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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV98–905–2 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 relaxes the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ 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 this change. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 8, 1998.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne M. Dec, 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) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, 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 of Agriculture 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 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 grade and size requirements are designated to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 8, 1998, and size 48 (3$^{9}/_{16}$ 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$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on October 14 and December 16, 1997, 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 adjusts Table I to reflect the minimum size of 56 through November 8, 1998. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). Export

requirements are not changed by this rule.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

While wanting to give handlers the opportunity to continue to market size 56, the Committee also wanted the opportunity to review the effect of size 56 on the domestic market after the percentage of size rule expired November 30, 1997 (62 FR 58633; October 30, 1997). The percentage of size rule controlled the volume of sizes 48 and 56 that was shipped in a given week, to both domestic and export markets. There is a limited market for small sizes. However, the largest part of this market is to export markets. The Committee is not sure to what extent there is domestic demand for size 56. 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.

To determine if there is a domestic market for size 56, and the effect of its presence on the market, the Committee recommended, on October 14, 1997, allowing shipments of size 56 red seedless grapefruit through January 11, 1998. The Committee agreed to revisit the issue to evaluate the impact of size 56 on the market after the expiration of volume regulation.

The Committee revisited the issue during the meeting December 16, 1997, and determined that size 56 should be released until November 8, 1998. In making its recommendation, the Committee considered estimated supplies and current shipments. The Committee examined the size distribution information available for the current season. On December 12, 1997, the Florida Agricultural Statistics Service (FASS) reduced the marketable crop estimate for red seedless grapefruit by two million boxes, or approximately seven percent for the 1997–98 season. FASS also reported that red seedless grapefruit size as measured in November, was 30.6 percent size 56 and smaller as compared to 35.5 percent as measured in November last year. This in turn compares to only 16.8 percent measuring size 56 or smaller in November of 1995. So, even though red seedless grapefruit are running larger than last season, there are a fair number of small grapefruit.

The Committee also reviewed shipment data available through November 23 of this season. Thus far, size 56 red seedless grapefruit represents only 3.7 percent of total domestic shipments. Comparatively, through the same time period, 11 percent of all red seedless grapefruit shipments from Florida, domestic and export was size 56. Of the size 56 red seedless grapefruit shipped, 18 percent went to the domestic market, while 82 percent was shipped to the export market.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

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 8, 1998.

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 1997–98 season. This will provide for the maximization of shipments to fresh market channels during this period. 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 [7 CFR 944.106]. This rule relaxes the minimum size requirements for imported red seedless grapefruit to $3\frac{5}{16}$ inches in diameter (size 56) through November 8, 1998, to reflect the relaxation being made under the order for 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 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 Florida citrus handlers subject to regulation under the marketing order, about 11,000 citrus producers, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per $\frac{4}{5}$ bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were

23 million cartons of 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 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 handlers, growers, and importers may be classified as small entities.

Florida shipped approximately 44,224,000 cartons of grapefruit to the fresh market during the 1996–97 season. Of these cartons, about 25,586,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 18,798,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 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 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. No change is being made in the minimum size requirement for export shipments of size 56. 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 8, 1998, was passed by the Committee unanimously.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

During the discussion of this rule, the Committee considered the costs and benefits of this action. Several members stated that with the volume of grapefruit available, the stagnant demand, and concerns regarding the Asian export markets, it was important to take advantage of any market available. There was also discussion that Texas was planning to ship size 56 this season. Some members stated that if they eliminated size 56, they would be losing markets. Members agreed that maximizing fresh shipments helps grower returns. The Committee has released size 56 for the past seven seasons. There should be no production adjustment costs associated with this rule.

This rule is expected to have a positive impact on growers and handlers, as it will permit the shipment of smaller sized red seedless grapefruit to the domestic market, allowing the industry to meet anticipated demand through November 8, 1998. This will provide for the maximization of shipments to fresh market channels during this period.

This regulation lowers the minimum size to size 56. This minimum applies to all handlers of red seedless grapefruit. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

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 will also be applicable to imported grapefruit. This rule relaxes the minimum size 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 8, 1998.

The Committee discussed alternatives to this action. One alternative discussed was the elimination of size 56 grapefruit all together. Several members expressed concern that a viable market has been developed for a portion of the size 56 grapefruit crop. Not allowing handlers to supply this market could result in throwing business and money away. Other members pointed out that it could be detrimental to supply this market for smaller sizes if that market is not profitable and the result is depressed prices for all sizes of grapefruit.

In addition, the Committee recognized that through November, regulation was in place to control the amount of size 56 red seedless grapefruit entering the market. Under the percentage of size rule, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using a recommended percentage. This percentage of size rule was in effect through November 30, 1997. The Committee agreed that, for the remainder of the 1997–1998 season, no further restriction on size 56 was necessary. A motion to eliminate size 56 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 October 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 October 14, 1997, 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 January 22, 1998. 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 March 23, 1998. 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** (63 FR 3247, January 22, 1998) 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 63 FR 3247 on January 22, 1998, is adopted as a final rule without change.

Dated: April 14, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10259 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 1

[INS Order No. 1868–97]

RIN 1115–AE87

Amendment of the Regulatory Definition of Arriving Alien

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (Act), which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving alien includes parolees whose parole is terminated, without regard to the date of parole or the circumstances under which parole was granted. As a matter of policy, the Service has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1, 1997, as well as aliens who, either before or after April 1, 1997, return to the United States pursuant to a grant of advance parole that they applied for and obtained while physically present in and prior to their departure from the United States. This rule clarifies that these two types of parolees will not be subjected to expedited removal.

DATES: *Effective Dates:* The interim rule is effective April 20, 1998.

Comment Date: Written comments must be received on or before June 19, 1998.

ADDRESSES: Please submit written comments in triplicate to the: Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1868–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Linda Loveless, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7489.

SUPPLEMENTARY INFORMATION: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, which was enacted on September 30, 1996, created new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents. This provision was effective on April 1, 1997, and is applicable to aliens who are ''arriving in the United States'' as contained in section 235(b)(1)(A)(i) of the Act.

The existing regulatory definition of arriving alien includes parolees, starting that ''[a]n arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.'' Including certain parolees in the definition of arriving aliens is consistent with section 212(d)(5) of the Act, which states that ''* * * such parole of such alien shall not be regarded as an admission of the alien and when the purpose of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'' Existing regulations on the termination of parole are also consistent with the classification of certain paroled aliens as arriving aliens, stating that ''* * * he or she shall be restored to the status that he or she had at the time of parole.'' 8 CFR 212.5(d)(2)(i).

The definition as currently in effect, though consistent with the Act and prior regulations, encompasses certain groups not best regarded as arriving aliens for purposes of the applicability of expedited removal, such as aliens initially paroled before (often well before) the effective date of the expedited removal provisions, and aliens previously present in the United States (in some cases for long periods) who departed from and returned to the United States pursuant to advance parole. Because the Act does not contain a definition of ''arriving alien,'' it is left to the Attorney General to define the term in a manner that conforms with