

Rules and Regulations

Federal Register

Vol. 65, No. 25

Monday, February 7, 2000

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

[Docket No. FV99-905-6 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule continues to relax the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 ($3\frac{9}{16}$ inches diameter) to size 56 ($3\frac{5}{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended the change for Florida grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 12, 2000, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven,

Florida 33883; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, 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 marketing agreement and order are 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 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 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 the Secretary 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, the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade requirement for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least $3\frac{5}{16}$ inches in diameter) through November 12, 2000, and size 48 ($3\frac{9}{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect a change to the order's rules and regulations relaxing the minimum size requirement for domestic and import shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 ($3\frac{9}{16}$ inches diameter) to size 56 ($3\frac{5}{16}$ inches diameter) through November 12, 2000. Absent this change, the minimum size would be size 48 ($3\frac{9}{16}$ inches diameter). The Committee met on August 31, 1999, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and

size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule continues in effect the adjustments in Table I to establish a minimum size of 56 through November 12, 2000.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule also continues the adjustments in § 944.106 to establish a minimum size of 56 through November 12, 2000. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The official crop estimate of 27 million $1\frac{3}{4}$ bushel boxes is below last year's production of 28.7 million $1\frac{3}{4}$ bushel boxes of red seedless grapefruit. Acreage has declined in recent years from 81,348 acres in 1996, to 76,025 acres in 1998, to 71,731 acres in 1999. The acreage declines are due to groves being abandoned due to economic reasons, unhealthy groves being removed and replanted, and sick and diseased trees being removed from healthy, productive groves and not being replanted.

The Committee anticipates that fresh shipments of red seedless grapefruit will be approximately 16 million $\frac{4}{5}$ bushel cartons, similar to last season's level of 16.7 million $\frac{4}{5}$ bushel cartons. The quality of this year's crop is anticipated to be below normal. The fruit is expected to be misshapen more than normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The individual fruit size for the current crop is projected to be a little smaller than normal, but not as small as last season. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1999–2000 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, because it will permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will maximize shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red seedless grapefruit is for export.

During the first 11 weeks of the season (September 20 through December 5), there was a volume regulation in effect to limit the volume of small red seedless grapefruit that entered the fresh market. The Department issued rules, which were published on September 17, 1999 (64 FR 50419) and November 1, 1999 (64 FR 58759), implementing that regulation. The Committee believes that the percentage size regulation has been helpful in reducing the negative effects of size 56 on the domestic market, and that no additional restrictions are needed for the upcoming season.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 12, 2000. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1999–2000 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported

into the United States are currently in effect under § 944.106. This rule continues to relax the minimum size requirement for imported red seedless grapefruit to $3\frac{5}{16}$ inches in diameter (size 56) until November 12, 2000, to reflect the relaxation in effect under the order for red seedless grapefruit grown in Florida.

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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000 (13 CFR 121.201).

Based on the industry and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1998–99 season was around \$7.60 per $\frac{4}{5}$ bushel carton, and total fresh shipments for the 1998–99 season were approximately at 16.7 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Handlers in Florida shipped approximately 37,395,000 $\frac{1}{2}$ bushel cartons of grapefruit to the fresh market during the 1998–99 season. Of these cartons, about 22,123,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,720,000 cartons. During the period 1994 through 1998, imports have averaged 580,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule continues to relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 ($3\frac{1}{16}$ inches diameter) to size 56 ($3\frac{5}{16}$ inches diameter) through November 12, 2000. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 12, 2000, was passed by the Committee unanimously. In addition, there was a volume regulation in effect for the first 11 weeks of the 1999–2000 season (September 22 through December 5) that limited the volume of small red seedless grapefruit that entered the fresh market (64 FR 50419, September 17, 1999; and 64 FR 58759, November 1, 1999).

This rule will have a positive impact on affected entities by maximizing shipments of red seedless grapefruit into fresh market channels. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation.

This rule continues to relax the minimum size from size 48 ($3\frac{1}{16}$ inches in diameter) to size 56 ($3\frac{5}{16}$ inches in diameter) through November 12, 2000. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. Matching the sizes that can be shipped with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to handlers to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

During the period October 1, 1998, through June 30, 1999, imports of grapefruit totaled 15,500 metric tons (approximately 800,000 cartons). Recent yearly data indicate that imports during July, August, and September are typically negligible. Therefore, the 1998–99 season imports should not vary significantly from 15,500 metric tons. The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change must also be applicable to imported grapefruit. This rule relaxes the minimum size for imported grapefruit to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 12, 2000.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing

order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

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 August 31, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on November 1, 1999 (64 FR 58759). Copies of the rule were mailed by the Committee staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended January 3, 2000. No comments were received.

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, 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** (64 FR 58759, November 1, 1999) 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.

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

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 64 FR 58759 on November 1, 1999, is adopted as a final rule without change.

Dated: January 31, 2000.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-2689 Filed 2-4-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00-955-1 FR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Vidalia Onion Administrative Committee (Committee) for fiscal period 2000 and subsequent fiscal periods from \$0.07 to \$0.10 per 50-pound bag of Vidalia onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on January 1 and ends on December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

Small businesses may request information on complying with this

regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia Onions grown in Georgia area, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning January 1, 2000, and continue until amended, suspended, or terminated. 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 the Secretary 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary'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 increases the assessment rate established for the Committee for the fiscal period 2000 and subsequent fiscal periods from \$0.07 to \$0.10 per 50-pound bag of Vidalia onions handled.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998-99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 30, 1999, and unanimously recommended fiscal period 2000 expenditures of \$421,600 and an assessment rate of \$0.10 per 50-pound bag of Vidalia onions handled. In comparison, 1998-1999 budgeted expenditures were \$373,577. However, during the 1998-99 fiscal period the Committee recommended and the Department approved a change in the fiscal period under the order to January 1-December 31 from September 16-September 15 to make the fiscal period consistent with the Vidalia onion marketing season (64 FR 48243, September 3, 1999; 64 FR 72265, December 27, 1999). To provide for continuous operation of the order, the 1998-99 fiscal period was extended by 3 and 1/2 months (from September 16 to December 31, 1999). As a result, actual expenditures for 1998-99 are expected to total about \$475,577. In addition, the quantity of assessable onions for 1998-99 and assessment income is much less than expected. The Committee projected the quantity of assessable onions for 1998-99 at 4,842,857 50-pound bags and assessment revenue at \$339,000. The actual quantity of assessable onions is expected to be 3,617,017 50-pound bags, and assessment revenue is expected to total \$253,191. Because of this shortfall, the Committee will have to use more of its operating reserve to cover approved expenses than it expected.

The assessment rate of \$0.10 is \$0.03 higher than the rate currently in effect. The increase is needed so the Committee can maintain its operating