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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-FV-13-0009; FV13-905-2 IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Size and Grade Requirements on Valencia and Other Late Type Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule changes the size and grade requirements currently prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule reduces the minimum size requirement for Valencia and other late type oranges shipped to interstate markets from 2-8/16 inches to 2-4/16 inches from May 15 through August 31 each season. This rule also reduces the minimum grade requirement for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. This rule will provide additional

Valencia and other late type oranges for late season markets, helping to maximize fresh shipments.

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, Fruit and Vegetable 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 comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott,
Marketing Specialist, or Christian D. Nissen, Regional
Director, Southeast Marketing Field Office, Marketing Order
and Agreement Division, Fruit and Vegetable Program, AMS,
USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-
mail: Corey.Elliott@ams.usda.gov or
Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying
with this regulation by contacting Jeffrey Smutny,
Marketing Order and Agreement Division, Fruit and Vegetable
Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@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 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."

The Department of Agriculture (USDA) 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.

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 changes the minimum size requirement on Valencia and other late type oranges shipped to interstate markets from 2-8/16 inches to 2-4/16 inches from May 15 through August 31 each season. It also reduces the minimum grade requirement on Valencia and other late type oranges

shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. This rule will provide additional Valencia and other late type oranges for late season markets and will help maximize fresh shipments. The Committee unanimously recommended these changes at a meeting on January 8, 2013.

Section 905.52 of the order provides, in part, authority to establish minimum grade and size requirements for Florida citrus. Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in Table I of § 905.306(a). Currently, the minimum size for Valencia and other late type oranges is 2-8/16 inches in diameter. The minimum grade for Valencia and other late type oranges is a U.S. No. 1 from August 1 to June 14 and a U.S. No. 2 external/U.S. No. 1 internal from June 15 to July 31. The characteristics of these grades are specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179).

At its meeting, the Committee discussed that there may be a late season market for Florida Valencia and other late type oranges in the food service industry. One member stated that this market prefers a smaller-size orange and may be undersupplied during the last few months of the Florida citrus season, as supplies from other states have been declining. At the end of the season, growers still have Valencia and other late type oranges left on the tree to supply this market. However, with current size and grade regulations, it is difficult to supply this market.

During the last few seasons, approximately 97.5 percent of Valencia and other late type oranges were utilized in the production of orange juice, while approximately 2.5 percent, or about 3.1 million cartons, were utilized as shipments to the fresh market. Of the fresh shipments, 85 percent were shipped between March and May. With the current size and grade requirements, the Committee estimates that fewer than 465,000 cartons would be available after May 15 for shipment to the food service market.

According to the National Agricultural Statistics Service (NASS), approximately 10 percent of Valencia oranges measured at the end of April are 2-4/16 inches.

From this forecast, the Committee estimates an additional 200,000 cartons of Valencia and other late type oranges, between 2-4/16 and 2-8/16 inches in size, still remain on the tree.

However, most of the remaining fruit wouldn't meet grade requirements due to discoloration and scarring. As fruit continues to mature on the tree, physiological changes occur that affect the color of the fruit. Also, over time, the fruit gets more blemishes due to wind scarring. Therefore, only changing the minimum size may not be sufficient to make additional fruit available late in the season.

Consequently, to provide additional Valencia and other late type oranges to supply the food service market, the Committee recommended a relaxation in size and grade. This rule changes the minimum size requirement for Valencia and other late type oranges shipped to interstate markets from 2-8/16 inches to 2-4/16 inches from May 15 through August 31 each season. It also reduces the minimum grade requirement for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013,

to August 31, 2013. The Committee believes that relaxing the size and grade requirements will provide an outlet for fruit that may otherwise go un-harvested. This will maximize fresh shipments, allowing more fruit to be shipped to the fresh market, and increasing returns to both handlers and growers.

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 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 29 Valencia and other late type orange handlers subject to regulation under the marketing order and approximately 8,000 producers of citrus in the production area. Small agricultural service firms

are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average f.o.b. price for fresh Valencia and other late type oranges during the 2011-12 season was approximately \$12.42 per 4/5 bushel carton, and total fresh shipments were approximately 3.2 million cartons. Using the average f.o.b. price and shipment data, the majority of Florida Valencia and other late type orange handlers could be considered small businesses under SBA's definition. In addition, the average annual grower revenue is below \$750,000 based on production data, grower prices as reported by NASS, and the total number of Florida citrus growers. Thus, assuming a normal distribution, the majority of Valencia and other late type orange handlers and producers may be classified as small entities.

This rule relaxes the size and grade requirements prescribed under the order. These changes will allow additional late season fruit to be shipped to the fresh market, maximizing shipments and providing additional returns to both handlers and growers. This rule revises §

905.306 by reducing the minimum size requirements for interstate shipments of fresh Valencia and other late type oranges from 2-8/16 inches to 2-4/16 inches from May 15 to August 31 each season. This rule further revises § 905.306 by reducing the minimum grade requirements for interstate shipments of Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013. Authority for these changes is provided for in § 905.52. These changes were unanimously recommended by the Committee at a January 8, 2013, meeting.

This action does not impose any additional costs on the industry. However, it is anticipated that this action will have a beneficial impact. Reducing size and grade requirements for Valencia and other late type oranges from May 15 to August 31 will make additional fruit available for shipment to the fresh market, providing the opportunity to supply the potential food service industry market. The Committee believes that relaxing the size and grade requirements will provide an outlet for fruit that may otherwise go un-harvested. This will allow more fruit to be shipped to the fresh market and increase returns to both

handlers and growers. The benefits of this rule are expected to be equally available to all fresh citrus growers and handlers, regardless of their size.

Regarding alternatives to this action, the Committee considered two different approaches to providing additional fruit to the market. They considered changing the minimum size and leaving the current grade standard in place. However, the consensus of the Committee was that late in the season the additional quantity demanded could not be met through a size change alone. The Committee also considered changing the minimum size and establishing U.S. No. 1 Golden as the grade from May 15 to August 31. However, this option would effectively increase the grade from June 15 to July 31, which was not the Committee's intention for the 2013 season. Therefore, the Committee rejected both of these alternatives.

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 rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus 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 meeting was widely publicized throughout the Florida citrus industry. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the January 8, 2013, meeting was a public meeting. 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:

www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the size and grade requirements currently prescribed under the Florida citrus marketing order. 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** because: (1) This action relaxes the current size and grade requirements under the order; (2) these changes need to be in effect by May 15, 2013; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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 TANGELOS
GROWN IN FLORIDA

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

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

2. In § 905.306, Table I in paragraph (a) is amended by revising the entry for "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)
* * * * *			
Valencia	08/01/2012-05/14/2013	U.S. No. 1	2-8/16
and other	05/15/2013-06/14/2013	U.S. No. 1	2-4/16
late type		Golden	

06/15/2013-08/31/2013	U.S. No. 2,	2-4/16
	External	
	U.S. No. 1,	
	Internal	
On or after 09/01/13		
September 1-May 14	U.S. No. 1	2-8/16
May 15-June 14	U.S. No. 1	2-4/16
June 15- July 31	U.S. No. 2,	2-4/16
	External	
	U.S. No. 1,	
	Internal	
August 1-August 31	U.S. No. 1	2-4/16

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Dated: May 8, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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