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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99-905-5 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Clarification of Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises inspection requirements for shipments of Florida citrus and imports of grapefruit. The handling of citrus grown in Florida is regulated under a marketing order administered locally by the Citrus Administrative Committee (Committee). Grapefruit imports are subject to an import regulation issued under section 8e of the Agricultural Marketing Agreement Act of 1937. This change specifies in the regulations undersize tolerances for Florida citrus and imported grapefruit that are currently applied by the inspection service and clarifies the regulations. This rule also renumbers citations in the domestic and import regulations to reflect revisions to the numbering of the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.

EFFECTIVE DATE: This final rule becomes effective January 4, 2001.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final 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 final rule is also issued under section 8e of the Act, which provides that whenever certain 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 final 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. Maintaining confidence in the commodity shipped contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size requirements to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida citrus. Such regulations may be modified, suspended, or terminated under § 905.52. Section 905.53 specifies that whenever the handling of a variety of a type of fruit is regulated pursuant to § 905.52, each handler who handles any such type of fruit shall, prior to such handling of any lot of such variety, cause the lot to be inspected by the Federal-State Inspection Service and certified as meeting all applicable requirements of that regulation.

This final rule clarifies inspection requirements for oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit. Current inspection procedures allow undersize tolerances for domestic shipments of Florida citrus failing to meet minimum size regulations under the order. These procedures also allow undersize tolerances for imported grapefruit failing to meet minimum size

requirements established under the grapefruit import regulation. Specifically, these procedures allow for a 10 percent tolerance for undersize fruit in each lot and a 15 percent tolerance for undersize fruit in any individual sample. Undersize tolerances allow for variations to proper sizing and reduce handler-packing costs. This rule specifies these inspection procedures in the order's rules and regulations and in the grapefruit import regulation. The Committee unanimously recommended specifying the undersize tolerances for Florida citrus in the regulations at a meeting on April 6, 1999.

Paragraph (c) of § 905.306 currently references sections of the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida with the intention of providing tolerances for undersized fruit. However, the sections specified reference grade defects, not size tolerances. Therefore, specific undersize tolerances for Florida grown oranges, grapefruit, tangerines, and tangelos are added to the text of the regulations.

Paragraph (c) of § 905.306 is revised to allow for a 10 percent tolerance for undersized fruit in each lot and a 15 percent tolerance for undersized fruit in any individual sample. Additionally, paragraph (c) of § 944.106 of the grapefruit import regulation is also revised to reference the undersize tolerances specified in paragraph (c) of § 905.306 to recognize current inspection procedures.

This rule also renumbers citations in the order to reflect the revised United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida. Effective August 1, 1996, the various grade standards for Florida citrus were amended. Some sections of the amended standards were renumbered. This action renumbers some section references to the U.S. grade standards in §§ 905.146 and 905.306 to bring them into conformity with the renumbered sections in the amended standards.

Similar changes are also made in paragraph (c) of § 944.106 of the grapefruit import regulation issued under section 8e of the Act. That section 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. The grapefruit import regulation is based on the requirements issued under the marketing order for Florida citrus. Accordingly, a corresponding change to the grapefruit import regulation is made.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the 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 100 Florida citrus handlers subject to regulation under the marketing order, about 11,000 Florida citrus producers 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 (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1999–2000 season, the average annual f.o.b. price for fresh Florida citrus during the 1999–2000 season was \$9.08 per $\frac{1}{8}$ bushel carton for all shipments, and the total shipments for the 1999–2000 season approximated 58 million cartons of citrus. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition, and the Department believes that the majority of Florida citrus producers and grapefruit importers may be classified as small entities.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size requirements to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida citrus. Section 905.53 specifies that whenever the handling of a variety of a type of fruit is regulated pursuant to § 905.52, each handler who handles any such type of fruit shall, prior to such handling of any lot of such variety, cause the lot to be inspected by the Federal-State Inspection Service and certified as meeting all applicable requirements of that regulation.

This rule clarifies inspection requirements for oranges, grapefruit,

tangerines, and tangelos grown in Florida and imported grapefruit. Current inspection procedures allow for a 10 percent tolerance for undersize fruit in each lot and a 15 percent tolerance for undersize fruit in any individual sample for both domestic and import shipments. This action adds undersize tolerances to the order's rules and regulations and the import regulation for grapefruit. This rule also renumbers citations in the order to reflect revisions in the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida made in August 1996. Similar changes are also made to the grapefruit import regulation issued under section 8e of the Act.

This rule will have a positive impact on affected entities. This action enhances the understandability of the text of the regulations. The undersize tolerances allow for variations to proper sizing and reduce handler-packing costs. Without such tolerances, more fruit would fail to meet minimum size requirements without reconditioning, and handler-packing costs would increase accordingly. Thus, the tolerances help facilitate shipments of Florida citrus. The Committee unanimously recommended specifying the undersize tolerances for Florida citrus in the regulations at a meeting on April 6, 1999.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico, and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

With regard to alternatives, this action offers the best alternative to achieve the intended purpose of clarifying the inspection requirements.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with

this final rule. However, Florida citrus must meet the requirements specified in the U.S. standards for the various types of citrus grown in Florida issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 10, 2000 (65 FR 60121). Copies of the rule were mailed or sent via facsimile to all Committee members and citrus handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending December 11, 2000, was provided to allow interested persons to respond to the proposed rule. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping citrus from the 2000–2001 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule and no comments were received.

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.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

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

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 905.146, paragraph (c)(1) is revised to read as follows:

§ 905.146 Special purpose shipments.

* * * * *

(c) * * *

(1) Such fruit meets the requirements of U. S. No. 2 Russet grade and those requirements of U. S. No. 1 grade relating to shape (form), as such requirements are set forth in the revised U. S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), the revised Standards for Florida Tangerines (7 CFR 51.1810 through 51.1837), or the revised U. S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784). Such fruit also meets applicable minimum size requirements in effect for domestic shipments of citrus fruits.

* * * * *

4. In § 905.306, paragraphs (c) and (d) are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation.

* * * * *

(c) *Size tolerances.* To allow for variations incident to proper sizing in the determination of minimum diameters as prescribed in Tables I and II, not more than 10 percent, by count, of the fruit in any lot of containers may fail to meet the minimum diameter size requirements, and not more than 15 percent, by count, in any individual sample may fail to meet the minimum diameter size requirements specified: *Provided*, That such tolerances for other than Navel and Temple oranges shall be based only on the oranges in the lot measuring $2\frac{1}{16}$ inches or smaller in diameter.

(d) Terms used in the marketing order including Improved No. 2 grade for

grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in Rule No. 20–35.03 of the Regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit and diameter, shall mean the same as is given to the terms in the revised U. S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), the revised U. S. Standards for Florida Tangerines (7 CFR 51.1810 through 51.1837), or the revised U. S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784).

PART 944—FRUITS; IMPORT REGULATIONS

5. In § 944.106, paragraph (c) is revised to read as follows:

§ 944.106 Grapefruit import regulation.

* * * * *

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784), and in Marketing Order No. 905 (7 CFR §§ 905.18 and 905.306), shall be applicable herein.

* * * * *

Dated: December 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 01–97 Filed 1–2–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–6 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends indefinitely a portion of an order provision concerning the release of reserve cherries. The suspension will allow cherries held in inventory reserves to be released for exempt uses such as exports. The Cherry Industry Administrative Board (Board) recommended this action to allow reserve cherries to be used in outlets