



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

[Doc. No. AMS-SC-17-0064; SC17-905-2 FIR]

**Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida; Change in Size Requirements for Oranges**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture adopts as final without change, an interim rule implementing a recommendation from the Citrus Administrative Committee (Committee) to relax the minimum size requirements currently prescribed under the Marketing Order for oranges, grapefruit, tangerines, and pummelos grown in Florida (Order). This final rule also continues in effect administrative revisions to the subpart heading to bring the language into conformance with the Office of Federal Register requirements.

**DATES:** Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Abigail Campos, 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 E-mail: Abigail.Campos@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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 E-mail: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, 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 rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (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 Committee locally administers the Order and is

comprised of growers and handlers operating within the production area and one public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule 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).

The handling of oranges, grapefruit, tangerines, and pummelos grown in Florida is regulated by 7 CFR part 905. Prior to this change, the minimum size requirement for oranges was 2-8/16 inches. The reduction in size requirement to 2-4/16 inches in diameter was established to meet both a market demand for small-sized oranges, as well as a general market shortage of citrus. Losses of citrus production in Florida due to citrus greening and damage

caused by Hurricane Irma have resulted in an overall market shortage of citrus fruit. Therefore, this rule continues in effect the rule that relaxed the minimum size requirement for oranges from 2-8/16 inches to 2-4/16 inches in diameter.

In an interim rule published in the *Federal Register* on November 16, 2017, and effective on November 17, 2017, (82 FR 53397, Doc. No. AMS-SC-17-0064; SC17-905-2 IR), § 905.306 was amended by changing the minimum diameter for oranges from 2-8/16 inches to 2-4/16 inches in diameter. The relaxation in the size requirements would allow more oranges into the market and help maximize shipments.

#### **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 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 20 handlers of Florida Citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the average f.o.b. price for Florida oranges during the 2016-17 season was \$31.90 per box, and total fresh orange shipments were approximately 2.1 million boxes. Using the average f.o.b. price and shipment data, the majority of Florida orange handlers could be considered small businesses under SBA's definition (\$31.90 times 2.1 million boxes equals \$66.99 million divided by 20 handlers equals \$3,349,500 per handler). In addition, based on the NASS data, the average grower price for the 2016-2017 season was

\$17.51 per box. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below \$750,000 (\$17.51 times 2.1 million boxes equals \$36,771,000 divided by 500 growers equals \$73,542 per grower). Thus, the majority of handlers and producers of oranges may be classified as small entities.

This rule continues in effect the interim rule that relaxed the minimum size requirements for oranges covered under the Order from 2-8/16 inches to 2-4/16 inches in diameter. This change is expected to maximize shipments by allowing more oranges to be shipped to the fresh market and will help reduce the losses sustained by the orange industry as a result of citrus greening and the September 2017 hurricane in Florida. This rule amends the provisions of § 905.306. Authority for this change is provided in § 905.52 of the Order.

This action is not expected to increase costs associated with the Order requirements. Rather, this action will have a beneficial impact. Reducing the size requirements makes additional fruit available for shipment to the fresh market, provides an outlet for fruit that may

otherwise go unharvested, and affords more opportunity to meet consumer demand. This change provides additional fruit to fill the shortage cause by citrus greening and by Hurricane Irma. Further, by maximizing shipments, this action will help provide additional returns to growers and handlers as they work to recover from the losses stemming from the hurricane.

This action may also help reduce harvesting costs. By reducing the minimum size, more fruit can be harvested immediately. This may eliminate the need to leave fruit on the tree to increase in size, which requires follow-up picking later in the season. Given the amount of fruit loss, this could help reduce picking costs substantially. The benefits of this rule are expected to be equally available to all fresh orange growers and handlers, regardless of their size.

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

Further, the Committee's meetings were 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 June 29, 2017, and September 28, 2017, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before January 16, 2018. Four comments were received during the comment period in response to the proposal. The commenters included three in favor and one raising concerns not applicable to the interim rule.

The three commenters in support of the interim rule indicated relaxing the minimum size requirement for domestic shipments from 2-8/16 inches to 2-4/16 inches in diameter would maximize shipments and reduce the financial burden on industry and consumers. In addition, they stated the reduction in size would mitigate the impact on consumers by allowing more inventory to enter the market.

Two commenters mentioned that Florida citrus growers face a financial burden due to decreases in production. One commenter noted that there has been a constant decline in production. Another commenter noted that Hurricane Irma resulted in nearly \$760 million in damages to the citrus industry and that growers have reported as high as 70 percent crop loss.

Accordingly, no changes will be made to the interim rule based on the comments received.

To view the interim rule, go to:

<https://www.regulations.gov/document?D=AMS-SC-17-0064-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the *Federal Register* (82 FR 53397, November, 16, 2017) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 905**

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

**PART 905 - ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS  
GROWN IN FLORIDA**

Accordingly, the interim rule that amended 7 CFR part 905, which was published at 82 FR 53399 on November 16, 2017, is adopted as final, without change.

Dated: March 30, 2018

**Bruce Summers,**

*Acting Administrator,*

*Agricultural Marketing Service.*

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