

| Week | Weekly percentage |
|----------------------------------|-------------------|
| (t) 1/26/04 through 2/1/04 | 40 |
| (u) 2/2/04 through 2/8/04 | 40 |
| (v) 2/9/04 through 2/15/04 | 40 |

Dated: September 5, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-23045 Filed 9-5-03; 12:37 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV03-905-2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the regulations for seeded grapefruit under the Florida citrus marketing order and for seeded grapefruit imported into the United States. The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and is administered locally by the Citrus Administration Committee (committee). The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. Production of seeded grapefruit in Florida has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. The volume remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

DATES: September 10, 2003; comments received by November 10, 2003 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: moab.docketclerk@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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both 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. 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 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.

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.

This rule removes the regulations for seeded grapefruit under the order for Florida citrus. Thus, handlers of seeded grapefruit are no longer subject to minimum grade, size, assessment, and reporting requirements under the order. Production has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. For the purposes of this interim final rule, the term "domestic shipments" includes shipments between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States. The volume of fruit remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help the industry maximize fresh shipments and returns for Valencia and

other late type oranges. These actions were unanimously recommended by the committee at its meeting on July 1, 2003.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. The grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. 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.

Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different varieties of fresh Florida citrus. 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). Currently, the minimum grade for domestic seeded grapefruit is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784), with a minimum size of $3\frac{1}{16}$ inches in diameter for domestic shipments, and $3\frac{9}{16}$ inches for export shipments. The minimum grade for domestic Valencia and other late type oranges is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), with a minimum size of $2\frac{9}{16}$ inches in diameter for both domestic and export shipments.

Under §§ 905.51 and 905.52 of the order, the committee has authority to recommend to USDA the varieties of citrus to be regulated. This rule modifies § 905.306 by removing seeded grapefruit from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). The removal of seeded grapefruit from these tables has the effect of removing the grade and size requirements for seeded grapefruit under the order. Also, assessment and reporting requirements would no longer apply to seeded grapefruit. In addition, this rule further amends Table I of § 905.306 by reducing the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31, each season.

In making its recommendation, the committee recognized that seeded grapefruit is no longer significant in terms of shipments and market share. During the 2002–03 season, only 150 cartons of seeded grapefruit were shipped to the fresh market. This is down from 4,705 cartons shipped in the 1998–99 season. Currently, shipments of

seeded grapefruit represent less than .0005 percent of fresh shipments of Florida grapefruit. Seeded grapefruit production has declined as new seedless varieties have been developed and planted. Consequently, the committee determined that removing seeded grapefruit varieties from the order regulations will not have a negative impact on the grapefruit market.

In addition, this rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late oranges. The committee recommended reducing the minimum grade requirements for Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 2 external grade with a U.S. No. 1 internal grade from June 15, 2004, to July 31, 2004, and during the same period of each season thereafter. Valencia and late type oranges have difficulty meeting grade requirements late in the season. This is usually due to regreening, which is considered a defect under the U.S. Standard for Grades of Oranges.

At the end of the season growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes that permitting the shipment of a U.S. No. 2 external grade during the specified time would help the industry maximize fresh shipments and returns for Valencia and other late type oranges. Consequently, the committee recommended that during the period June 15 to July 31 the grade standard be lowered to U.S. No. 2 external grade with U.S. No. 1 internal grade for Valencia and other late type oranges shipped to domestic markets.

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 removes the minimum size and grade requirements for seeded grapefruit 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). The minimum grade and size requirements are specified in a table in paragraph (a) of § 944.106. This rule removes the minimum grade and size requirements for imported seeded grapefruit to reflect the change being

made under the order for seeded grapefruit grown in Florida.

Section 8e import requirements for oranges are based on the marketing order for South Texas oranges and as such will not be impacted by this relaxation.

Initial Regulatory Flexibility Analysis

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 initial 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 75 grapefruit and Valencia and other late type orange handlers subject to regulation under the order, approximately 11,000 producers of Florida citrus in the regulated area, and approximately 10 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2002–03 season was approximately \$7.24 per $\frac{4}{5}$ bushel carton, and total fresh shipments for the 2002–03 season are estimated at 28.3 million cartons of grapefruit. The average annual f.o.b. price for fresh Florida Valencia and other late type oranges during the 2002–03 season was approximately \$6.99 per carton, and total fresh shipments are estimated at 3,669,000 cartons. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit and Valencia and other late type orange shipments. Using the average f.o.b. prices, at least 75 percent of the grapefruit and Valencia and other late type orange handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit and Valencia and other late type orange handlers may be classified as small entities. In addition, based on information from the Foreign Agricultural Service, USDA, the dollar

value of imported grapefruit ranged from \$902,000 in 1998 to \$2,018,000 during the 2002 season. Using these numbers, all grapefruit importers may be classified as small entities. The majority of Florida grapefruit and Valencia and other late type orange producers may also be classified as small entities.

This rule removes seeded grapefruit from regulation under the order. Handlers of seeded grapefruit will no longer be required to meet the minimum grade and size requirements and will not be subject to assessments and reporting requirements. Removing these varieties from the minimum grade and size requirements will have no significant impact on the grapefruit market. This rule also reduces the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31 each season. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. Section 905.306 of the order's rules and regulation specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. The Committee unanimously recommended this action at a meeting on July 1, 2003.

During the 2002–2003 season, only 150 cartons of seeded grapefruit were shipped out of a total of 28.3 million $\frac{4}{5}$ bushel cartons of seedless grapefruit. Production of seeded varieties has declined as newer seedless varieties have been developed and planted. Current market share and shipment levels justify removal of the order requirements for seeded grapefruit.

