

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 319 and 354

[Docket No. 98-087-2]

#### Solid Wood Packing Material From China

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is hosting, in addition to the public hearing in Washington, DC, two more public hearings to accept oral comments from the public on an interim rule that will amend the regulations for importing logs, lumber, and other unmanufactured wood articles by adding treatment and documentation requirements for solid wood packing material imported from China.

#### PLACES, DATES, AND TIMES OF MEETINGS:

The first meeting will be held at the Jackson Federal Building, North and South Auditorium, 4th Floor, 915 Second Avenue, Seattle, WA. This meeting will begin at 9:00 a.m. local time and is scheduled to end at 5:00 p.m. local time, on Tuesday, November 3, 1998. Visitors must enter the Jackson Federal Building through the Second Avenue entrance.

The second meeting will be held at the Hyatt Regency Long Beach, Regency Ballroom ABC, 4th Floor, 200 South Pine Avenue, Long Beach, CA. This meeting will begin at 9:00 a.m. local time and is scheduled to end at 5:00 p.m. local time, on Thursday, November 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140,

Riverdale, MD 20737-1236, (301) 734-6799.

**SUPPLEMENTARY INFORMATION:** On September 18, 1998, the Animal and Plant Health Inspection Service (APHIS) published an interim rule in the **Federal Register** (63 FR 50100-50111, Docket No. 98-087-1) that will amend the regulations for importing logs, lumber, and other unmanufactured wood articles by adding treatment and documentation requirements for solid wood packing material imported from China. This change means that wooden pallets, crating, dunnage, and other wooden packing material imported into the United States from China will have to be heat treated, fumigated, or treated with preservatives prior to departure from China. This action will affect anyone who uses solid wood packing material in connection with exporting commodities from China to the United States. This action is necessary to control the risk that solid wood packing material from China could introduce dangerous plant pests, including forest pests, into the United States, a risk demonstrated by many recent incidents where exotic pests were detected in solid wood packing material from China. This interim rule is scheduled to become effective December 17, 1998.

In the preamble to the interim rule, we announced that there would be three public hearings on the interim rule—one in Washington, DC, on October 16, 1998, at the Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue, SW., and two others on the west coast, dates and locations to be announced. This notice announces the dates and locations for the public hearings on the west coast.

All three public hearings will provide interested persons a full opportunity to present their views regarding this interim rule. The public hearings will begin at 9:00 a.m. local time and are scheduled to end at 5:00 p.m. local time. However, the hearings may be terminated at any time after they begin if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the interim rule may be part of the commenters' oral presentations. Neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings. However, they will be able to answer questions to clarify or explain provisions of the interim rule.

Done in Washington, DC, this 6th day of October 1998.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98-27369 Filed 10-9-98; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV98-906-1 FIR]

#### Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

**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 which decreased the assessment rate, from \$0.125 to \$0.11 per 7/10 bushel carton, established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1998-99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 12, 1998.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing

Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-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, Fruit and Vegetable Programs, 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 and 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." 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."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1998, and continue until amended, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 1998-99 and subsequent fiscal periods from \$0.125 per  $\frac{7}{10}$  bushel carton to \$0.11 per  $\frac{7}{10}$  bushel carton handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 10, 1998, and unanimously recommended 1998-99 expenditures of \$1,172,950 and an assessment rate of \$0.11 per  $\frac{7}{10}$  bushel carton of oranges and grapefruit handled. On August 18, 1998, the Committee met again and unanimously approved a \$9,000 increase to the 1998-99 budget, which increased the total budget to \$1,181,950. In comparison, last year's budgeted expenditures were \$1,100,478. The assessment rate of \$0.11 is \$0.015 lower than the rate previously in effect. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The assessment rate decrease was necessary to bring expected assessment income closer to the amount necessary to administer the program for the 1998-99 fiscal period. At the previous rate, assessment income would have exceeded anticipated expenses by about \$5,550, and the projected reserve on July 31, 1999, would have exceeded the level the Committee believes adequate to administer the program.

The major expenditures recommended by the Committee for the 1998-99 fiscal period include \$768,700 for advertising and promotion and \$179,000 for the Mexican Fruit Fly support program. Budgeted expenses for these items in 1997-98 were \$712,000 and \$170,000, respectively. Budget increases for 1998-99 (with the 1997-98 budgeted amounts in parentheses) include administrative at \$68,313 (\$64,548) and compliance at \$73,369 (\$71,112). A new budget item for 1998-99 includes funds totaling \$14,000 for promotion program evaluation.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million cartons which should provide \$1,045,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$270,000) will be kept within the maximum permitted by the order (approximately one fiscal periods' expenses; \$906.35).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998-99 budget and those for subsequent fiscal periods will be reviewed, and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the 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 approximately 2,000 producers of oranges and grapefruit in the production area and 17 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of orange and grapefruit producers and handlers may be classified as small entities.

