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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV05-906-1 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changes to Container and Pack Requirements

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 that revised the container and pack requirements prescribed under the marketing order (order) covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The order regulates the handling of such fruit and is administered locally by the Texas Valley Citrus Committee (Committee). This rule continues in effect the addition of eight new containers to the list of authorized containers for use by Texas citrus handlers, the removal of one obsolete container, and the grouping of all the requirements on authorized bags for easier reference. Other continued changes correct references to the U.S. grade standards for oranges and grapefruit grown in Texas. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and improve producer returns.

DATES: *Effective Date:* January 9, 2006.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942; 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 and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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."

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.

This rule continues in effect the action that revised container and pack requirements prescribed under the Texas orange and grapefruit order and made several conforming and formatting changes. The rule revised the rules and regulations and container requirements by adding eight new containers to the list of authorized containers for use by Texas citrus handlers, removing one obsolete container, combining all of the requirements on authorized bags into one grouping for easier reference. Other changes included revising incorrect references to the U.S. grade standards for oranges and grapefruit grown in Texas and States other than Florida, California, and Arizona (7 CFR part 51.680 through 51.714 for oranges, and 7 CFR part 51.620 through 51.653 for grapefruit). See 68 FR 46433, August 6, 2003; and 66 FR 48785, September 24, 2001, for information on changes in the grade standards that necessitated changes to the Texas citrus handling regulations.

These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns by lessening the chances of confusion in the marketplace. In addition, this rule is needed to bring the administrative rules and regulations into conformance with amendments to the U.S. grade standards. These changes were unanimously recommended by the Committee on May 26, 2005.

The Committee's Container Subcommittee met on May 26, 2005, and discussed in detail possible changes to the order's container requirements. The Subcommittee recommended and the Committee unanimously approved the following changes to the orange and grapefruit container requirements and conforming changes to the rules and regulations to bring them into conformity with current industry marketing practices:

(1) The addition of eight new containers to the list of approved containers for use by Texas citrus handlers;

(2) Elimination of one obsolete wire crib from the container list, combining five approved bags currently listed separately into one paragraph for easier reference, and removal of some obsolete language in one container listing;

(3) Removal of references no longer needed in the Texas citrus regulations

because of changes made to the U.S. grade standards for Texas oranges and grapefruit; and

(4) Correction of references to legal citations in the regulations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 of the citrus marketing order authorizes the issuance of container and pack regulations. Section 906.340(a)(1) of the order's rules and regulations outlines container requirements for fresh shipments of Texas oranges and grapefruit. Container standardization helps prevent marketing confusion and helps foster orderly marketing.

Section 906.340 of the rules and regulations previously specified 12 containers authorized for use by Texas citrus handlers in paragraphs (a)(1)(i) through (xi). Paragraph (a)(1)(xi) of § 906.340 also authorized the Committee to approve other types of containers for testing purposes. Such test containers are subject to prior approval and their use by handlers is supervised by the Committee.

Over the years, the Committee has approved experimental containers for use by the Texas citrus industry. The need for experimental containers is reviewed by the Committee at the beginning of each season. Because buyers, including retailers, have continued to request an increasing array of containers to meet their various display objectives, the number of Committee approved experimental containers had increased to 11.

The Committee recently reviewed its experimental container list and decided to convert those being used by handlers to permanent status and to eliminate those that were no longer in use to lessen the chances of confusion and to reflect current industry practices. The Committee, therefore, recommended converting to permanent status 8 experimental containers which are now widely used by the Texas citrus industry. The following containers were moved from the experimental to the permanent container list:

(1) A fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15½ inches in width, and 7 inches in depth;

(2) A fiberboard box with approximate dimensions of 15 inches in length, 11 inches in width, and 7¼ inches in depth;

(3) A fiberboard box with approximate dimensions of 25¾ inches in length, 15

inches in width, and 8⅜ to 10½ inches in depth;

(4) A reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(5) A reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(6) A reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(7) An octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided*, That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit; and

(8) A closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¾ inches in width, and 6¹⁵⁄₁₆ inches in height: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds.

Retail buyers are highly competitive and experiment frequently with various in-store displays utilizing many container shapes and sizes. This ongoing experimentation is influenced by European container development, consumer preferences, evolving handling/racking systems, and other variables. These forces have combined to demand an ever-increasing number of containers on the experimental list. The intent of this action is to reduce the experimental container list to those which truly are still experimental. The Committee believes that the permanent container list should include all the containers that the Texas citrus industry is now using. Adding the widely used containers to the permanent list and eliminating the unused containers brings the requirements into conformity with current industry operating practices. This change does not preclude additional containers being put on the experimental list, when necessary.

