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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-00-304]

Grapefruit and Oranges (Texas and States Other Than Florida, California and Arizona); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adopting as a final rule, without change, an interim final rule regarding the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona) and the United States Standards for Grades of Oranges (Texas and States other than Florida, California and Arizona). These standards are issued under the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: David Priestler, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 2065 South Building, STOP 0240, Washington, DC 20250-0240; Fax (202) 720-8871.

SUPPLEMENTARY INFORMATION:

Background

AMS received a request to revise the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona), and the United States Standards for Grades of Oranges (Texas and States other than Florida, California and Arizona) from members of the Texas fruit and vegetable industry. Members of the Texas industry requested that these standards be

revised to reflect current cultural and marketing practices and give industry greater flexibility in marketing and packaging using developing technologies. The major changes requested revised the standard pack sections of the grapefruit and orange standards, and the standard sizing section of the orange standard by redefining the requirements in each section.

AMS issued an interim final rule with request for comments on September 24, 2001 (66 FR 48785). A comment period of 60 days was provided for interested persons to respond. The comment period ended on November 23, 2001, and no comments were received.

Executive Order 12988 and 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small entities.

There are approximately 315 producers of grapefruit and oranges in the production area and 16 handlers who would be affected by this amendment. Starting August 6, 2001, small agricultural producers have been defined by the Small Business Administration (SBA) (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.

Under this definition, the majority of grapefruit and orange producers and handlers using the grade standards in this regulation may be classified as small entities.

Using an average f.o.b. price of \$8.00 per carton, 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of \$750,000; therefore, a majority of producers of oranges and grapefruit who will be affected by this rule may be classified as small entities.

The main purpose of the changes was to bring the standards into conformity with current packaging and marketing practices and technologies. This rule specifically revises the standard pack sections of the grapefruit and orange standards and the standard size section of the orange standard by redefining the requirements. This rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

The alternative option to this rule would be to leave the standards unchanged. This is not a viable alternative because amendments reflect current industry practices and are consistent with the regulations under the Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas Marketing Order (7 CFR Part 906).

This rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

■ According, the interim final rule amending CFR part 51 which was published at 66 FR 48785 on September 24, 2001, is adopted as a final rule without change.