Rules and Regulations

Federal Register
Vol. 82, No. 223
Tuesday, November 21, 2017

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Doc. No. AMS–SC–17–0063; SC17–905–1 IR]

Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida and Imported Grapefruit; Change in Size Requirements for Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Citrus Administrative Committee (Committee) to relax the minimum size requirements currently prescribed for grapefruit under the marketing order for oranges, grapefruit, tangerines, and pummelos grown in Florida (Order). The Committee locally administers the Order and is comprised of producers and handlers operating within the production area and one public member. This rule relaxes the minimum size requirement for grapefruit from 3$^{5}/_{16}$ inches in diameter to 3 inches in diameter. This rule will maximize shipments by allowing more grapefruit to be shipped to the fresh market and will help reduce the losses sustained by the grapefruit industry during the September 2017 hurricane in Florida. The corresponding change in the grapefruit import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Effective November 24, 2017; comments received by January 22, 2018 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida, hereinafter referred to as the ''Order.'' The Order is 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 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 (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 USDA 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, USDA 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 USDA'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 that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes the minimum size requirements for grapefruit prescribed under the Order. This rule relaxes the minimum size requirement for grapefruit from 3$^{5}/_{16}$ inches in diameter to 3 inches in diameter. This rule will maximize shipments by allowing more grapefruit to be shipped to the fresh market and will help reduce the losses sustained by the grapefruit industry during the September 2017 hurricane in Florida. This change was unanimously recommended by the Committee at

meetings on June 29, 2017, and September 28, 2017.

Section 905.52 of the Order provides authority to establish minimum size requirements for Florida citrus. Section 905.306 of the rules and regulations issued under the Order specifies, in part, the minimum size requirements for grapefruit. 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). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106.

At its June 29, 2017, meeting, the Committee discussed the continuing decline in production as a result of losses from citrus greening, which is affecting the entire production area. The Committee also recognized that some consumers are now showing a preference for smaller-sized fruit. The Committee agreed the current minimum size should be relaxed in order to make additional fruit available for shipment.

The Committee met again on September 28, 2017, to discuss the additional damage Hurricane Irma caused to the current crop and revisited the discussion regarding the need to reduce the minimum size requirements. The major grapefruit-growing regions in Florida suffered significant damage and fruit loss from the hurricane. The strong winds from the storm blew substantial volumes of fruit off the trees. The impact of the storm is also expected to produce a much higher than normal fruit drop. The extent of the loss is evident in the official USDA crop estimate for this season, which reflects a 37 percent decrease from last year's estimate. Given the limited supply of fruit due to citrus greening and the impact of Hurricane Irma, the Committee believes relaxing the size requirements for grapefruit is needed to make more fruit available for shipment.

The Committee also considered a reduction in the soluble solids and the solids-to-acid minimum ratio as outlined in the minimum maturity requirements. However, members were concerned that reducing maturity requirements would impact the quality of the fruit. Consequently, the Committee did not recommend making any changes to the minimum maturity requirements at this time.

Committee members recognized that with the special circumstances surrounding this season and with the ongoing impacts of citrus greening, some allowances should be made to assist growers and handlers and provide additional volume to the market. The Committee believes relaxing the size requirements will make more fruit available to meet market demand, help maximize fresh shipments, increase returns to growers and handlers, and help address the losses stemming from the hurricane. Consequently, the Committee recommended changing the minimum size requirement for grapefruit from 3$^{5}/_{16}$ inches in diameter to 3 inches in diameter.

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 changes the minimum size requirement under the domestic handling regulations for grapefruit, a corresponding change to the import regulations is required.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 of the Fruit Import Regulations. Section 944.106(h) specifies that grapefruit imported into the United States are in most direct competition with grapefruit produced in the area covered by Marketing Order No. 905. This change relaxes the minimum size requirements for imported grapefruit from 3$^{5}/_{16}$ inches in diameter to 3 inches in diameter. The relaxation of minimum size requirements also has a beneficial impact on importers of grapefruit. This change allows a smaller-sized grapefruit to be shipped to the United States, thereby increasing the amount of fruit available for shipment to the fresh market, thus benefiting importers.

The Committee also recommended a relaxation in the minimum size requirements for oranges covered under the Order. That change is being considered under a separate action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses 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.

