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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

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 changed the rules and regulations prescribed under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues to exempt shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. Producers can ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from order regulations, not to exceed 1,500 boxes per variety for the season. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: February 28, 2003.

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.*

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.

This rule continues in effect changes to the rules and regulations under the order to exempt shipments of small quantities of tree run citrus from grade, size, and assessment requirements. Tree run citrus is wholesome citrus picked and boxed in the field and taken directly to market without being graded or sized. With this change, producers are allowed to ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from marketing order regulations. Total shipments cannot exceed 1,500 boxes per variety for the season. This action was unanimously recommended by the committee at its meeting held on May 22, 2002.

Section 905.80 of the marketing order provides authority for the committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 is continued in effect. This section defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus fruit exempt from grade, size, and assessment requirements under the order. Under this section, once the exemption has been approved, the grower must report to the committee the volume of fruit shipped, the date of the shipment, and type of transportation used.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, ''Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree.'' Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to this change, all tree run citrus had to meet all requirements of the marketing order, as well as State

of Florida Statutes and Florida Department of Citrus regulations. Even with this change, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection. Growers are able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

Over the past few years, small producers of Florida citrus have expressed concerns regarding problems incurred when selling their citrus. These concerns include costs, returns, and available markets. These problems, along with market conditions, have driven a fair number of citrus growers and handlers out of the citrus industry. These concerns have been discussed at committee meetings, as well as meetings of other industry groups.

Some small growers have stated they have had difficulty getting packinghouses to pack their fruit. There is limited demand for certain varieties of citrus produced. In some cases, supply exceeds demand in the standard markets. According to committee data, over the past five years, fresh grapefruit sales have dropped 25 percent and fresh orange shipments are down 11 percent. In some cases, varieties may be out of favor with handlers and consumers, or there may be a glut on the market of a particular variety of fruit. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

The costs of growing for the fresh market have been increasing, while in many cases, the returns to the grower have been decreasing. The cost of picking, packing, and hauling, and associated handling costs for fruit going to the fresh market, is sometimes greater than the grower's return on the fruit. The costs associated with growing for the fresh market are greater than the costs for growing for the processed market.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. For example, during the last five years, only the 1999–2000 season produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2000–02 season was $2.72 compared to $4.25 for fresh oranges.

In some cases, where the cost of harvesting citrus exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets to move their fruit in an effort to increase returns. Several growers at the meeting stated that regulations previously imposed on the citrus industry made it difficult for them to ship homegrown fruit into interstate markets. Some growers believe secondary markets exist (which previously could not be supplied) that will provide them additional outlets to sell their citrus. They think niche markets exist that could be profitable. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

Growers want the opportunity to continue pursuing those niche markets. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe to do it profitably, they need to bypass the normal handler operations and the associated costs.

The committee listened to the concerns of these small growers and the problems they have encountered. In an effort to allow these growers to pursue these niche markets, the committee, which consists of growers and handlers, unanimously voted to allow a minimum quantity of citrus to be shipped exempt from the grade, size, and assessment regulations. The committee recommended growers be allowed to ship up to 150 1-3/5 bushel boxes of each variety, per shipment, from their own groves, with total shipments for the season not to exceed 1,500 boxes per variety.

Throughout industry discussions, many different combinations of varieties and shipment totals were discussed. In making this recommendation, the committee determined that 150 boxes of each variety per shipment allows the grower to ship a sufficient amount of fruit to make the exemption cost effective and yet not allow too much fruit to enter market channels exempt from marketing order requirements. The committee believes this level of volume will help keep this fruit in non-competitive outlets.

The committee believes this tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. This change allows growers to sell directly to similar markets outside of the State. The committee believes this action allows the industry to service more non-traditional markets and that this may be a way to increase fresh market shipments and develop new markets. Granting this exemption allows growers to supply markets that might not otherwise be supplied. Some members expect that this tree run or grove fresh fruit may create greater consumer interest in fresh citrus fruit.

Under this provision, the grower is required to apply to the committee, on a ''Grower Tree Run Certificate Application'' form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide the committee with their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced on the specified grove. The grower must also certify that the fruit to be handled comes from the grove owned by the grower applicant. The grower will also report to the committee the actual number of boxes per variety shipped under the exemption.

The Grower Tree Run Certificate Application form is submitted to the committee manager. The manager reviews the application for completeness and accuracy. The manager also verifies the information provided. After the application has been reviewed, the manager notifies the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a ''Report of Shipments Under Grower Tree Run Certificate'' form, also provided by the committee, must be completed for each shipment. On this form, the grower provides the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the

committee. This report enables the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

The FDOC defines tree run grade and wholesomeness of citrus fruit. This fruit is handled by the grower and bypasses normal handler operations. Even with the change to the provisions under the order, tree run citrus must still meet the requirements of the State of Florida Statutes and FDOC regulations, including inspection. Consequently, growers will need to continue to have the fruit inspected to meet current State requirements.