The Committee also recommended eliminating one wire crib on the permanent list with dimensions of 46½ by 37 by 30 inches, which was no longer being used by the industry. In addition, the Committee recommended combining five separate bag requirements into one paragraph to allow for easier reference. Previously, paragraph (a)(1) of § 906.340 listed bags with a capacity of five, eight, ten, or 18 pounds of fruit, and four-pound poly or vexar bags for oranges only, in paragraphs (iv), (v), (x), and (xi). This action combined all the bag

requirements into one paragraph so all of the authorized bags could be more easily identified. In addition, the Committee indicated that a reference to Freight Container Tariff 2G previously in § 906.340(a)(1)(ii) was obsolete and recommended that it be removed.

The U.S. grade standards for Texas oranges and grapefruit were revised in 2003 to reflect current cultural and marketing practices and give the industry greater flexibility in marketing and packaging using developing technologies. The major changes revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section. To bring the order regulations into conformity with the revised grade standards, in paragraphs (c)(3)(iii) and (e) of § 906.120, the words "which are packed level full," and "the term *level full* means that the fruit is level with the top edge of the bottom section of the carton;" respectively, were removed. In addition, in the introductory text of paragraph (a)(2)(i)(A) of § 906.340, the comma after "and" and the words "when place packed in cartons or other containers," were removed. Also, in the introductory text of paragraph (a)(2)(ii)(A) of § 906.340, the words "when place packed in cartons or other containers" and "and otherwise meet the requirements of standard sizing", when referring to grapefruit only, were removed.

Furthermore, the interim final rule revised several references to the U.S. standards for grapefruit and oranges for Texas and States other than Florida, California, and Arizona in paragraph (b) of § 906.137 in the regulations to correctly identify applicable sections of the U.S. grade standards. A reference to "51.685" of the U.S. grade standards for grapefruit was incorrect and was revised to "51.653" to accurately reflect sections of the grapefruit standard. Also, an incorrect reference to "51.712" of the U.S. grade standards for oranges was revised to "51.714". In addition, a reference to "51.652" in paragraph (c) of § 906.340 was revised to "51.653".

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 18 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 212 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. The majority of Texas orange and grapefruit handlers and producers may be classified as small entities.

Last year, 6 of the 18 handlers (33 percent) each shipped over 545,951 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of \$10.99 per carton, these handlers could be considered large businesses by the SBA, and the remaining 12 handlers (67 percent) could be considered small businesses. Of the approximately 212 producers within the production area, few have sufficient acreage to generate sales in excess of \$750,000; therefore, a majority of producers and handlers of Texas oranges and grapefruit may be classified as small entities.

This rule continues in effect the action that revised container and pack requirements prescribed under the Texas orange and grapefruit order and made several conforming and formatting changes. The interim final rule revised the rules and regulations and container requirements by adding eight new containers to the list of authorized containers for use by Texas citrus handlers, removing one obsolete container, combining all of the requirements on authorized bags into one grouping for easier reference. Other changes included revising incorrect references to the U.S. grade standards for oranges and grapefruit grown in Texas and States other than Florida, California, and Arizona (7 CFR part 51.680 through 51.714 for oranges, and 7 CFR part 51.620 through 51.653 for grapefruit). See 68 FR 46433, August 6, 2003; and 66 FR 48785, September 24, 2001, for information on changes to the grade standards that necessitated changes in the Texas citrus handling regulations.

These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns by lessening the chances of

confusion in the marketplace. In addition, this rule was needed to bring the order's rules and regulations into conformance with amendments to the U.S. grade standards. These changes were unanimously recommended by the Committee on May 26, 2005.

The Committee's Container Subcommittee met on May 26, 2005, and discussed in detail possible changes to the order's container requirements. The Subcommittee recommended and the Committee unanimously approved the following changes to the orange and grapefruit container requirements and conforming changes to the rules and regulations to bring them into conformity with current industry marketing practices: (1) The addition of eight new containers to the list of approved containers for use by Texas citrus handlers; (2) Elimination of one obsolete wire crib from the container list, combining the requirements of five approved bags currently listed separately into one paragraph for easier reference, and removing obsolete language in one container listing; (3) Removal of references no longer needed in the Texas citrus regulations because of changes made to the U.S. grade standards for Texas oranges and grapefruit; and (4) Correction of references to legal citations in the regulations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 of the citrus marketing order authorizes the issuance of container and pack regulations. Section 906.340(a)(1) of the order's rules and regulations outlines container requirements for fresh shipments of Texas oranges and grapefruit. Container standardization helps prevent marketing confusion.

