



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-SC-17-0064; SC17-905-2 IR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Citrus Administrative Committee (Committee) to relax the minimum size requirements currently prescribed under the marketing Order for oranges, grapefruit, tangerines, and pummelos grown in Florida (Order). The Committee locally administers the order and is comprised of growers and handlers operating within the production area and one public member. This rule relaxes the minimum size requirements for oranges from 2-8/16 inches to 2-4/16 inches in diameter. This rule will maximize shipments by allowing more oranges to be shipped to the fresh market and help reduce the losses sustained by the citrus industry during the September 2017 hurricane in Florida. This rule also contains a formatting change to subpart references to

bring the Order language into conformance with Office of Federal Register's guidelines.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] will be considered prior to issuance of a final rule.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida, hereinafter referred to as the "Order." The Order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions

that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the

handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes the minimum size requirements for oranges prescribed under the Order. This rule relaxes the minimum size requirements for oranges from 2-8/16 inches to 2-4/16 inches in diameter. This rule will maximize shipments by allowing more oranges to be shipped to the fresh market and help reduce the losses sustained by the orange industry during the September 2017 hurricane in Florida. This change was unanimously recommended by the Committee at meetings held on June 29, 2017, and September 28, 2017.

Section 905.52 of the Order provides authority to establish minimum size requirements for Florida citrus. Section 905.306 of the rules and regulation issued under the Order specifies, in part, the minimum size requirements for oranges. Requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a) and export shipments in Table II of paragraph (b).

At its June 29, 2017, meeting, the Committee discussed the continuing decline in production as a result of losses

from citrus greening, which is affecting the entire production area. The Committee also recognized that some consumers are now showing a preference for smaller-sized fruit. The Committee agreed the current minimum size should be relaxed in order to make additional fruit available for shipment.

The Committee met again on September 28, 2017, to discuss the additional damage Hurricane Irma caused to the current crop and revisited the discussion regarding the need to reduce the minimum size requirements. The major orange-growing regions in Florida suffered significant damage and fruit loss from the hurricane. The strong winds from the storm blew substantial volumes of fruit off the trees. The impact of the storm is also expected to produce a much higher than normal fruit drop. The extent of the loss is evident in the official USDA crop estimate for this season, which reflects a 21 percent decrease from last year's estimate. Further, as the industry continues to assess the damage caused by the storm, fruit loss estimates may go even higher. Given the limited supply of fruit due to greening and the impact of Hurricane Irma, the Committee believes relaxing the size requirements for oranges is needed to make more fruit available for shipment.

Committee members recognized that with the special circumstances surrounding this season, and with the ongoing impacts of citrus greening, some allowances should be made to assist growers and handlers and provide additional volume to the market. The Committee believes relaxing the size requirements will make more fruit available to meet market demand, help maximize fresh shipments, increase returns to growers and handlers, and help address the losses stemming from the hurricane. Consequently, the Committee recommended changing the minimum size requirements for oranges from 2-8/16 inches to 2-4/16 inches in diameter.

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

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

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

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the average f.o.b. price for Florida oranges during the 2016-17 season was \$31.90 per box, and total fresh orange shipments were approximately 2.1 million boxes. Using the average f.o.b. price and shipment data, the majority of Florida orange handlers could be considered small businesses under SBA's definition (\$31.90 times 2.1 million

boxes equals \$66.99 million divided by 20 handlers equals \$3,349,500 per handler). In addition, based on the NASS data, the average grower price for the 2016-2017 season was \$17.51 per box. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below \$750,000 (\$17.51 times 2.1 million boxes equals \$36,771,000 divided by 500 growers equals \$73,542 per grower). Thus, the majority of handlers and producers of oranges may be classified as small entities.

This rule relaxes the minimum size requirements for oranges covered under the Order from 2-8/16 inches to 2-4/16 inches in diameter. This change is expected to maximize shipments by allowing more oranges to be shipped to the fresh market and will help reduce the losses sustained by the grapefruit industry as a result of citrus greening and the September 2017 hurricane in Florida. Authority for this change is provided in § 905.52. This rule amends § 905.306. The Committee unanimously recommended this change at its June 29, 2017, and September 28, 2017, meetings.

