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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-96-301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will revise the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. This rule revises the "Application of Tolerances" sections, which establishes the limitations of defective fruit per sample. It also sets a minimum sample size of twenty-five fruit.

EFFECTIVE DATE: August 5, 1996. Comments must be received by October 1, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the 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.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Act, and 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 150 handlers of Florida citrus who are subject to regulation under these standards and approximately 11,000 producers of citrus in Florida. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. A majority of handlers and producers of Florida citrus may be classified as small entities.

These revisions will be a benefit to handlers and producers of Florida citrus, regardless of the size, by minimizing the destruction of packages and allowing more defective fruit in individual packages while maintaining overall quality levels. Accordingly, AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

The United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida

Oranges and Tangelos, and United States Standards for Grades of Florida Tangerines were recently revised following extensive discussions with the Florida citrus industry and a 60 day comment period. The final rule to revise the standards was published in the Federal Register on May 8, 1996, and will become effective August 1, 1996. However, we received two requests after the publication date concerning the revisions to the standards. One was from the Florida Citrus Packers, Inc., which "represents nearly 90 percent of Florida's fresh commercial citrus industry, growers and shippers" and from the Commissioner of the Florida Department of Agriculture and Consumer Services (FDACS). Both requested revision of the "Application of Tolerances" sections of the standards and they requested a minimum sample size of twenty-five fruit for each of the U.S. standards for Florida citrus.

The "Application of Tolerances" sections in the standards effective August 1, 1996, are based on the contents of individual packages with no specified sample size. At that time, it was AMS' understanding that a specified sample was no longer needed and that defects were to be based on individual packages. After publication in the Federal Register on May 8, 1996, the Florida citrus industry and FDACS stated the following concerns to AMS.

The industry stated that without further revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, the tolerances are too restrictive for these consumer packages ultimately resulting in failing to market citrus account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit.

The FDACS states that "* * * inspections based on small containers will require inspection procedures which are more time consuming and less efficient than the present." The State also expresses their concern in adopting and implementing the revisions to the "Application of Tolerances" sections and the minimum sample size of twenty-five fruit expeditiously, in order to train

inspectors for the 1996/1997 citrus season.

Therefore, this rule will change Sections 51.760, 51.1151, and 51.1820 "Tolerances," to set a minimum sample size of twenty-five fruit; which will read as follows: "In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:" The Sections 51.761, 51.1152, and 51.1821 "Application of Tolerances," will also change from individual package limitations to limitations on individual samples and will read as follows: "Individual samples are subject to the following limitations, unless otherwise specified in §§ 51.760, 51.1151, 51.1820, respectively. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade."

Pursuant to 5 U.S.C. 553, it is 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 30 days after publication in the Federal Register because: (1) The standards were published in the Federal Register on May 8, 1996, and will become effective August 1, 1996; (2) harvesting for the 1996/1997 Florida citrus season will begin in early Fall and USDA in cooperation with the FDACS needs ample time to train inspectors and inform the industry of these changes; and (3) this interim final rule provides a 60 day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.760 is amended by revising the introductory text to read as follows:

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

3. Section 51.761 is revised to read as follows:

§ 51.761 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And *provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

4. Section 51.1151 is amended by revising the introductory text to read as follows:

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

5. Section 51.1152 is revised to read as follows:

§ 51.1152 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

6. Section 51.1820 is amended by revising the introductory text to read as follows:

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on

a minimum 25 count sample, are provided as specified:

* * * * *

7. Section 51.1821 is revised to read as follows:

§ 51.1821 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

Dated: July 29, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19637 Filed 8–01–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 915

[Docket No. FV96–915–1 FIR]

Avocados Grown in South Florida; 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 that established an assessment rate for the Avocado Administrative Committee (Committee) under Marketing Order No. 915 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. **EFFECTIVE DATE:** Effective on April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698, or Tershirra Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small