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Over the years, the Committee has approved experimental containers for use by the Texas citrus industry. The need for experimental containers is reviewed by the Committee at the beginning of each season. Because buyers, including retailers, have continued to request an increasing array of containers to meet their various

display objectives, the number of Committee approved experimental containers had increased to 11.

The Committee recently reviewed its experimental container list and decided to convert those being used by handlers to permanent status and to eliminate those that were no longer in use to lessen the chances of confusion and to reflect current industry practices. The Committee, therefore, recommended converting to permanent status 8 experimental containers which are now widely used by the Texas citrus industry. The following containers were moved from the experimental container list to the permanent container list:

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(3) A fiberboard box with approximate dimensions of 25¾ inches in length, 15 inches in width, and 8⅜ to 10½ inches in depth;

(4) A reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(5) A reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(6) A reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(7) An octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided*, That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit; and

(8) A closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¾ inches in width, and 6¹⁵/₁₆ inches in height: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds.

Retail buyers are highly competitive and experiment frequently with various in-store displays utilizing many container shapes and sizes. This ongoing experimentation is influenced by European container development, consumer preferences, evolving handling/racking systems, and other variables. These forces have combined to demand an ever-increasing number of containers on the experimental list. The intent of this action is to reduce the experimental container list to those which truly are still experimental. The

Committee believes that the permanent container list should include all the containers the Texas citrus industry is now using. Moving the widely used containers from the experimental list to the permanent list and eliminating unused containers brings the container requirements into conformity with industry operating practices. This change does not preclude additional containers being put on the experimental list, when necessary.

The Committee also recommended eliminating one wire crib on the permanent list with dimensions of 46½ by 37 by 30 inches, which was no longer being used by the industry. In addition, the Committee recommended combining five separate bag requirements into one paragraph to allow for easier reference. Previously, paragraph (a)(1) of § 906.340 listed bags with a capacity of five, eight, ten, or 18 pounds of fruit, and four-pound poly or vexas bags for oranges only, in paragraphs (iv), (v), (x), and (xi). This rule combined all the bag requirements into one paragraph so all authorized bags could be more easily identified. In addition, the Committee indicated that a reference to Freight Container Tariff 2G previously in § 906.340(a)(1)(ii), was obsolete and recommended that it be removed.

The U.S. grade standards for Texas oranges and grapefruit were revised in 2003 to reflect current cultural and marketing practices and give the industry greater flexibility in marketing and packaging using developing technologies. The major changes revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section. To bring the order regulations into conformity with the revised grade standards, in paragraphs (c)(3)(iii) and (e) of § 906.120, the words “which are packed level full,” and “the term *level full* means that the fruit is level with the top edge of the bottom section of the carton;”, respectively, were removed. In addition, in the introductory text of paragraph (a)(2)(i)(A) of § 906.340, the comma after “and” and the words “when place packed in cartons or other containers,” were removed. Also, in the introductory text of paragraph (a)(2)(ii)(A) of § 906.340, the words “when place packed in cartons or other containers” and “and otherwise meet the requirements of standard sizing”, when referring to grapefruit only, were removed.

Furthermore, the interim final rule revised several references to the U.S. standards for grapefruit and oranges for

Texas and States other than Florida, California, and Arizona in paragraph (b) of § 906.137 in the regulations to correctly identify applicable sections of the U.S. grade standards. A reference to “51.685” of the U.S. grade standards for grapefruit was incorrect and was revised to “51.653” to accurately reflect sections of the grapefruit standard. Also, an incorrect reference to “51.712” of the U.S. grade standards for oranges was revised to “51.714”. In addition, a reference to “51.652” in paragraph (c) of § 906.340 was revised to “51.653”.

The benefits of these changes are expected to be equally available to all Texas citrus producers and handlers regardless of their size of operation. The changes offer benefits to the entire Texas citrus industry. These changes enable handlers to compete more effectively in the marketplace by lessening the chances of marketing confusion. These changes also will contribute to the industry’s long-term objective of marketing as much citrus as possible.

These regulation changes are expected to lead to market expansion. The alternative of leaving the regulations unchanged would not bring the regulations into conformity with industry operating practices. Accordingly, in assessing alternatives to the changes provided in this rule, this action provides the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas orange and 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. 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 Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 26, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee’s Container Subcommittee met on May 26, 2005, and discussed this issue in detail. That meeting was also a public meeting and

both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on August 31, 2005. Copies of the rule were mailed by the Committee’s staff to all Committee members and orange and grapefruit handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 31, 2005. 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** (70 FR 51574, August 31, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

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

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 906 which was published at 70 FR 51574 on August 31, 2005, is adopted as a final rule without change.

Dated: December 5, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23821 Filed 12–8–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03–A]

Milk in the Upper Midwest Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.