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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV03-905-2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule removing the regulations for seeded grapefruit under the Florida citrus marketing order and for seeded grapefruit imported into the United States. The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and is administered locally by the Citrus Administrative Committee (committee). The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. Production of seeded grapefruit in Florida has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also continues in effect a relaxation of the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. The volume remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help maximize shipments and returns for

fresh Valencia and other late type oranges.

EFFECTIVE DATE: February 5, 2004.

FOR FURTHER INFORMATION CONTACT:

William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

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 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."

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

This rule continues in effect the removal of regulations for seeded grapefruit under the order for Florida citrus. Thus, handlers of seeded grapefruit are no longer subject to minimum grade, size, assessment, and reporting requirements under the order. Production has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also continues in effect a relaxation in the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. For the purposes of this final rule, the term "domestic shipments" includes shipments between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States. The volume of fruit remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help the industry maximize fresh shipments and returns for Valencia and other late type oranges. These actions were unanimously recommended by the committee at its meeting on July 1, 2003.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. The grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different

varieties of fresh Florida citrus. 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). Prior to the issuance of the interim final rule, the minimum grade for domestic seeded grapefruit was a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784), with a minimum size of $3\frac{1}{16}$ inches in diameter for domestic shipments, and $3\frac{3}{16}$ inches for export shipments. The minimum grade for domestic Valencia and other late type oranges was a U.S. No. 1 for the season as specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), with a minimum size of $2\frac{7}{16}$ inches in diameter for both domestic and export shipments.

Under §§ 905.51 and 905.52 of the order, the committee has authority to recommend to USDA the varieties of citrus to be regulated. This rule continues to modify § 905.306 by removing seeded grapefruit from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). The removal of seeded grapefruit from these tables has the effect of removing the grade and size requirements for seeded grapefruit under the order. Also, assessment and reporting requirements no longer apply to seeded grapefruit. In addition, this rule continues to amend Table I of § 905.306 by reducing the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31, each season.

In making its recommendation, the committee recognized that seeded grapefruit is no longer significant in terms of shipments and market share. During the 2002–03 season, only 150 cartons of seeded grapefruit were shipped to the fresh market. This is down from 4,705 cartons shipped in the 1998–99 season. Currently, shipments of seeded grapefruit represent less than .0005 percent of fresh shipments of Florida grapefruit. Seeded grapefruit production has declined as new seedless varieties have been developed and planted. Consequently, the committee determined that removing seeded grapefruit varieties from the order regulations will not have a negative impact on the grapefruit market.

In addition, this rule also continues to relax the minimum grade requirements for domestic shipments of fresh Valencia and other late oranges. The committee recommended reducing the minimum grade requirements for

Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 2 external grade with a U.S. No. 1 internal grade from June 15, 2004, to July 31, 2004, and during the same period of each season thereafter. Valencia and late type oranges have difficulty meeting grade requirements late in the season. This is usually due to regreening, which is considered a defect under the U.S. Standard for Grades of Oranges.

At the end of the season growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes that permitting the shipment of a U.S. No. 2 external grade during the specified time will help the industry maximize fresh shipments and returns for Valencia and other late type oranges. Consequently, the committee recommended that during the period June 15 to July 31 that the grade standard be lowered to U.S. No. 2 external grade with U.S. No. 1 internal grade for Valencia and other late type oranges shipped to domestic markets.

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 removes the minimum size and grade requirements for seeded grapefruit 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 (7 CFR 944.106). The minimum grade and size requirements are specified in a table in paragraph (a) of § 944.106. This rule removes the minimum grade and size requirements for imported seeded grapefruit to reflect the change made under the order for seeded grapefruit grown in Florida.

Section 8e import requirements for oranges are based on the marketing order for South Texas oranges and as such will not be impacted by this relaxation.

Final Regulatory Flexibility Analysis

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.

