

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Doc. No. AMS-FV-14-0041; FV14-905-2 IR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Grade Requirements on Valencia and Other Late Type Oranges

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

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

**SUMMARY:** This rule changes the minimum grade requirements currently prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule reduces the minimum grade requirement for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15 through June 14 each season and to a U.S. No. 2 external/U.S. No. 1 internal from June 15 through August 31 each season. This rule will provide additional Valencia and other late type oranges for late season markets, helping to maximize fresh shipments.

**DATES:** Effective May 23, 2014; comments received by July 28, 2014 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 and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments

should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or Email: [Corey.Elliott@ams.usda.gov](mailto:Corey.Elliott@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 905, 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 Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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.

This rule changes the minimum grade requirement for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15 to June 14 each season and to a U.S. No. 2 external/U.S. No. 1 internal from June 15 to August 31 each season. This rule will provide additional Valencia and other late type oranges for late season markets and will help maximize fresh shipments. The Committee unanimously recommended these changes at a meeting on April 3, 2014.

Section 905.52 of the order provides, in part, authority to establish minimum grade requirements for Florida citrus. Section 905.306 of the order's rules and regulations specifies the minimum grade requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in Table I of § 905.306(a). The characteristics of these grades are specified in the U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179).

Last season, the Committee recommended relaxing grade and size requirements for the last part of the season. The purpose of this change was to make additional Valencia and other late type oranges available to supply potential late season markets. The Committee made this recommendation as it was difficult to supply late season markets due to the limited volume of fruit remaining after May 15 that would meet the then-current size and grade requirements. In a rulemaking action (78 FR 52079, as corrected at 79 FR 19461), the minimum size requirement for Valencia and other late type oranges shipped to interstate markets was reduced from 2<sup>8</sup>/<sub>16</sub> inches to 2<sup>4</sup>/<sub>16</sub> inches from May 15 through August 31 each season. This action also reduced the minimum grade requirement for Valencia and other late type oranges

shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15, 2013, to June 14, 2013, and to a U.S. No. 2 external/U.S. No. 1 internal from June 15, 2013, to August 31, 2013.

At its April 2014 meeting, the Committee discussed the effects of the 2012–13 season rulemaking change. The Committee concluded that the temporary grade change had provided handlers the opportunity to sell additional fruit without affecting overall consumer demand for Valencia and other late type oranges. The Committee approximated that the industry had benefited from an additional \$500,000 in sales as a result of the change.

Consequently, the Committee recommended continuing the relaxation in the minimum grade for the 2013–14 season and subsequent seasons. Therefore, this rule reduces the minimum grade requirement for Valencia and other late type oranges shipped to interstate markets from a U.S. No. 1 to a U.S. No. 1 Golden from May 15 to June 14 each season and to a U.S. No. 2 external/U.S. No. 1 internal from June 15 to August 31 each season. The Committee believes that relaxing grade requirements will provide an outlet for fruit that may otherwise go unharvested. This will maximize fresh shipments by allowing more fruit to be shipped to the fresh market, increasing returns to both handlers and growers.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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 businesses 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.

There are approximately 30 Valencia and other late type orange handlers subject to regulation under the marketing order and approximately 750 producers of citrus in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average f.o.b. price for fresh Valencia and other late type oranges during the 2012–13 season was approximately \$11.80 per  $\frac{1}{8}$  bushel carton, and total fresh shipments were approximately 3.6 million cartons. Using the average f.o.b. price and shipment data, the majority of Florida Valencia and other late type orange handlers could be considered small businesses under SBA's definition. In addition, the average annual grower revenue is below \$750,000 based on production data, grower prices as reported by NASS, and the total number of Florida citrus growers. Thus, assuming a normal distribution, the majority of Valencia and other late type orange handlers and producers may be classified as small entities.

This rule relaxes the grade requirements for Valencia and other late type oranges prescribed under the order. This change will allow additional late season fruit to be shipped to the fresh market, maximizing shipments and providing additional returns to both handlers and growers. This rule revises § 905.306 by reducing the minimum grade requirements for interstate shipments of Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 1 Golden from May 15 to June 14 each season and to a U.S. No. 2 external/U.S. No. 1 internal from June 15 to August 31 each season. Authority for these changes is provided for in § 905.52. These changes were unanimously recommended by the Committee at its April 3, 2014, meeting.

This action does not impose any additional costs on the industry. However, it is anticipated that this action will have a beneficial impact. Reducing the grade requirements for Valencia and other late type oranges from May 15 to August 31 will make additional fruit available for shipment to the fresh market, providing the opportunity to supply late season markets. The Committee believes that relaxing the grade requirements will provide an outlet for fruit that may otherwise go unharvested. This will allow more fruit to be shipped to the fresh market and increase returns to both handlers and growers. The benefits of this rule are expected to be equally available to all fresh citrus growers and handlers, regardless of their size.

Regarding alternatives to this action, the Committee considered leaving the current grade regulations in place but found that the relaxation in grade that was in effect for the 2012–13 season provided additional fruit to the fresh market without affecting consumer

demand. Therefore, the Committee rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 3, 2014, 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 comments on this interim rule, including 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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the grade requirements currently prescribed under the Florida citrus marketing order. 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 rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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) This action relaxes the current grade requirements under the order; (2) these changes need to be in effect by May 15, 2014; (3) the

Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

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

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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

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

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 905.306, Table I in paragraph (a) is amended by revising the entry for “Valencia and other late type” under “Oranges” to 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 .....	September 1–May 14 .....	U.S. No. 1 .....	2 <sup>8</sup> / <sub>16</sub>
	May 15–June 14 .....	U.S. No. 1 Golden .....	2 <sup>4</sup> / <sub>16</sub>
	June 15–August 31 .....	U.S. No. 2, External/U.S. No. 1, Internal	2 <sup>4</sup> / <sub>16</sub>
* * * * *	* * * * *	* * * * *	* * * * *

\* \* \* \* \*

Dated: May 22, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–12287 Filed 5–23–14; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Doc. No. AMS–FV–12–0008; FV12–920–1 FR]

#### Kiwifruit Grown in California; Order Amending Marketing Order No. 920

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. The amendments were proposed by the Kiwifruit Administrative Committee (Committee or KAC), which is responsible for the local administration of the order. The five amendments will provide authority to recommend and conduct production and postharvest research, to recommend and conduct market research and

development projects, to receive and expend voluntary contributions, to specify that recommendations for production research and market development be approved by eight members of the Committee, and to update provisions regarding alternate members' service on the Committee. These amendments are intended to improve administration of and compliance with the order, as well as reflect current industry practices.

**DATES:** This rule is effective May 29, 2014.

#### FOR FURTHER INFORMATION CONTACT:

Melissa Schmaedick, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Email: [Melissa.Schmaedick@ams.usda.gov](mailto:Melissa.Schmaedick@ams.usda.gov); or, Michelle Sharrow, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–9921, Fax: (202) 720–8938 or Email: [Michelle.Sharrow@ams.usda.gov](mailto:Michelle.Sharrow@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program,

AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit produced in California, 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.” Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendments of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any research and market development provisions of any State program covering California kiwifruit (7 U.S.C. 608c(6)(I)).