Valencia and late type oranges have difficulty meeting grade requirements late in the season. At the end of the season, growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes permitting the shipment of a U.S. No. 2 external grade with a minimum U.S. No. 1 internal grade from June 15 to July 31 for domestic shipments will help the industry maximize fresh shipments and returns for Valencia and other late type oranges.

This rule is expected to have a positive impact on affected entities as it relaxes handling requirements. With this rule removing seeded grapefruit from the varieties regulated, handlers

will be able to market these varieties free from order requirements. In addition, the relaxation in grade requirements from June 15 to July 31 each season for Valencia and other late type oranges will allow handlers to make additional supplies available for the fresh domestic market, thus, increasing returns. No additional costs are imposed on growers, handlers, and importers with this rule. The benefits derived from this change are expected to benefit both large and small entities equally.

During the period January 1 through December 31, 2002, imports of grapefruit totaled 23,246 metric tons (approximately 1,100,000 cartons). The Bahamas were the principal source, accounting for nearly 99 percent of the total. Remaining imports were supplied by Israel. Most imported grapefruit enters the United States from October through May.

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 requirements for domestic seeded grapefruit shipments, this change must also be applicable to imported grapefruit. This rule removes the import requirements for seeded grapefruit. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers.

One alternative to this action was to make no changes to the order's handling regulations. However, the committee believes seeded grapefruit varieties have no significant impact on the grapefruit market and that action should be taken to remove them from the handling regulations. In addition, the committee believes making additional supplies of oranges available late in the season may increase returns. Therefore, the alternative of making no changes was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the removal of seeded grapefruit from requirements currently prescribed under the marketing order for Florida citrus and the grapefruit import regulation. This rule also invites comments on the relaxation of minimum grade requirements for fresh Valencia and other late type oranges. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

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 rule until 30 days after publication in the **Federal Register** because: (1) Handlers will begin shipments of seeded grapefruit in mid-September 2003 and the removal of regulations should be effective by that time; (2) the committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 905

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

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 905 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 2. Section 905.306 is amended by:

■ a. In paragraph (a), by removing under the heading “Grapefruit”, entries for “Seeded, except red” and “Seeded, red” from Table I and under the heading “Oranges” revising the entry for “Valencia and other late type”;

■ b. In paragraph (b), by removing under the heading “Grapefruit” entries for “Seeded, except red” and “Seeded, red” from Table II.

The revisions to Table I read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

| Variety | Regulation period | Minimum grade | Minimum diameter (inches) |
|------------------------------------|------------------------|--|--------------------------------|
| (1) | (2) | (3) | (4) |
| * * * | * * * | * * * | * * * |
| Valencia and other late type | August 1 June 14 | U.S. No. 1, U.S. No. 2, External | 2 ⁸ / ₁₆ |
| | June 15 July 31 | U.S. No. 1, Internal | 2 ⁹ / ₁₆ |
| * * * | * * * | * * * | * * * |

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PART 944—FRUITS; IMPORT REGULATIONS

■ 3. In § 944.106(a), the entry for “Seeded” is removed from the table.

Dated: September 4, 2003.

A.J. Yates,
Administrator, Agricultural Marketing Service.

[FR Doc. 03–22948 Filed 9–4–03; 3:16 pm]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 550

[No. 2003–44]

RIN 1550–AB80

Federal Savings Associations—Operations, Agency Offices; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulation governing agency offices of federal savings associations to conform that regulation to recent changes to OTS’s fiduciary activities regulations. OTS is also removing an incorrect parenthetical in 12 CFR 550.136, OTS’s regulation governing the extent to which state law

applies to the fiduciary activities of a federal savings association.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT:

Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, (202) 906–7170, Kevin Corcoran, Special Counsel, Business Transactions Division, (202) 906–6962, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, Examination Policy Division, (202) 906–5636, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

On December 12, 2002, OTS amended its regulations governing the fiduciary activities of federal savings associations, found at 12 CFR part 550.¹ One of those amendments was to 12 CFR 550.70, which sets out when a federal savings association must obtain OTS approval or file a notice before exercising fiduciary powers. Under that rule, if a federal savings association wants to commence fiduciary activities in a new state that are not materially different from those that OTS has already approved for the association, it need not file a new fiduciary powers application. Rather, the association needs to file, within ten days after commencing the activities in the new state, a written notice that identifies the new state, describes the fiduciary activities the association is conducting in the new

state, and provides sufficient information supporting a conclusion that those activities are permissible in the new state. If an association proposes to open an agency office in any state to perform only activities ancillary to its fiduciary business, or to open a new agency office in a state in which the association is already conducting approved fiduciary activities, no fiduciary application or notice is required.

To minimize potential confusion about applicable procedures, OTS today is conforming its agency office regulation, 12 CFR 545.96, to reflect this change in the fiduciary activities regulations. Under subparagraph (a) of § 545.96, a federal savings association may, without OTS’s approval, establish and maintain agency offices that only service and originate (but not approve) loans and contracts, or manage or sell real estate owned by the federal savings association. Subparagraph (b) of the regulation states that, except for payment on savings accounts, a federal savings association may conduct activities not listed in subparagraph (a) at an agency office with OTS approval. The regulation does not currently address fiduciary activities, nor does it indicate how it interacts with part 550.

In the preamble to the proposed amendments to § 550.70, OTS explained in detail why a new fiduciary powers application was not necessary when a federal savings association wanted to conduct already approved fiduciary activities in a new state:

¹ 67 FR 76293 (December 12, 2002).