



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS-SC-17-0049; SC17-906-2 FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changing of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation to change the container requirements under the Marketing Order for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This action removes five containers from the list of authorized containers and adds seven new containers to the list. This change also modifies the descriptions of two authorized containers.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, 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 Email:

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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 Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule, 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 final 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. Part 906 (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 Texas Valley Citrus Committee (Committee) locally administers the Order and is comprised of growers and handlers of Texas citrus operating within the production area.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action 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 final rule removes five containers from the list of authorized containers under the Order and adds seven new containers to the list. This action also modifies the descriptions of two authorized containers. The Committee recommended these changes to align the Order's container regulations with current industry practices. The Committee unanimously recommended the changes at a meeting on June 8, 2017.

Section 906.40(d) of the Order authorizes the issuance of regulations to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit. Section 906.340 provides that no handler shall handle any variety of

oranges or grapefruit grown in the production area unless such fruit is packed in one of the containers specified under the Order. This section also specifies a detailed list of the containers currently authorized under the Order. In addition, this section allows the Committee to approve the use of other types and sizes of containers for testing for research purposes.

The Committee reviewed the containers listed in § 906.340 and compared them to the containers being utilized throughout the industry. This process included surveying handlers to determine which containers were being used. As a result, the Committee determined five of the authorized containers were no longer being used to pack Texas oranges or grapefruit.

The Committee also reviewed the list of experimental containers that had been approved for testing purposes. Seven of the experimental containers have been widely accepted throughout the Texas citrus industry and are being used to pack and ship Texas citrus. As a result of the review, the Committee voted to remove the five containers that were no longer being used from the list of authorized containers and add the seven experimental containers to

§ 906.340.

The Committee also discussed that while the description in § 906.340(a)(1)(ii) of the closed fully telescopic fiberboard carton with approximate inside dimensions of 16 1/2 by 10 3/4 by 9 1/2 inches is correct, this container is commonly known throughout the Texas citrus industry as a standard carton. Consequently, for clarification purposes, the Committee voted to add the words "Standard Carton" to this container description.

Further, the Committee noted that in § 906.340(a)(1)(iv) poly or mesh bags can be used to pack oranges and grapefruit to a capacity of 5, 8, 10, or 18 pounds of fruit, but that only oranges can be packed in the 4-pound bags. During the discussion, Committee members agreed handlers should also be allowed to ship grapefruit in 4-pound bags. Thus, the Committee voted to update the description to allow for the packing of both oranges and grapefruit in poly or mesh bags having a capacity of 4 pounds.

These changes reflect the containers being utilized throughout the industry and aligns the regulations with current industry practices.

Section 8e of the Act provides that when certain domestically produced commodities, including oranges, 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 container requirements under the domestic handling regulations, no corresponding change to the import regulations is required.

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 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 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on National Agricultural Statistics Service (NASS) and Committee data, the average price for Texas citrus during the 2016-17 season was approximately \$16 per carton, and total shipments were 7.6 million cartons. Using the average price and shipment information, the number of handlers (13), and assuming a normal distribution, the majority of handlers would have average annual receipts of \$9.4 million, which is greater than \$7,500,000. (\$16 per carton times 7.6 million cartons equals \$121.6 million, divided by 13 equals \$9.4 million per handler.) Thus, the majority of Texas citrus handlers may be classified as large business entities.

In addition, based on NASS information, the weighted grower price for Texas citrus during the 2016-17 season was

approximately \$9.35 per carton. Using the weighted average price and shipment information, the number of producers (170) and assuming a normal distribution, the majority of producers would have annual receipts of \$418,000, which is less than \$750,000. (\$9.35 per carton times 7.6 million cartons equals \$71.06 million, divided by 170 equals \$418,000 per producer.) Thus, the majority of Texas citrus producers may be classified as small entities.

This final rule revises the container requirements established under the Order. This rule removes five containers from the list of authorized containers and adds seven new containers to the list. This action also updates one container to allow handlers to use it to pack oranges and grapefruit, and modifies the description of another container to indicate it is the standard container used by the industry. These changes align the list of authorized containers with current industry needs and practices. This rule revises § 906.340. Authority for these changes is provided in § 906.40.

It is not anticipated that this final rule will impose additional costs on handlers or growers, regardless of size. The containers removed from the list of authorized

containers are no longer being used by the industry. This rule provides an additional container for packing grapefruit, clarifies the description for one container, and adjusts the container regulations to better reflect current industry practices. The benefits of this rule are expected to be equally available to all fresh orange and grapefruit growers and handlers, regardless of size.

The Committee considered alternatives to this action, including making no changes to the list of authorized containers. However, it was determined that making the recommended changes provides an up-to-date list of containers currently being used by the Texas citrus industry. Therefore, the Committee rejected this alternative.

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, Fruit Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does 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.

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.

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

The Committee's meeting was widely publicized throughout the Texas 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 June 8, 2017, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the *Federal Register* on July 6, 2018 (83 FR 31471).

Copies of the proposed rule were sent via email to all Committee members and Texas citrus handlers. The proposed rule was made available through the internet by USDA and the Office of the *Federal Register*. A 30-day comment period ending August 6, 2018, was provided to allow interested persons to respond to the proposal. 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/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.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, 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.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

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

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 906.340(a)(1) to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) *Containers.* (i) Closed fiberboard carton with approximate inside dimensions of 13 1/4 x 10 1/2 x 7 1/4 inches: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with approximate inside dimensions of 16 1/2 x 10 3/4 x 9 1/2 inches (Standard carton);

(iii) Poly or mesh bags having a capacity of 4, 5, 8, 10, or 18 pounds of fruit;

(iv) Rectangular or octagonal bulk fiberboard crib with approximate dimensions of 46 to 47 1/2 inches in

length, 37 to 38 inches in width, and 36 inches in height: *Provided*, That the container has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(v) Rectangular or octagonal 2/3 fiberboard crib with approximate dimensions of 46 to 47 1/2 inches in length, 37 to 38 inches in width, and 24 inches in height: *Provided*, That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(vi) Octagonal fiberboard crib with approximate dimensions of 46 to 47 1/2 inches in width, 37 to 38 inches in depth, and 26 to 26 1/2 inches in height: *Provided*, That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the crib may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(vii) Fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15 1/2 inches in width, and 7 inches in depth;

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

(ix) Reusable collapsible plastic bin with approximate dimensions of 36 3/4 x 44 3/4 x 27 inches;

(x) Octagonal bulk triple wall fiberboard crib with approximate dimensions of 37 3/4 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;

(xi) Bag having the capacity of 15 pounds of fruit, either in a combination 1/2 poly and 1/2 mesh bag or mesh bag;

(xii) Reusable collapsible plastic mini bin with approximate dimensions of 39 1/2 inches in length, 24 inches in width, and 30 1/2 inches in height: *Provided*,

That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(xiii) Bag having the capacity of three pounds of fruit;

(xiv) Standard carton with approximate inside dimensions of 16.375 x 10.6875 x 10.25 inches;

(xv) 8/5 Body master carton with approximate inside dimensions of 19.5385 x 13.125 x 11.625 inches, one piece;

(xvi) Euro 8/5 (5 Down) with approximate inside dimensions of 22.813 x 14.688 x 7.0 up to 7.936 inches;

(xvii) Fiberboard one piece display container with approximate inside dimensions of 23 inches x 15 inches x 9 1/2 up to 10 1/2 inches in depth;

(xviii) Such types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee: *Provided*, That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

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Dated: October 15, 2018

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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