There are approximately 75 grapefruit and Valencia and other late type orange handlers subject to regulation under the order, approximately 11,000 producers of Florida citrus in the regulated area, and approximately 10 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) 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 \$750,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2002–03 season was approximately \$7.24 per $\frac{4}{5}$ -bushel carton, and total fresh shipments for the 2002–03 season are estimated at 28.3 million cartons of grapefruit. The average annual f.o.b. price for fresh Florida Valencia and other late type oranges during the 2002–03 season was approximately \$6.99 per carton, and total fresh shipments are estimated at 3,669,000 cartons. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit and Valencia and other late type orange shipments. Using the average f.o.b. prices, at least 75 percent of the grapefruit and Valencia and other late type orange handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit and Valencia and other late type orange handlers may be classified as small entities. In addition, based on information from the Foreign Agricultural Service, USDA, the dollar value of imported grapefruit ranged from \$902,000 in 1998 to \$2,018,000 during the 2002 season. Using these numbers, all grapefruit importers may be classified as small entities. The majority of Florida grapefruit and Valencia and other late type orange producers may also be classified as small entities.

This rule continues in effect the removal of seeded grapefruit from regulation under the order. Handlers of seeded grapefruit are no longer required to meet the minimum grade and size requirements and are not subject to assessments and reporting requirements. Removing these varieties from the minimum grade and size requirements

will have no significant impact on the grapefruit market. This rule also continues in effect a reduction in the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31 each season. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. The committee unanimously recommended this action at a meeting on July 1, 2003.

During the 2002–2003 season, only 150 cartons of seeded grapefruit were shipped out of a total of 28.3 million 4/5-bushel cartons of seedless grapefruit. Production of seeded varieties has declined as newer seedless varieties have been developed and planted. Current market share and shipment levels justify removal of the order requirements for seeded grapefruit.

Valencia and late type oranges have difficulty meeting grade requirements late in the season. At the end of the season, growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes permitting the shipment of a U.S. No. 2 external grade with a minimum U.S. No. 1 internal grade from June 15 to July 31 for domestic shipments will help the industry maximize fresh shipments and returns for Valencia and other late type oranges.

This rule is expected to continue to have a positive impact on affected entities as it relaxes handling requirements. With this rule removing seeded grapefruit from the varieties regulated, handlers are able to market these varieties free from order requirements. In addition, the relaxation in grade requirements from June 15 to July 31 each season for Valencia and other late type oranges allows handlers to make additional supplies available for the fresh domestic market, and may increase returns. No additional costs are imposed on growers, handlers, and importers with this rule. The benefits derived from this change are expected to benefit both large and small entities equally.

During the period January 1 through December 31, 2002, imports of

grapefruit totaled 23,246 metric tons (approximately 1,100,000 cartons). The Bahamas were the principal source, accounting for nearly 99 percent of the total. Remaining imports were supplied by Israel. Most imported grapefruit enters the United States from October through May.

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 requirements for domestic seeded grapefruit shipments, this change must also be applicable to imported grapefruit. This rule removes the import requirements for seeded grapefruit. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers.

One alternative to this action was to make no changes to the order's handling regulations. However, the committee believes that seeded grapefruit varieties have no significant impact on the grapefruit market and that action should be taken to remove them from the handling regulations. In addition, the committee believes that making additional supplies of oranges available late in the season may increase returns. Therefore, the alternative of making no changes was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus 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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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 July 1, 2003, 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.

An interim final rule concerning this action was published in the **Federal Register** on September 9, 2003. A correction to this docket was published in the **Federal Register** on October 15, 2003. Copies were mailed by the

committee's staff to all committee members and citrus handlers. In addition, the rule and correction were made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period, which ended November 10, 2003. No comments were received.

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.

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** (68 FR 53021, September 9, 2003) and as corrected in the **Federal Register** (68 FR 59446, October 15, 2003) 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, 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 68 FR 53021 on September 9, 2003, and corrected at 68 FR 59446 on October 15, 2003, is adopted as a final rule without change.

Dated: December 30, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–168 Filed 1–5–04; 8:45 am]

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