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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV95-906-3-IFR]

#### Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Interim Final Rule to Temporarily Relax Size Requirements for Texas Grapefruit

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

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule temporarily relaxes the minimum size requirements for Texas grapefruit for the entire 1995-96 season. This interim final rule is designed to help the Texas citrus industry successfully market the 1995-96 season grapefruit crop.

**EFFECTIVE DATE:** October 23, 1995. Comments received by November 22, 1995, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; FAX: 202-720-5698. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: 202-690-3670; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS,

1313 East Hackberry, McAllen, Texas 78501; telephone: 210-682-2833.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Marketing Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Thus, both statutes have small entity orientation and compatibility.

There are about 15 citrus handlers subject to regulation under the order covering oranges and grapefruit grown in Texas, and about 750 producers of these citrus fruits in Texas. Small agricultural service firms, which includes grapefruit handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (committee) met on August 15, 1995, and recommended relaxing the size requirements for Texas grapefruit. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Minimum grade and size requirements for fresh grapefruit grown in Texas are in effect under § 906.365 (7 CFR 906.365). This rule amends § 906.365 by revising paragraph (a)(4) to permit shipment of grapefruit measuring at least 3<sup>5</sup>/<sub>16</sub> inches in diameter (pack size 112) and grading at least U.S. No. 1 for the entire 1995-96 season ending June 30, 1996.

Section 906.365 establishes minimum size requirements for Texas grapefruit. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, that is the minimum diameter for the grapefruit in any lot is 3<sup>9</sup>/<sub>16</sub> inches. At other times, grapefruit that is pack size 112, except that the minimum diameter for grapefruit in any lot is 3<sup>5</sup>/<sub>16</sub> inches, may be shipped if it grades at least U.S. No. 1. The minimum grade requirement for

grapefruit is U.S. No. 2. This interim final rule provides that pack size 112 grapefruit may be shipped throughout the entire 1995-96 season if such grapefruit grade at least U.S. No. 1. This relaxation is similar to the relaxations which were issued for the 1993-94 and 1994-95 seasons.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the remainder of the 1995-96 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida.

This relaxation is expected to help the Texas citrus industry successfully market its 1995-96 season grapefruit crop and have a positive effect on producer returns. Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the entire 1995-96 season will enable Texas grapefruit handlers to meet market needs. This interim final rule is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments are expected to begin in late September this season.

This interim final rule reflects the committee's and the Department's appraisal of the need to temporarily relax minimum size requirements for fresh Texas-grown grapefruit, as specified. The Department's view is that this interim final rule will have a beneficial impact on Texas producers and handlers of fresh grapefruit, since it enables such producers and handlers to make available the quality and sizes of grapefruit needed to meet consumer needs consistent with 1995-96 season crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC 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.

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 action until 30 days after publication in the Federal Register because: (1) The 1995-96 season began September 13; (2) Texas citrus handlers are aware of this relaxation which was recommended by the TVCC at a public

meeting, and they will need no additional time to comply with such requirements; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 906

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

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### **PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS**

1. The authority citation for 7 CFR part 906 continues to read as follows:

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

2. Section 906.365 is amended by revising paragraph (a)(4) to read as follows:

#### **§ 906.365 Texas Orange and Grapefruit Regulation 34.**

(a) \* \* \*

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be  $3\frac{9}{16}$  inches: *Provided*, That any handler may handle grapefruit, except during the period November 16 through January 31 each season, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be  $3\frac{9}{16}$  inches: *Provided further*, That for the period beginning October 23, 1995, and ending June 30, 1996, any handler may handle grapefruit if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be  $3\frac{5}{16}$  inches in diameter.

\* \* \* \* \*

Dated: October 17, 1995.  
Sharon Bomer Lauritsen,  
*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-26205 Filed 10-20-95; 8:45 am]

BILLING CODE 3410-02-P

#### **7 CFR Parts 922, 923, and 924**

[Docket No. FV95-922-2FIR]

#### **Expenses and Assessment Rates for the 1995-96 Fiscal Year for Specified Marketing Orders**

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 the interim final rule which authorized expenses for the 1995-96 fiscal year for Marketing Orders No. 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATE:** April 1, 1995, through March 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 922 [7 CFR Part 922] regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 [7 CFR Part 923] regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 [7 CFR Part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders 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 final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenses for the 1995-96 fiscal period which began April 1, 1995, through March 31, 1996. This final rule will not