



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Doc. No. AMS-SC-17-0063; SC17-905-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule implementing 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 and the grapefruit import regulation. The interim rule relaxed the minimum size requirement for domestic shipments and imports of grapefruit from 3-5/16 inches to 3 inches in diameter.

DATES: Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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 obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or 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 action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. Part 905

(referred to as 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 Committee locally administers the Order and is comprised of growers and handlers operating within the production area and one public member.

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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).

The handling of oranges, grapefruit, tangerines, and pummelos grown in Florida is regulated by the Order. Prior to this change, the minimum size requirement for domestic and export shipments of grapefruit was 3-5/16 inches. The reduction in size requirement to 3 inches in diameter was established to meet both a market demand for small-sized grapefruit, as well as a general market shortage of citrus. Losses of citrus production in Florida due to citrus greening and damage caused by Hurricane Irma, have resulted in an overall market shortage of citrus fruit. Therefore, this rule continues in effect the rule that relaxed the minimum size requirement for grapefruit from 3-5/16 inches to 3 inches in diameter.

In an interim rule published in the *Federal Register* on November 21, 2017, and effective on November 24, 2017, (82 FR 55305, Doc. No. AMS-SC-17-0063; SC17-905-1 IR), §§ 905.306 and 944.106 were amended by changing the minimum diameter for grapefruit from 3-5/16 inches to 3 inches in

diameter. The change in the size requirements will allow more grapefruit into the market and help maximize shipments.

Final 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 final 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. There are approximately 50 citrus importers. 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 grapefruit during the 2016-17 season was \$29.40 per box, and total fresh grapefruit shipments were approximately 3.2 million boxes. Using the average f.o.b. price and shipment data, the majority of Florida grapefruit handlers could be considered small businesses under SBA's definition (\$29.40 times 3.2 million boxes equals \$94.1 million divided by 20 handlers equals \$4.7 million per handler). In addition, based on NASS data, the average grower price for the 2016-17 season was \$16.02 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 (\$16.02 times 3.2 million boxes equals \$51,264,000 divided by 500 producers equals \$102,528 per handler). Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh grapefruit was approximately \$11.2 million in 2016. Using this value and the number of

importers (approximately 50), most importers would have annual receipts of less than \$7,500,000 for grapefruit. Thus, the majority of handlers, producers, and importers of grapefruit may be classified as small entities.

South Africa, Peru, and Mexico are the major grapefruit-producing countries exporting grapefruit to the United States. In 2016, shipments of grapefruit imported into the United States totaled approximately 24,000 metric tons.

This rule continues in effect the action that reduced the minimum size requirements for grapefruit covered under the Order and imported grapefruit from 3-5/16 inches to 3 inches in diameter. This change is expected to maximize shipments by allowing more grapefruit to be shipped to the fresh market while providing greater flexibility to handlers and importers. Further, it helps reduce the losses sustained by the grapefruit industry as a result of citrus greening and Hurricane Irma. This rule amends the provisions of §§ 905.306 and 944.106. Authority for the change is provided in § 905.52. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase costs associated with the Order's requirements. Rather, this action will have a beneficial impact. Reducing the size requirements makes additional fruit available for shipment to the fresh market, provides an outlet for fruit that may otherwise go unharvested, and affords more opportunity to meet consumer demand. This change provides additional fruit to fill the shortage caused by citrus greening and 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 can 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 grapefruit growers and handlers, regardless of their size.

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 the Office of Management and Budget (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 action imposes no 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. 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 meeting 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.

Comments on the interim rule were required to be received on or before January 22, 2018. One comment was received during the comment period. The Commenter was in favor of the regulation, and stated that both producers and consumers would benefit from this action.

Accordingly, no changes will be made to the interim rule, based on the comment received.

To view the interim rule, go to:

<https://www.regulations.gov/document?D=AMS-SC-17-0063-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the *Federal Register* (82 FR

55305, November 21, 2017) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR PART 905

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

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges

Accordingly, the interim rule that amended 7 CFR parts 905 and 944 and that was published at 82 FR 55305 on November 21, 2017, is adopted as a final rule, without change.

Dated: April 18, 2018.

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

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