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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV02-905-3 FIR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that removed the Dancy and Robinson varieties of tangerines from the regulated varieties of Florida citrus prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (committee). This rule also continues in effect the removal of a section of the rules and regulations dealing with handling procedures for Dancy and Robinson tangerines. Production of these varieties has declined and is expected to continue to decline. Removing these varieties will not have a significant impact on the tangerine market.

**EFFECTIVE DATE:** December 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, 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](mailto: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 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.

The order provides for the establishment of grade and size requirements for Florida citrus, with the

concurrence of USDA. These 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.

This rule continues in effect the removal of Dancy and Robinson tangerines from the regulated varieties of Florida citrus fruit prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. Production of these varieties has declined, and it is expected that production will continue to decline. Removing these varieties from the minimum grade and size requirements will not have a significant impact on the overall quality of tangerines. This action was unanimously recommended by the committee at its meeting on May 22, 2002.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and 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).

This rule continues to modify § 905.306 by deleting Dancy tangerines and Robinson tangerines from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). In its deliberations, the committee realized that Dancy tangerines and Robinson tangerines no longer significantly impact the citrus market. During the 2001-02 season, total shipments of Dancy tangerines were 12,798 cartons. Florida Department of Agriculture statistics show that in 2000-01, 23,000 cartons were shipped. This is down from 94,000 cartons shipped during the 1997-98 season. During 2001-02, only 124,249 cartons of Robinson tangerines were shipped. Florida Department of Agriculture statistics show that in 2000-01, 165,000 cartons were shipped. This is down from 262,000 cartons shipped in 1997-98. Production of these varieties has declined as newer varieties

have been developed and planted. The decline is expected to continue. Shipments of these varieties represented less than 3 percent of fresh shipments of early tangerines during the 2001–02 season. Consequently, the committee believes that the current market share and shipment levels justify removal of minimum grade and size requirements for these varieties.

Section 905.152 sets forth procedures for determining handlers' permitted quantities of Dancy and Robinson tangerine varieties when a portion of the 210 size of these varieties was restricted. Because Dancy and Robinson tangerines no longer have to meet size requirements, § 905.152 is unnecessary and the removal of this section is continued.

### 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 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 11,000 producers of Florida citrus in the production area and approximately 75 tangerine handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on industry and committee data, the average annual F.O.B. price for fresh early Florida tangerines during the 2000–01 season was around \$10.00 per  $\frac{4}{5}$ -bushel carton, and total fresh shipments of early tangerines for the 2001–02 season were approximately 5.2 million cartons.

Approximately 20 percent of all handlers handled 77 percent of Florida tangerine shipments. Using tangerine shipments and the average F.O.B. prices, it can be determined that the majority of Florida tangerine handlers could be considered small businesses under SBA's definition. In addition, the

majority of Florida citrus growers may be classified as small entities.

This rule continues in effect the removal of Dancy and Robinson tangerines from the varieties of citrus regulated under the order. These varieties are no longer required to meet the minimum grade and size requirements. Production of these varieties has declined and it is expected that production will continue to decline. Removing these varieties from the list of regulated varieties will not have a significant impact on the tangerine market.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. This rule continues in effect modifications to § 905.306 of the rules and regulations concerning covered varieties and minimum grade and size requirements, respectively. This rule also continues to remove § 905.152.

This rule is expected to have a positive impact on affected entities because these varieties are being removed from the handling requirements. Because this rule continues to relax the handling requirements by removing two varieties from the list of varieties regulated, handlers will be able to market these varieties free from the order's requirements. There are no additional costs imposed on growers and handlers with this rule.

Only a total of approximately 137,000 cartons of these tangerines were shipped during the 2001–02 season. Florida Department of Agriculture statistics show that in 2000–01, a total of 188,000 cartons of these varieties were shipped. This is down from a total of 356,000 cartons of Dancy and Robinson tangerines shipped during the 1997–98 season. Shipments of these varieties accounted for less than 3 percent of the overall 5.2 million cartons of early Florida tangerines shipped during the 2001–02 season. Production of these varieties has declined as newer varieties have been developed and planted. The decline in production of these varieties is expected to continue. Most producers have already discontinued growing these varieties and handlers find it easier to sell the newer varieties that have been developed. The benefits derived from this change are expected to benefit both large and small entities equally.

One alternative discussed was to make no change to the order's handling

regulations. The committee saw this alternative as being of no benefit to the industry because of the declining production and minimal market share of these varieties. The committee believes these varieties have no significant impact on the tangerine market and agreed that action should be taken to remove these varieties from the handling regulations, so this alternative was rejected.

Another alternative was to also remove the Ambersweet variety from the regulations. However, the committee determined that annual shipments of this variety are at a level that impacts the market and, therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida tangerine 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, as noted in the initial regulatory flexibility analysis, 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 the committee's deliberations. Like all committee meetings, the May 22, 2002, 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 July 23, 2002. Copies of the rule were mailed or sent via facsimile to all Committee members and handlers. 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 which ended September 23, 2002. 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 information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67

FR 48015, July 23, 2002) 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 67 FR 48015 on July 23, 2002, is adopted as a final rule without change.

Dated: October 28, 2002.

A.J. Yates,

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-27764 Filed 10-31-02; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Parts 945 and 980

[Docket No. FV00-945-2 FR]

##### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Irish Potatoes Imported Into the United States; Modification of Handling and Import Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This rule removes the reference to Norgold variety potatoes from the handling regulation issued under the marketing order for Idaho-Eastern Oregon potatoes. The Norgold variety was specifically referenced to establish less restrictive maturity requirements for early season shipments. However, Norgold variety potatoes are no longer produced in the production area covered under the marketing order and the less restrictive requirements are not needed. As required under section 608e of the Agricultural Marketing Agreement Act of 1937, the maturity requirements for potato imports are changed accordingly.

**EFFECTIVE DATE:** This final rule becomes effective December 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-

2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-5698, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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."

This rule also is issued under section 608e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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 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.

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 608e of the Act.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the order. Requirements in effect prior to this final rule provided, in part, that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better. All varieties were to meet the maturity requirement of slightly skinned (except the Norgold variety from August 1-15, and the White Rose and red skinned varieties from August 1-December 31 were allowed to be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements. Size is to be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540-51.1566), and the size must be marked consistent with section 51.1545 of these standards.

The Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the order, met on November 9, 1999, and unanimously recommended the removal of reference to Norgold variety potatoes from the handling regulations.

Prior to this final rule, the Norgold variety of potatoes was specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) could be applied during a 15-day period (August 1-August 15) at the beginning of each shipping season. This rule removes the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. As required under section 608e of the Act, the maturity requirements for potato imports are changed accordingly. This rule also removes outdated language and makes other conforming changes to the handling and import regulations. The Committee recommended this change in the regulations because Norgold variety