

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 905 and 944**

[Docket No. FV99-905-1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule relaxing the minimum size requirement for red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3⁵/₁₆ inches diameter) to size 56 (3⁵/₁₆ inches diameter) under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). This rule continues to allow handlers and importers to ship size 56 red seedless grapefruit through November 7, 1999, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: May 3, 1999.**FOR FURTHER INFORMATION CONTACT:**

William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay_N_Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/oaob.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements

are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3⁵/₁₆ inches in diameter) through November 7, 1999, and size 48 (3⁵/₁₆ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect changes to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3⁵/₁₆ inches diameter) to size 56 (3⁵/₁₆ inches diameter) through November 7, 1999. This rule allows for the continued shipment of size 56 red seedless grapefruit. Absent this relaxation, the minimum size would be size 48 (3⁵/₁₆ inches diameter). The Committee met on September 3, 1998, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This final rule continues the adjustment to Table I establishing a minimum size of 56 through November 7, 1999. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This final rule also continues the adjustment § 944.106 establishing a minimum size of 56 through November 7, 1999. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The supply of red seedless grapefruit is expected to be slightly higher than last season based on the Department's official crop estimate of 31,500,000 1³/₅ bushel boxes as compared to last season's utilized supply of 30,600,000 boxes. The fruit is expected to be high quality with a good appearance. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in

Florida during the entire 1998-99 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1998-99 season, and will provide for the maximization of shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red grapefruit is for export.

During the first 11 weeks of the season (September 21 through December 6) a volume regulation limited the volume of small red seedless grapefruit entering the fresh market. That action was successful in moving smaller-sized fruit to those markets demanding such sizes (63 FR 51511, September 28, 1998; 64 FR 3807, January 26, 1999). The Committee agreed that this regulation helped reduce the negative effects of size 56 on the domestic market.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 7, 1999. This rule will have a beneficial impact on producers and handlers because it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1998-99 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are

regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule continues to relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule continues the minimum size requirement for imported red seedless grapefruit at 3⁵/₁₆ inches in diameter (size 56) until November 7, 1999, to reflect the relaxation under the order for red seedless grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000 (13 CFR 121.601).

Based on the industry and Committee data for the 1997-98 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1997-98 season was around \$6.30 per 4/5 bushel cartons, and total fresh shipments for the 1997-98 season are estimated at 15.5 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler

receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Florida handlers shipped approximately 42,410,000 4/5 bushel cartons of grapefruit to the fresh market during the 1997-98 season. Of these cartons, about 21,860,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 21,148,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule continues to relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3⁹/₁₆ inches diameter) to size 56 (3⁵/₁₆ inches diameter) through November 7, 1999. No change is being made in the minimum size 56 requirement for export shipments. Absent this relaxation, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 7, 1999, was passed by the Committee unanimously. In addition, there was a volume regulation in effect for the first 11 weeks of this season (September 21 through December 6) that limited the volume of small red seedless grapefruit entering the fresh market (63 FR 51511, September 28, 1998; 64 FR 3807, January 26, 1999).

This rule will have a positive impact on affected entities. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements.

This rule continues to relax the minimum size from size 48 (3⁹/₁₆ inches diameter) to size 56 (3⁵/₁₆ inches diameter) through November 7, 1999. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated

demand in those markets for the 1998–99 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 7, 1999.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 3, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

An interim final rule concerning this action was published in the **Federal Register** on November 10, 1998 (63 FR 62919). Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 11, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 62919, November 10, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 63 FR 62919 on November 10, 1998, is adopted as a final rule without change.

Dated: March 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 10, 11, 25, and 95

RIN 3150–AF97

Conformance to National Policies For Access to and Protection of Classified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the requirements for the protection of and access to classified information to new national security policy documents. This final rule is necessary to ensure that classified information in the possession of NRC licensees, certificate holders, and others under the NRC's regulatory requirements is protected in accordance with current national policies.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: James J. Dunleavy, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7404, E-mail JJD1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1998 (63 FR 41206), the NRC published a proposed rule in the **Federal Register** to amend 10 CFR parts 10, 11, 25, and 95 to conform its requirements for the protection of classified information at licensee, certificate holder and other facilities to new national security policy documents. The national requirements for the protection of and access to classified National Security Information were revised by the issuance of the