

# Rules and Regulations

Federal Register

Vol. 74, No. 177

Tuesday, September 15, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 905 and 944

[Doc. No. AMS-FV-09-0002; FV09-905-1 FIR]

#### Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of Size Requirements for Grapefruit

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

**ACTION:** Affirmation of interim final rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the minimum size requirement for white seedless grapefruit prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and the grapefruit import regulation. The interim final rule relaxed the minimum size requirement for domestic and import shipments from 3 <sup>9</sup>/<sub>16</sub> inches (size 48) to 3 <sup>5</sup>/<sub>16</sub> inches (size 56). This change is expected to maximize fresh white seedless grapefruit shipments and provide greater flexibility to handlers and importers.

**DATES:** Effective September 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (863) 324-3375, *Fax:* (863) 325-8793, or *E-mail:* [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto: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 Web site: <http://www.ams.usda.gov/>

*AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*; or 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@ams.usda.gov](mailto:Jay.Guerber@ams.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."

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 Order 12866.

The handling of oranges, grapefruit, tangerines, and tangelos grown in Florida is regulated by 7 CFR part 905. Prior to this change, the minimum size requirement for domestic shipments of white seedless grapefruit was 3 <sup>9</sup>/<sub>16</sub> inches, while the minimum size requirement for export shipments was 3 <sup>5</sup>/<sub>16</sub> inches. The more restrictive size requirement for domestic shipments was established in response to the domestic market preference for larger sized fruit, while the export market favored the smaller sized fruit. However, with total shipments of white seedless grapefruit declining, handlers need to be able to ship fruit to whichever markets become available. Therefore, this rule continues in effect the rule that relaxed the minimum size requirement for domestic shipments from 3 <sup>9</sup>/<sub>16</sub> inches to 3 <sup>5</sup>/<sub>16</sub> inches, making the minimum size requirement

the same for both domestic and export markets.

Imported grapefruit are subject to regulations specified in 7 CFR part 944. Under those regulations, imported grapefruit must meet the same minimum size requirements as specified for domestic grapefruit under the order. Therefore, the minimum size requirement was also relaxed from 3 <sup>9</sup>/<sub>16</sub> inches to 3 <sup>5</sup>/<sub>16</sub> inches for white seedless grapefruit imported into the United States.

In an interim final rule published in the **Federal Register** on April 7, 2009, and effective on April 8, 2009 (74 FR 15641, Doc. No. AMS-FV-09-0002, FV09-905-1 IFR), §§ 905.306 and 944.106 were amended by changing the minimum diameter for "Seedless, except red" from 3 <sup>9</sup>/<sub>16</sub> inches to 3 <sup>5</sup>/<sub>16</sub> inches.

#### 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 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.

There are approximately 40 Florida grapefruit handlers subject to regulation under the marketing order and about 8,000 citrus producers in the production area. There are approximately 10 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

According to industry and Committee data, the average annual f.o.b. price for fresh Florida white seedless grapefruit during the 2007-08 season was \$10.30 per <sup>4</sup>/<sub>5</sub>-bushel carton, and total fresh

shipments were around 3.3 million cartons. Based on the average f.o.b. price, a majority of Florida white seedless 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 Florida citrus producers, the average annual producer revenue is less than \$750,000. Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh grapefruit ranged from approximately \$2.14 million in 2006 to \$2.06 million in 2008. Using these values, all importers would have annual receipts of less than \$7 million for grapefruit. Therefore, the majority of handlers, producers and importers of white seedless grapefruit may be classified as small entities.

This rule continues in effect the action that relaxed the minimum size requirement for white seedless grapefruit grown in Florida and imported white seedless grapefruit. This rule relaxes the minimum size requirement for domestic and import shipments from  $3\frac{9}{16}$  inches to  $3\frac{5}{16}$  inches. This change maximizes fresh white seedless grapefruit shipments and provides greater flexibility to handlers and importers. This rule amends the provisions of §§ 905.306 and 944.106. Authority for the change in the order's rules and regulations 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 requirements or the grapefruit import regulation. Rather, this action represents a cost savings for handlers and has the potential to increase industry returns. This change makes the minimum size requirement the same for both the domestic and export markets. Having the same minimum size requirement for both domestic and export shipments makes it easier to move fruit to available markets without having to repack fruit to meet the differing size requirements. This reduces costs and provides greater flexibility for handlers. Importers also benefit from this change, as a greater volume of fruit is available for shipment to the United States. The opportunities and benefits of this rule are equally available to all grapefruit handlers, growers, and importers, regardless of their size.

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.

Further, the Committee's meeting was 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 December 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim final rule were required to be received on or before April 8, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to: <http://www.regulations.gov/search/Regs/home.html#searchResults?Ne=11+8+8053+8098+8074+8066+8084+1&Ntt=AMS-FV-09-0002&Ntk=All&Ntx=mode+matchall&N=0>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, 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 final rule, without change, as published in the **Federal Register** (74 FR 15641, April 7, 2009) will tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 905

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

##### 7 CFR Part 944

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

#### PARTS 905 AND 944—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR parts 905 and 944 and that was published at 74 FR 15641 on April 7, 2009, is adopted as a final rule, without change.

Dated: September 9, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-22114 Filed 9-14-09; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Doc. No. AMS-FV-09-0012; FV09-959-1 FIR]

#### Onions Grown in South Texas; Change in Regulatory Period

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

**ACTION:** Affirmation of interim final rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that revised the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown in South Texas under Marketing Order No. 959 (order). The interim final rule shortened the regulatory period from March 1 through July 15 to March 1 through June 4. The relaxation in the interim final rule was necessary to enable producers and handlers to compete more effectively in the marketplace.

**DATES:** *Effective Date:* Effective September 16, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (956) 682-2833, *Fax:* (956) 682-5942; or *E-mail:*

*Belinda.Garza@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or 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@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959),