This exemption is effective for the current season beginning October 8, 2002, and ending July 1, 2003, only. The committee determined that offering the exemption for one season will provide sufficient information on how the fruit shipped under the exemption was received on the market. It will also indicate whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. It will also indicate the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, it will provide the committee with information regarding any potential impact on competitive outlets. The committee will also have information available regarding any compliance issues not previously discussed. At the end of the season, the committee will review all available information and decide whether the exemption should be continued.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

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 11,000 producers of Florida citrus in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, and average annual f.o.b. price for fresh Florida citrus during the 2001–02 season was approximately $8.10 per 4/5-bushel carton for all shipments, and the total fresh shipments for the 2001–02 season were around 55 million 4/5-bushel cartons of Florida citrus. Approximately 50 percent of the handlers handled 94 percent of Florida citrus shipments. Using information provided by the committee, about 54 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, USDA believes that the majority of Florida citrus producers may be classified as small entities.

This rule continues in effect the addition of § 905.149 to the rules and regulations under the order exempting shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. This action allows growers to ship 150 1-3/5 bushel boxes per variety, per shipment, of their own tree run citrus free from marketing order regulations into interstate markets. Total shipments cannot exceed 1,500 boxes per variety for the season per individual grower. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower. This rule has the opposite effect. It reduces the costs associated with having fruit handled by a packinghouse. This rule enables growers to ship their tree run citrus free from grade, size, and assessment requirements under the order. This action allows growers to ship minimum quantities of their citrus directly into interstate commerce exempt from some order requirements and their related costs. With this action, growers can reduce handling costs and use those savings toward developing additional markets. This benefits all growers regardless of size but it is expected to have a particular benefit for the small grower.

The committee considered several alternatives to this action, including making no change to the current regulations. The committee believed that some change was necessary to help Florida citrus growers. The committee considered allowing growers to ship unlimited quantities of any grower's citrus. This option was rejected because it would have caused market disruption and compliance problems, because growers could become shippers for other growers. It would have also made it more difficult to keep this fruit in noncompetitive outlets. Other alternatives considered were increasing the number of boxes available to be shipped per load, and increasing the number of boxes available to be shipped per season. These options were also rejected amid concerns that too much fruit could be shipped and find its way into the competitive markets.

This action requires two additional forms. In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35), AMS obtained emergency approval for a new information collection request under OMB No. 0581–NEW for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This information collection will be merged with the forms currently approved for use under OMB No. 0581–0189 ''Generic OMB Fruit Crops.''

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

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 May 22, 2002, 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. A subcommittee met May 21, 2002, and discussed the tree run 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 October 7, 2002. Copies of the rule were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register** and USDA. That rule provided for a 60-day comment period which ended December 6, 2002. 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** (67 FR 62313, October 7, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

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

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 62313 on October 7, 2002, is adopted as a final rule without change.

Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–2014 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 236 and 241

[INS No. 2203–02]

RIN 1115–AG67

Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule governs the public disclosure by any state or local government entity or by any privately operated facility of the name and other information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the Immigration and Naturalization Service (INS or Service). This rule establishes a uniform policy on the public release of information on Service detainees and ensures the Service's ability to support the law enforcement and national security needs of the United States.

DATES: This rule is effective on January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Dea Carpenter, Deputy General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service (''Service'') published this rule as an interim rule with request for comments on April 22, 2002. 67 FR 19508. In the 60-day comment period, the Service received only four comments.

The comments received may be described as follows: One commenter contended that the rule violates non-citizens' constitutional rights, the public's right to know under the First Amendment, the States' rights under the Tenth Amendment and the Guarantee Clause of Article IV of the Constitution. This comment also argued that the manner of promulgation of the interim rule violated the Administrative Procedure Act (APA), and that consent to the rule by a non-federal institution could not validate the rule. A second commenter asserted that the rule violates the First Amendment and the Due Process Clause of the Fifth Amendment to the Constitution; that the rule derogates treaty obligations of the United States under international law; that, in enacting the interim rule, the Service failed to comply with the notice and comment provisions of the APA; that the rule violates the Tenth Amendment; and that the rule exceeds the scope of delegated authority under the Immigration and Nationality Act (''Act''). The third comment also took the position that the rule exceeds the authority delegated under the Act. The fourth comment urged that the rule is impractical and affects the ability of third persons to communicate with detainees. All of the commenters were of the view that the rule reflects undesirable public policy.

Rather than respond to each comment individually, the Service believes that it is more functional to respond to the concerns raised, organized by subject matter. The Service has considered the comments and responds as follows:

1. The commenters' suggestion that the rule exceeds the Attorney General's authority under federal law is without merit. Federal control over matters regarding aliens and immigration is plenary and exclusive. ''Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere.'' *Nyquist* v. *Mauclet,* 432 U.S. 1, 10 (1977); *see* also, *e.g., Mathews* v. *Diaz,* 426 U.S. 67, 81 (1976) (''[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.''). Under federal law, the Attorney General is explicitly charged with the administration and enforcement of the Nation's immigration laws. 8 U.S.C. 1103(a)(1) (''[t]he Attorney General shall be charged with the administration and