

Done in Washington, DC, this 2nd day of November 2004.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV04-905-2 FIR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that established an exemption for shipments of small quantities of tree run citrus from the rules and regulations under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). Under rule, shipments of tree run citrus continue to be exempt from grade, size, and assessment requirements under the order. Producers can ship 150 1 $\frac{3}{4}$  bushel boxes, per variety, per shipment of their own citrus free from order regulations, not to exceed 3,000 boxes per variety season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

**EFFECTIVE DATE:** December 8, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Cathy Harding, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884-1671; 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."

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 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, 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.

This rule continues in effect an exemption for shipments of small quantities of tree run citrus from the grade, size, and assessment requirements under the order. Tree run fruit is quality citrus picked and boxed in the field and taken directly to market without being graded or sized. By providing this exemption, producers can ship 150 1 $\frac{3}{4}$  bushel boxes per variety, per shipment, of their own citrus free from order regulations. Total shipments cannot exceed 3,000 boxes per variety, per season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was

recommended unanimously by the Committee at its meeting on June 15, 2004.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the Committee, with the approval of USDA, may specify. No assessment is levied on fruit so shipped. The Committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the Committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions were originally established just for the 2002-03 season, then extended for the 2003-04 season. During the 2003-04 season, growers were allowed to ship a maximum of 150 1 $\frac{3}{4}$  bushel boxes per variety, per shipment, up to a seasonal total of 3,000 boxes per variety of their tree run fruit free from order requirements.

For the past two seasons, the Committee has utilized the provisions of § 905.149 on an annual basis. Rather than making this recommendation each year, the Committee recommended that the provisions of § 905.149 be established on a continuous basis. However, growers must receive approval from the Committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20-35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, (FDOC) regulation 20-62.002 defines wholesomeness as fruit free from rot, decay sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus

regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the season prior to the utilization of \$905.149, small producers of Florida citrus expressed concerns about problems incurred when trying to sell their citrus. costs, These concerns included increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of small citrus growers out of the citrus industry.

According to the Florida Agricultural Statistics Service, from 1998–99 to 2002–03, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 11 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last seven seasons, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1998–99 through 2002–03, the differential between fresh prices and processed prices has averaged \$4.43 per box for grapefruit and \$2.20 per box for oranges. Hence, many growers would prefer to ship to the fresh market.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the

returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

As a result, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to continue servicing them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the Committee recommended for the past two seasons that producers be allowed to ship small quantities of their own production directly to the market exempt from order requirements. The exemption was established on an annual basis for the 2002–03 season [68 FR 4361, January 29, 2003] and for the 2003–04 season [68 FR 68717, December 10, 2003]. The exemption for the 2003–04 season expired July 31, 2004.

The Committee recommended this exemption on a yearly basis for the past two seasons to determine its affect and how fruit shipped under the exemption was received on market. The Committee was interested in whether markets existed that packed fruit was not supplying. They also wanted an indication of the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, the Committee wanted information regarding any compliance issues or any impact on competitive outlets.

During the 2003–04 season, 101 growers were approved to ship under the exemption. Approximately 40 growers actually used the exemption, shipping a total of nearly 16,000 1 $\frac{3}{8}$  bushel boxes of oranges, grapefruit, tangerines, and tangelos. This is an increase from 23 growers shipping approximately 4,500 boxes during the 2002–03 season. Those producers who

took advantage of the exemption believe that the program was successful. They were able to sell their fruit and supply markets not already supplied by traditional packers. Growers also believe more markets exist. They think with time, they can identify additional markets. Thus, growers want to continue to have the opportunity to supply these markets.

The Committee had agreed that following the 2003–04 season, it would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued. In the June 15, 2004, meeting, the Committee discussed this issue, and considered the impact and benefits of the exemption.

The Committee also reviewed a letter in support of the exemption from Florida Citrus Mutual, a large grower organization. The Committee believes that markets have been developed and that tree run fruit will continue to be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the State, and such markets have been successful. Continuing this exemption allows growers to sell directly to similar markets outside of the State, supplying markets that might not otherwise be supplied. The Committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets. Consequently, the Committee voted unanimously to extend the tree run exemption on a continuous basis.