This action is not expected to increase the costs associated with the Order's requirements. Rather, it is

anticipated this action will have a beneficial impact. Reducing the size requirements will make additional fruit available for shipment to the fresh market, provide an outlet for fruit that may otherwise go unharvested, and afford more opportunity to meet consumer demand. This change will provide additional fruit to fill the shortage caused by citrus greening and by Hurricane Irma. Further, by maximizing shipments, this action will help provide additional returns to growers and handlers as they work to recover from the losses stemming from the hurricane.

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

An alternative to this action would be to maintain the current minimum requirements for domestic shipments of oranges. However, leaving the requirements unchanged would not make additional of fruit available for shipment.

Following the significant damage experienced by the industry from the September 2017 hurricane, maximizing shipments will help provide additional returns to growers and handlers as they recover from the loss. Another alternative considered was to reduce the minimum maturity requirements. However, Committee members thought it was important to maintain the maturity requirements to ensure overall quality. Therefore, this alternative was rejected.

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

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

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register*. The Florida citrus industry has been dealing with the devastating effects of citrus greening for more than 10 years, resulting in ever smaller harvests, and escalating production costs. The September 2017 hurricane caused significant additional damage and crop loss to the industry, with losses running into the millions of dollars. This rule, in conjunction with a companion rule for

grapefruit, will bring some much-needed relief by providing additional fruit for shipment to the fresh market and to increase returns to growers and handlers. Based on the size frequency measurements provided by NASS as part of grapefruit and orange crop estimates, the recommended relaxation in size for both grapefruit and oranges could make an additional 20 to 25 percent of the crop available for shipment to the fresh market. Based on estimates, this could mean an additional volume of about 700,000 boxes of citrus available for shipment. Using an average fresh price per box of around \$30, this could provide the industry with an additional \$20 million in returns for the 2017-18 season. This rule relieves a restriction on the size of oranges that can be shipped to the fresh market. Therefore, good cause exists for this rule becoming effective one day after publication in the *Federal Register*. In addition, the Committee unanimously recommended these changes at public meetings, and interested parties had an opportunity to provide input. Further, this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule. This rule also contains a formatting change

to subpart references to bring the Order language into conformance with Office of Federal Register's guidelines.

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 PUMMELOS
GROWN IN FLORIDA

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

Authority: 7 U.S.C. 601-604.

[Subpart Redesignated as Subpart A]

2. Redesignate "Subpart-Order Regulating Handling" as "Subpart A - Order Regulating Handling".

[Subpart Redesignated as Subpart B and Amended]

3. Redesignate "Subpart-Rules and Regulations" as subpart B and revise the heading to read as follows:

Subpart B - Administrative Requirements

[Subpart Redesignated as Subpart C]

4. Redesignate "Subpart-Assessment Rates" as "Subpart C-Assessment Rate".

[Subpart Redesignated as Subpart D]

5. Redesignate "Subpart-Grade and Size Requirements" as "Subpart D-Grade and Size Requirements".

6. In § 905.306, Table I in paragraph (a) and Table II in paragraph (b) are amended by revising the entries for "Early and midseason," "Navel," "Temple," and "Valencia and other late type" under "Oranges," to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo

Regulation.

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
Early and midseason	01/29/90-08/19/90	U.S. No. 1 Golden	2-4/16
	On and after 08/20/90	U.S. No. 1	2-4/16
Navel	On and after 12/7/81	U.S. No. 1	2-4/16
Temple	On and after 12/7/81	U.S. No. 1	2-4/16
Valencia and other late type	September 1-May 14	U.S. No. 1	2-4/16
	May 15-June 14	U.S. No. 1 Golden	2-4/16
	June 15- August 31	U.S. No. 2, External/ U.S. No. 1, Internal	2-4/16

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(b) * * *

Table II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
Early and midseason	01/29/90-08/19/90	U.S. No. 1 Golden	2-4/16
	On and after 08/20/90	U.S. No. 1	2-4/16
Navel	On and after 11/24/89	U.S. No. 1 Golden	2-4/16
Temple	On and after 11/24/89	U.S. No. 1	2-4/16
Valencia and other late type	March 23, 1992-9/27/92	U.S. No. 1	2-4/16
	On and after 9/28/92	U.S. No. 1	2-4/16

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[Subpart Redesignated as Subpart E and Amended]

7. Redesignate "Subpart-Interpretive Rule" as subpart E and revise the heading to read as follows:

Subpart E - Interpretations

Dated: November 9, 2017

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2017-24701 Filed: 11/15/2017 8:45 am; Publication Date: 11/16/2017]