



This document is scheduled to be published in the Federal Register on 05/29/2013 and available online at <http://federalregister.gov/a/2013-12654>, and on FDsys.gov

Billing code 3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-FV-12-0052; FV12-905-2 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Revising Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements prescribed under the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) is responsible for local administration of the order. This rule requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information will enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers.

EFFECTIVE DATE: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, 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: Jennie.Varela@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 revises the reporting requirements prescribed under the order. This rule requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information will enable the Committee to more efficiently administer

the order and better communicate fresh market issues to fresh market citrus growers. This rule was unanimously recommended by the Committee at a July 17, 2012, meeting.

Section 905.71 of the order provides the Committee, with the approval of the Secretary, authority to collect information from handlers that is deemed necessary for administering the order. This rule utilizes this authority to establish a new § 905.171 under the rules and regulations of the order. This new section requires handlers of fresh citrus to report to the Committee a list of names and contact information for all growers whose fruit they have shipped by June 15 of each season.

Prior to this action, the Committee did not require handlers to report any information regarding the growers who supply them. In order to communicate with its grower base regarding the order or Committee actions, the Committee depended on mailing lists from other industry groups. However, third party lists are often incomplete, out-of-date, or do not distinguish between those growing for the fresh market or those growing for the processed market.

Ninety percent of the volume of citrus produced in Florida is sold for processing into juice, which is not regulated under the order. Consequently, while there are an estimated 8,000 citrus growers, it is estimated only 750 growers produce for the fresh market. Because there is no

readily available comprehensive list of fresh citrus growers, the Committee could allocate a great deal of resources into information distribution and still not be certain that the information is getting to those covered under the order.

Recently, the Committee began discussing potential changes to the order to make it more efficient and responsive to industry needs. In these discussions, the Committee recognized that grower involvement could be improved through focused communication with fresh market citrus growers. However, in order to actively reach out to growers in the industry, the Committee must have accurate information. The Committee discussed developing a list of growers compiled annually from information provided by handlers to make effective outreach possible. Some members expressed concerns about the disclosure of proprietary information. The Committee addressed these concerns by stating the scope of the information collection could be limited to only grower contact information.

In addition, while this action assists the Committee in its efforts to keep growers informed and to solicit their input on potential changes to the order, it also can be used to increase grower outreach and involvement in Committee elections and membership, facilitate grower participation in

amendment and continuance referenda, and provide for a more efficient use of Committee resources.

As a result, Committee members recommended collecting grower names and contact information each season from handlers of fresh citrus so that the Committee will have an accurate and updated list to use in communicating with fresh market citrus growers. June 15 was selected as the due date for this information as it is toward the end of the season and Committee members agreed handlers will have a complete list at that time.

This change revises reporting requirements to require all fresh citrus handlers regulated under the order to provide the Committee with contact information for all growers whose fruit they have shipped. This information is due by June 15 of each season. The change enables the Committee to more efficiently administer the order and communicate fresh market issues to fresh market citrus growers.

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 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 8,000 growers of citrus in the production area and approximately 45 handlers subject to regulation under the marketing 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 \$7,000,000 (13 CFR 121.201).

Based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is below \$750,000. In addition, based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010-11 season was approximately \$12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using

the average f.o.b. price and shipment data, about 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. Thus, assuming a normal distribution, the majority of producers and handlers of Florida citrus may be classified as small entities.

This rule revises the reporting requirements prescribed under the order. This action requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled by June 15 of each season. This information will enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This rule creates a new § 905.171, which establishes the new reporting requirement. The authority for this action is provided for in § 905.71. This change was unanimously recommended by the Committee at a July 17, 2012, meeting.

Requiring grower contact information each season imposes a minor increase in the reporting burden on all citrus handlers. However, this data is already recorded and maintained by handlers as a part of their daily business. Handlers, regardless of size, should be able to readily access this information. Consequently, any

additional costs associated with this change will be minimal and apply equally to all handlers.

This action will also help growers receive more information about the activities under the order, and make them more aware of their opportunities to participate in the efforts of the Committee. The benefits of this rule are expected to be equally available to all fresh citrus growers, regardless of their size.

The Committee discussed making no change as an alternative to this action, but determined that in order to efficiently carry out the objectives of the marketing order, the information collection within this new report was necessary. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this collection has been submitted to the Office of Management and Budget (OMB) with the reference number 0581-0284. Upon approval, the collection will be merged with OMB No. 0581-0189, Generic OMB Fruit Crops. This final rule establishes the use of a new Committee form, which imposes a minor burden increase of 15 hours. The form, Handler Supplier Report, requires minimum information necessary to effectively carry out the requirement of the order. The information would enable the

Committee to more efficiently administer the order and improve communication with growers.

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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

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 on all issues. Like all Committee meetings, the July 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 5, 2013 (78 FR 14236).

Copies of the rule were mailed or sent via facsimile to all Committee members and citrus handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 6, 2013, 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:
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.

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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee requires time to prepare and mail out

a handler information packet that should include the Handler Supplier Report, prior to the beginning of shipments for the next crop year that begins August 1. In addition, handlers are aware of this rule that was recommended at a Committee meeting on July 17, 2012. Also, a 60-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 905

Citrus, Marketing agreements, Reporting and recordkeeping requirements.

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 part 905 continues to read as follows:

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

2. Section 905.171 is added to read as follows:

§ 905.171 Handler supplier report.

Each handler shall furnish a supplier report to the Committee on an annual basis. Such reports shall be made on forms provided by the Committee and shall include the name and business address of each grower whose fruit was shipped or acquired by the handler during the season.

Handlers shall submit this report to the Committee not later than June 15 of each season.

Dated: May 21, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

[FR Doc. 2013-12654 Filed 05/28/2013 at 8:45 am; Publication Date: 05/29/2013]