Last year, 4 of the handlers each shipped over 833,000  $\frac{7}{10}$  bushel cartons of oranges and grapefruit, which at an average free-on-board (f.o.b.) price of \$6.00, generated approximately \$5 million in gross sales. These handlers would be considered large businesses under SBA's definition, and the remaining 13 handlers would be considered small businesses. Of the approximately 2,000 producers within the production area, few have sufficient acreage to generate sales in excess of \$500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from \$0.125 to \$0.11 per  $\frac{7}{10}$  bushel carton handled. The Committee unanimously recommended 1998–99 expenditures of \$1,181,950 and an assessment rate of \$0.11 per  $\frac{7}{10}$  bushel carton. The assessment rate of \$0.11 is \$0.015 lower than the 1997–98 rate. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 1998–99 season is estimated at 9.5 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include \$768,700 for advertising and promotion and \$179,000 for the Mexican Fruit Fly support program. Budgeted expenses for these items in 1997–98 were \$712,000

and \$170,000, respectively. Budget increases for 1998–99 (with the 1997–98 budgeted amounts in parentheses) include administrative at \$68,313 (\$64,548), and compliance at \$73,369 (\$71,112). A new budget item for 1998–99 includes funds totaling \$14,000 for promotion program evaluation.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries is depressing prices. To allow more of the revenue from sales to be retained by those paying assessments, the Committee recommended that the 1998–99 rate of assessment be reduced to \$0.11 per  $\frac{7}{10}$  bushel carton. The reduction in the assessment rate will, however, cause the Committee to draw approximately \$131,950 from reserves to meet the 1998–99 budget. At the end of the 1998–99 fiscal period, the reserve is expected to be \$117,428. Interest income totaling \$5,000 also will be used to cover program expenses in 1998–99.

The Committee reviewed and unanimously recommended 1998–99 expenditures of \$1,172,950, which included increases in administrative costs, compliance, the advertising and promotion program, and the addition of funds to cover a promotion program evaluation. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In a subsequent meeting on August 18, 1998, however, the Committee approved a \$9,000 increase for the Mexican Fruit Fly program, which increased the total budget to \$1,181,950. In arriving at the budget, the Committee considered information from various sources. A lower assessment rate was considered. The Committee, however, concluded that establishing a lower rate would require it to use too much of its reserve. Based on its estimate of anticipated 1998–99 shipments, the Committee concluded that an assessment rate of \$0.11 per  $\frac{7}{10}$  bushel carton of oranges and grapefruit would generate the income necessary to administer the program with an appropriate reserve level. Funds in the reserve will be kept within the maximum permitted by the order (approximately one fiscal period's expenses; § 906.35).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1998–99

season could range between \$4.50 and \$9.00 per  $\frac{7}{10}$  bushel carton of oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of the total pack-out revenue could range between 2.4 and 1.2 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 10 and August 18, 1998, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit 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.

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

An interim final rule concerning this action was published in the **Federal Register** on July 24, 1998 (63 FR 39697). Copies of that rule were also mailed or sent via facsimile to all Texas orange and grapefruit handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 22, 1998, and no comments were received.

After consideration of all relevant material 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.

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

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

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

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 63 FR 39697 on July 24, 1998, is adopted as a final rule without change.

Dated: October 6, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-27311 Filed 10-9-98; 8:45 am]

BILLING CODE 3410-02-P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 966**

[Docket No. FV98-966-2 IFR]

#### **Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the handling requirements currently prescribed under the Florida tomato marketing order. The marketing order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). This rule exempts shipments of producer field-packed tomatoes from the container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule will allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This will facilitate the movement of Florida tomatoes and should improve returns to producers.

**DATES:** Effective October 10, 1998; comments received by December 14, 1998 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, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632; or E-mail: moabddocket\_clerk@usda.gov. All comments should reference the docket 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.

#### **FOR FURTHER INFORMATION CONTACT:**

Christian D. Nissen, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes 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 (Department) 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.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2<sup>9</sup>/<sub>32</sub> inches in diameter. Current pack and container requirements outline the types of information that needs to appear on a container, weight restrictions the packed containers must meet, and that the containers must be packed at a registered handler's facility.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. It includes the authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order.

Section 966.323 specifies the handling regulations issued under the order. Section 966.323(a)(3)(i) requires that certain types of tomatoes packed by registered handlers be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight can not be less than the designated weight or exceed the designated weight by more than two pounds. Section 966.323(a)(3)(ii) currently requires that certain types of tomatoes be packed by registered handlers in containers that are marked with the designated net weight and with the name and address of the registered handler, and that such containers must be packed at the registered handler's facilities.

This rule changes the handling regulations under the order. This rule defines producer field-packed tomatoes and will allow handlers to ship field-packed tomatoes exempt from the net weight requirements. This rule also exempts producer field-packed tomatoes from the requirement that all tomatoes be packed at a registered handler's facility. These tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, pack and inspection requirements. These tomatoes also would continue to be subject to assessments. The committee met September 11, 1998, and unanimously recommended this change.

In its discussion of this rule, the committee recognized that the market for red, ripe tomatoes or vine-ripes is continuing to grow. Place packed vine-ripe tomatoes are shipped from many foreign and domestic growing areas, and currently maintain a strong and growing