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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03-905-1 FIR]

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

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 extending for one season the exemption for tree run citrus 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). This rule continues in effect an exemption for shipments of tree run citrus from grade, size, and assessment requirements for the 2003-04 season. This rule also continues in effect an increase in the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, 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.Gueber@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.

This rule continues in effect an extension for one season of an exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. This rule also continues in effect an increase in the limit on the total amount of citrus a grower can ship under the exemption from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. This extension is for the 2003-04 season only. 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 July 1, 2003.

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 of this section were originally established just for the 2002-03 season. It allowed growers to ship a maximum of 150 1³/₄ bushel boxes per variety per shipment up to a seasonal total of 1,500 boxes per variety of their tree run fruit free from order requirements.

This rule continues the amendment to § 905.149 and the extension of its provisions for another season. This rule extends the exemption to ship tree run citrus free from grade, size, and assessment requirements as specified in § 905.149 for the 2003-04 season. This rule also continues to amend § 905.149 by increasing the limit on the amount of citrus a grower can ship during the season from 1,500 boxes to 3,000 boxes