Growers will continue to be required to apply to the Committee, on the "Grower Tree Run Certificate Application" form provided by the Committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the Committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for

exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the Committee, must be completed for each shipment. On this form, the grower will provide location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the Committee. This report will enable the Committee to maintain compliance. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

#### Final 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 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.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75

handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2003–04 season was approximately \$8.69 per 4/5 bushel carton, and total fresh shipments for the 2003–04 season were around 52 million cartons of oranges, grapefruit, tangerines, and tangelos. Twenty handlers handled approximately 66 percent of Florida's citrus shipments in 2003–04. Considering the average f.o.b. price, at least 55 percent of the orange grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule establishes the provisions of § 905.149 of the rules and regulations on a continuous basis. This rule continues in effect an exemption for shipments of small quantities of tree run citrus from the grade, size, assessment requirements under the order. Growers must receive approval from the Committee before they can use this exemption. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from \$1.71 per box for processed oranges to \$2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately \$6.50 per box, for grapefruit the charge is approximately \$5.75 per box, and for tangerines the charge can be as high as \$9 per box. Sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether. For the 2003–04 season, this exemption accounted for additional fresh shipments totaling over 32,000 cartons.

This rule will not impose any additional costs on the grower. It will have the opposite effect of providing growers the opportunity to reduce the

costs associated with having fruit handled by a packinghouse. This action will continue to allow growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by the traditional packinghouses. This regulation will help growers by providing another outlet for their fruit. This will benefit all growers regardless of size, but it is expected to have a particular benefit for small growers who need additional revenue to meet operating costs.

The Committee considered one alternative to this action. The possible alternative was to not continue the exemption. However, the Committee believes the exemption provides other possible outlets for fruit and may help increase returns to growers. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. 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 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 June 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 16, 2004. Copies of the rule were mailed, e-mailed or faxed by the Committee staff to all Committee members and tree run citrus growers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended October 15, 2004. No comments were received.

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.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 50265, August 16, 2004) will tend to effectuate the declared policy of the Act.

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

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

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

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 69 FR 50265 on August 16, 2004, is adopted as a final rule without change.

Dated: November 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-24825 Filed 11-5-04; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Parts 71, 77, 78, 79, 80, 85, and 93

[Docket No. 04-052-1]

##### Livestock Identification; Use of Alternative Numbering Systems

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs. Additionally, we are amending the regulations to authorize the use of a numbering system to identify premises where animals are managed or held. These new numbering systems will be a key element in a national animal identification system that is being implemented by the U.S. Department of Agriculture, at present on a voluntary basis. The changes we are

making to the regulations are necessary to allow the use of these new numbering systems for official purposes. Use of the new numbering systems will not, however, be required as a result of this rulemaking. Finally, we are amending the regulations to prohibit the removal of official identification devices and to eliminate potential regulatory obstacles to the recognition of emerging technologies that could offer viable alternatives to existing animal identification devices and methods.

**DATES:** This interim rule is effective November 8, 2004. We will consider all comments that we receive on or before January 7, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET (Preferred Method):** Go to <http://www.epa.gov/feddoctet> to submit or view public comments on this docket. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-052-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-052-1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neil Hammerschmidt, Animal Identification Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737-1231; (301) 734-5571.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the interstate movement of certain animals to prevent the spread of livestock and poultry diseases within the United States. The interstate movement regulations are contained in 9 CFR chapter I, subchapter C (parts 70 through 89). APHIS also has regulations providing for the payment of indemnity for certain animals that are destroyed to prevent the spread of various diseases. The indemnity regulations are contained in 9 CFR chapter I, subchapter B (parts 49 through 55). Among other things, the interstate movement regulations, as well as some of the indemnity regulations, contain requirements for the official identification of animals.

The official numbering systems recognized under the regulations prior to this interim rule, such as the National Uniform Eartagging System, have been vital to disease control and eradication programs, but may not be well suited for uses outside of those programs. For example, many producers use separate identification numbers or methods for on-farm production purposes, animal data recording, genetic evaluation, and breed registration. Assigning multiple identification numbers to an animal may necessitate attaching multiple identification tags or devices to the animal, and some identification devices are inevitably lost over time. The ability to access information about a particular animal may also be impaired when data about that animal are stored in various databases under various numbering systems. Furthermore, as diseases such as tuberculosis, brucellosis, and pseudorabies are eradicated from the United States, fewer animals are required to be officially identified under the regulations. As a result, our ability to trace diseased animals back to their herds of origin and to trace other potentially exposed animals forward is being compromised.

To address these considerations, USDA has identified the need for a national animal identification system (NAIS) and defined several key objectives for such a system. These include: (1) Allowing producers, to the extent possible, the flexibility to use current systems or adopt new ones; (2) having a system that is technology neutral, so that all existing effective technologies and new technologies that may be developed in the future may be utilized; (3) having a system that builds upon national data standards to ensure that a uniform and compatible system