

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV05-905-1 IFR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in the Minimum Maturity Requirements for Fresh Grapefruit

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule reduces the minimum maturity requirements for fresh grapefruit under the marketing order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this change. This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida.

**DATES:** Effective December 23, 2004; comments received by February 22, 2005 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 Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket

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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884-1671; 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](mailto: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."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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 reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida. This action was unanimously recommended by the Committee at its meeting on November 16, 2004.

Section 905.52 of the order provides authority for the establishment of grade and size requirements for Florida citrus. One element of grade is maturity. Section 905.306 of the order specifies, in part, the minimum maturity requirements for grapefruit. The current minimum maturity requirements for Florida grapefruit are 8.0 percent soluble solids (sugars) and 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1.

This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent soluble solids for the remainder of the 2004-05 season which ends July 31, 2005. On August 1, 2005, the requirement returns to 8.0 percent soluble solids. The 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1 remains unchanged by this action.

During the months of August and September the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The strong winds from the storms blew substantial volumes of the setting fruit off the trees. The impact of the storms also produced 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

64 percent decrease from last year's estimate.

In inspecting groves following the storms, growers have found that the younger trees retained their fruit better compared to trees in established groves. However, based on Committee discussion, the fruit from younger trees has more difficulty meeting the current maturity requirement. To address the situation, the Committee considered how the maturity requirements might be adjusted so that more fruit from the younger trees would be available for the fresh market.

The Committee considered several options to address this issue including a one-point reduction in the soluble solids and a reduction in the minimum ratio. Several members were concerned about reducing requirements too much and believed that reducing maturity requirements by a full point would impact the quality of the fruit. It was also stated that the industry should not pack inferior fruit just because there is a shortage of volume. The Committee agreed that the current maturity standards have been well received by the market. However, Committee members also recognized that the special circumstances surrounding this season were unprecedented in the history of the grapefruit industry, and based on that, if it was possible, some allowances should be made to assist growers and provide some additional volume to the market.

The Committee reached a compromise position where the soluble solid requirement was reduced by a half a point and the ratios were maintained at current levels. The Committee stressed that this change be made for the remainder of the current season only, and starting August 1, 2005, the maturity retirements return to their current level. The Committee believes by reducing the soluble solids level and maintaining the minimum ratio combinations at the current levels for the remainder of the season, additional quantities of grapefruit can be made available for the fresh market without a significant reduction in quality. Therefore, the Committee voted unanimously to reduce the minimum soluble solid level from 8.0 to 7.5 until July 31, 2005. This change benefits both growers and consumers by increasing the available supply of fresh grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. As this rule changes the minimum

maturity requirements under the domestic handling regulations, a corresponding change to the import regulations must be considered. Such change to the import regulations would be made under a separate action.

#### **Initial 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 initial 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 handlers subject to regulation under the order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2003–04 season was approximately \$8.00 per 4/5-bushel carton, and total fresh shipments for the 2003–04 season are estimated at 26 million cartons of grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 69 percent of the grapefruit handlers could be considered small businesses under SBA's definition. In addition, based on production and grower prices reported by the National Agricultural Statistics Service, and the total number of grapefruit growers, the average annual grower revenue is approximately \$20,600. In view of the foregoing, it can be concluded that the majority of handlers and producers of Florida grapefruit may be classified as small entities.

This rule reduces the minimum maturity requirement for soluble solids (sugars) from 8.0 percent to 7.5 percent until July 31, 2005. This action makes additional quantities of grapefruit available for the fresh market and will

help reduce the losses sustained by the grapefruit industry during the recent hurricanes in Florida. This action was unanimously recommended by the Committee at its meeting on November 16, 2004. This rule modifies the maturity requirements specified in § 905.306. Authority for this action is provided for in § 905.52 of the order.

With respect to the impact of this action, it is anticipated that this temporary change will not result in any increase in grower or handler costs. However, it will make some additional quantities of grapefruit available for the fresh market. This will help growers maximize their fresh shipments in a year where there may be potential shortages of grapefruit. This will help increase grower returns and address some of the losses sustained from the storms.

The Committee believes by reducing the soluble solids level and maintaining the minimum ratio combinations at the current levels for the remainder of the 2004–05 season, additional quantities of grapefruit will be made available for the fresh market without a significant reduction in quality. This change benefits both growers and consumers by increasing the available supply of fresh grapefruit.

The purpose of this rule is to help improve producer returns and provide some additional volume of grapefruit to the market. The opportunities and benefits of this rule are expected to be available to all grapefruit handlers and producers regardless of their size of operation.

The Committee considered several alternatives to taking this action. One alternative considered was a reduction in maturity requirements to 7.0 percent soluble solids with 7.0 to 1 solids to acid ratio. Committee members believed that this was too much of a change and that it would negatively impact the quality of the fruit. Therefore, this option was rejected. Another alternative considered was making no change to the maturity requirement. However, the Committee believed that some adjustment should be made to accommodate fruit from young trees. The Committee also recognized the special circumstances surrounding this season as a result of the hurricanes. Consequently, the Committee unanimously supported the action taken by this rule.

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

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 on all issues. Like all Committee meetings, the November 16, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. In addition, interested persons are invited to submit information on 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/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.

This rule invites comments on a reduction in the minimum maturity requirements prescribed under the order until July 31, 2005. 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 final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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** because: (1) Handlers began shipping grapefruit in late September; (2) Florida grapefruit growers need to know as soon as possible that they can begin picking this fruit; (3) the Committee recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 905

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

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 905.306, paragraph (e) is amended as follows:

- a. By designating the current text preceding Table III as paragraph (e)(1);
- b. By adding new paragraph (e)(2) to read as follows:

#### § 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulations.

\* \* \* \* \*

(e) \* \* \*

(2) Notwithstanding the provision of paragraph (e)(1) of this section, for the period December 23, 2004 to July 31, 2005, all grapefruit shipped under the order shall meet minimum maturity requirements of 7.5 percent soluble solids (sugars) and 7.5 to 1 solids to acid ratio or shall comply with one of the alternate equivalent soluble solids and solids to acid ratio combinations set forth in Table III: Provided, That the minimum ratio shall not drop below 7.2 even if the soluble solids (sugars) reaches a level higher than 9.6.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27892 Filed 12–17–04; 4:47 pm]

BILLING CODE 3410–02–P

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Parts 19, 34, 40, 55, and 60

RIN 3150–AH58

#### Minor Correction Amendments for FY2004

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several miscellaneous errors in the NRC Rules and Regulations. This document is necessary to inform the public of these corrective changes to NRC regulations.

**DATES:** *Effective Date:* December 22, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Alzonia Shepard, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6864.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Nuclear Regulatory Commission is amending the regulations in 10 CFR Parts 19, 34, 40, 55 and 60 to correct several miscellaneous errors in regulatory text. These changes occurred in the process of preparing and printing rulemaking documents.

Because these amendments constitute minor administrative corrections to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(B). The amendments are effective upon publication in the **Federal Register**. Good cause exists under 5 U.S.C. 553(d) to dispense with the usual 30-day delay in the effective date of the final rule, because the amendments are of a minor and administrative nature dealing with corrections to certain CFR sections, which do not require action by any person or entity regulated by the NRC. Nor does the final rule change the substantive responsibilities of any person or entity regulated by the NRC.

##### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

##### Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0053; 3150–0044; 3150–0010; 3150–0130; 3150–0020; and 3150–0011.

##### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information of an information collection requirement unless the requesting document displays a currently valid OMB control number.