There are approximately 20 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. There are approximately 50 citrus importers. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the average f.o.b. price for Florida grapefruit during the 2016–17 season was $29.40 per box, and total fresh grapefruit shipments were approximately 3.2 million boxes. Using the average f.o.b. price and shipment data, the majority of Florida grapefruit handlers could be considered small businesses under SBA's definition ($29.40 times 3.2 million boxes equals $94.1 million divided by 20 handlers equals $4.7 million per handler). In addition, based on NASS data, the average grower price for the 2016–17 season was $16.02 per box. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below $750,000 ($16.02 times 3.2 million boxes equals $51,264,000 divided by 500 producers equals $102,528 per handler). Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh grapefruit was approximately $11.2 million in 2016. Using this value and the number of importers (approximately 50), most importers would have annual receipts of less than $7,500,000 for grapefruit. Thus, the majority of handlers, producers, and importers of grapefruit may be classified as small entities.

South Africa, Peru, and Mexico are the major grapefruit-producing countries exporting grapefruit to the United States. In 2016, shipments of grapefruit imported into the United States totaled approximately 24,000 metric tons.

This rule relaxes the minimum size requirements for grapefruit covered under the order from a 3$^{5}/_{16}$ inches in diameter to 3 inches in diameter and makes a corresponding change to the grapefruit import regulation. This change is expected to maximize shipments by allowing more grapefruit to be shipped to the fresh market and will help reduce the losses sustained by the grapefruit industry as a result of citrus greening and the September 2017 hurricane in Florida. Authority for this

change is provided in § 905.52. This rule revises §§ 905.306 and 944.106. The Committee unanimously recommended this change at its June 29, 2017, and September 28, 2017, meetings. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase the costs associated with the Order's requirements or the grapefruit import regulation. Rather, it is anticipated that this action will have a beneficial impact. Reducing the size requirements will make additional fruit available for shipment to the fresh market, provide an outlet for fruit that may otherwise go unharvested, and afford more opportunity to meet consumer demand. This change will provide additional fruit to fill the shortage caused by citrus greening and by Hurricane Irma. Further, by maximizing shipments, this action will help provide additional returns to growers and handlers as they work to recover from the losses stemming from the hurricane.

This action may also help reduce harvesting costs. By reducing the minimum size, more fruit will be able to be harvested immediately. This may eliminate the need to leave fruit on the tree to increase in size, which requires follow-up picking later in the season. Given the amount of fruit loss, this could help reduce picking costs substantially. The benefits of this rule are expected to be equally available to all fresh grapefruit growers, handlers, and importers, regardless of their size.

An alternative to this action would be to maintain the current minimum size requirements for domestic shipments of grapefruit. However, leaving the requirements unchanged would not make additional fruit available for shipment. Following the significant damage experienced by the industry from the September 2017 hurricane, maximizing shipments will help provide additional returns to growers and handlers as they recover from the loss. Another alternative considered was to reduce the minimum maturity requirements. However, Committee members thought it was important to maintain the maturity requirements to ensure overall quality. Therefore, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the citrus industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the June 29, 2017, and September 28, 2017, meetings were public meetings, and all entities, both large and small, were able to express their views on this issue. Further, information will be provided to importers regarding this change. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the size requirements for grapefruit currently prescribed under the Marketing Order for oranges, grapefruit, tangerines, and pummelos grown in Florida and the grapefruit import regulation. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. The Florida citrus industry has been dealing with the devastating effects of citrus greening for more than 10 years, resulting in ever smaller harvests and escalating production costs. The September 2017 hurricane caused significant additional damage and crop loss to the industry, with losses estimated at more than $700 million. This rule, in conjunction with a companion rule for oranges, will bring some much-needed relief by providing additional fruit for shipment to the fresh market and to increase returns to growers and handlers. Based on the size frequency measurements provided by NASS as part of grapefruit and orange crop estimates, the recommended relaxation in size for both grapefruit and oranges could make an additional 20 to 25 percent of the crop available for shipment to the fresh market. Based on estimates, this could mean an additional volume of about 700,000 boxes of citrus available for shipment. Using an average fresh price per box of around $30, this could provide the industry with an additional $20 million in returns for the 2017–18 season. This rule relieves a restriction on the size of domestic and imported grapefruit that can be shipped to the fresh market. Therefore good cause exists for this rule becoming effective three days after publication in the **Federal Register.** In addition, the Committee unanimously recommended these changes at public meetings, and interested parties had an opportunity to provide input. Further, this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

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 in the preamble, 7 CFR parts 905 and 944 are amended as follows:

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

■ 1. The authority citation for part 905 continues to read as follows:

Authority: 7 U.S.C. 601–604.

■ 2. In § 905.306, Table I in paragraph (a) and Table II in paragraph (b) are amended by revising the entries for ''Seedless, red'' and ''Seedless, except red'' under ''Grapefruit'' to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * * * *			
Grapefruit			
Seedless, red	On and after 11/13/00	U.S. No. 1	3
Seedless, except red	On and after 9/01/94	U.S. No. 1	3
* * * * * * *			

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * * * *			
Grapefruit			
Seedless, except red	On and after 9/01/94	U.S. No. 1	3
Seedless, red	On and after 9/01/94	U.S. No. 1	3
* * * * * * *			

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. The authority citation for part 944 continues to read as follows:

Authority: 7 U.S.C. 601–604.

■ 4. In § 944.106, the table in paragraph (a) is revised to read as follows:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Seedless, red	On and after 11/13/00	U.S. No. 1	3
Seedless, except red	On and after 9/01/94	U.S. No. 1	3

* * * * *

Dated: November 16, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–25209 Filed 11–20–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2017–0012]

RIN 1557–AE 23

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1571]

RIN 7100–AE 83

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE 63

Regulatory Capital Rules: Retention of Certain Existing Transition Provisions for Banking Organizations That Are Not Subject to the Advanced Approaches Capital Rules

AGENCIES: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule to extend the regulatory capital treatment applicable during 2017 under the regulatory capital rules (capital rules) for certain items. These items include regulatory capital deductions, risk weights, and certain minority interest limitations. The relief provided under the final rule applies to banking organizations that are not subject to the capital rules' advanced approaches (non-advanced approaches banking organizations). Specifically, for these banking organizations, the final rule extends the current regulatory capital treatment of mortgage servicing assets, deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, significant investments in the capital of unconsolidated financial institutions in the form of common stock, non-significant investments in the capital of unconsolidated financial institutions, significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock, and common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest exceeding the capital rules' minority interest limitations. Under the final rule, advanced approaches banking organizations continue to be subject to the transition provisions established by the capital rules for the above capital items. Therefore, for advanced approaches banking organizations, their transition schedule is unchanged, and advanced approaches banking organizations are required to apply the capital rules' fully phased-in treatment for these capital items beginning January 1, 2018.

DATES: This rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Senior Risk Expert (202) 649–6983; or Benjamin Pegg, Risk Expert (202) 649–7146, Capital and Regulatory Policy; or Carl Kaminski, Special Counsel, or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan Climent, Manager, (202) 872–7526; Elizabeth MacDonald, Manager, (202) 475–6316; Andrew Willis, Supervisory Financial Analyst, (202) 912–4323; Sean Healey, Supervisory Financial Analyst, (202) 912–4611 or Matthew McQueeney, Senior Financial Analyst, (202) 452–2942, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; David W. Alexander, Counsel (202) 452–2877, or Mark Buresh, Senior Attorney (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Michael Maloney, Capital Markets Senior Policy Analyst, *mmaloney@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888, *regulatorycapital@fdic.gov;* or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Rachel Ackermann, Counsel, *rackmann@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) adopted rules that strengthened the capital requirements applicable to banking organizations supervised by the agencies (capital rules).[1] The capital rules limit the amount of capital that is eligible for inclusion in regulatory capital in cases where the capital is issued by a consolidated subsidiary of a banking organization and not owned by the parent banking organization (minority interest).[2] The capital rules also require amounts of mortgage servicing assets (MSAs), deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks (temporary difference DTAs), and certain investments in the capital of unconsolidated financial institutions above certain thresholds to be deducted from a banking organization's regulatory capital.[3]

The capital rules contain transition provisions that phase in certain requirements over several years in order to give banking organizations time to

[1] Banking organizations subject to the agencies' capital rules include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States that are not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, or bank holding companies and savings and loan holding companies that are employee stock ownership plans. The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

[2] 12 CFR 217.21 (Board); 12 CFR 3.21 (OCC); 12 CFR 324.21 (FDIC).

[3] *See* 12 CFR 217.22(c)(4), (c)(5), and (d)(1) (Board); 12 CFR 3.22(c)(4), (c)(5), and (d)(1) (OCC); 12 CFR 324.22(c)(4), (c)(5), and (d)(1) (FDIC). Banking organizations are permitted to net associated deferred tax liabilities against assets subject to deduction.