

rules and regulations

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Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS), DEPARTMENT OF AGRICULTURE

PART 900—GENERAL REGULATIONS WITH RESPECT TO MARKETING AGREEMENTS AND ORDERS

Ex Parte Communications

In accordance with Pub. L. 94-409, commonly known as the "Government in the Sunshine Act," certain amendments to the Administrative Procedure Act (5 U.S.C. 557) will become effective on March 12, 1977. In part, these amendments establish additional restrictions with respect to ex parte communications in certain proceedings of Government agencies.

To implement such amendments to the Administrative Procedure Act, notice is hereby given that the subpart of the Agricultural Marketing Service's General Regulations (7 CFR Part 900) titled "Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Orders" is hereby amended by revising § 900.16 to read as follows:

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to

be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

Effective date: March 12, 1977.

Signed at Washington, D.C., on February 18, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc 77-5595 Filed 2-23-77; 8:45 am]

[Orange Reg. 75, Amdt. 8; Grapefruit Reg. 77, Amdt. 5; Tangerine Reg. 48, Amdt. 7; Tangelo Reg. 48, Amdt. 5]

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

Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: These amendments are issued pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR 905). The amendments for Florida oranges, tangerines, and tangelos lower the minimum grade requirements applicable to domestic and export shipments of early and midseason, navel and Valencia varieties of oranges, Temple oranges; Murcott Honey oranges; tangerines, and tangelos. The amendment of the grapefruit regulation lowers the minimum diameter requirement for domestic shipments of Florida pink seedless grapefruit. The amendments recognize the quality and size composition of the remaining supply of fruit remaining for fresh ship-

ment and are designed to permit movement of available supplies of fruit consistent with the interests of producers and consumers.

EFFECTIVE DATE: February 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3545.

SUPPLEMENTARY INFORMATION:

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the regulation of shipments of oranges, grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) These amendments reflect the Department's appraisal of the current and prospective demand for oranges, grapefruit, tangerines, and tangelos by domestic and export market outlets. Less restrictive grade and size requirements for such fruit are consistent with the character of much of the fruit remaining for fresh shipment.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of these amendments until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which these amendments are based became available and the time when these amendments must become effective in the act is insufficient; and these amendments order to effectuate the declared policy of the act relieve restrictions on the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Order. 1. The provisions of paragraphs (a) (1), (a) (3), (a) (5), (a) (7), (a) (9), (b) (1), (b) (3), (b) (5), (b) (7), and (b) (9) of § 905.564 (Orange Regulation 75; 41 FR 42177, 49474, 51029, 53007, 54917; 42 FR 5071, 8361, 42 FR 9663) are revised to read as follows:

§ 905.564 Orange Regulation 75.

(a) * * *

(1) Any oranges, except navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 grade and the external requirements of the U.S. No. 1 grade;

(3) Any navel oranges, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 and the external requirements of the U.S. No. 1 Golden grade;

(5) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 2 Russet;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 Golden grade for Murcotts;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 grade and the external requirements of the U.S. No. 1 grade; and

(b) * * *

(1) Any oranges, except navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 grade and the external requirements of the U.S. No. 1 grade;

(3) Any navel oranges, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 and the external requirements of the U.S. No. 1 Golden grade;

(5) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 2 Russet;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 Golden grade for Murcotts;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not meet at least the requirements of the U.S. No. 2 grade and the external requirements of the U.S. No. 1 grade; and

2. The provisions of § 905.565 (Grapefruit Regulation 77; 41 FR 42177, 49474, 51029, 54917, 42 FR 9663) are amended

by revising paragraph (a) (4) and adding a new paragraph (a) (5) as follows:

§ 905.565 Grapefruit Regulation 77.

(a) * * *

(4) Any seedless grapefruit, except pink seedless grapefruit, grown in the production area, which are of a size smaller than 3 $\frac{3}{16}$ inches in diameter, except that a tolerance for seedless grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit.

(5) Any pink seedless grapefruit, grown in the production area, which are of a size smaller than 3 $\frac{3}{16}$ inches in diameter, except a tolerance for pink seedless grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit.

3. In § 905.566 (Tangerine Regulation 48; 41 FR 42177, 49801, 51029, 51796, 53649, 54917; 42 FR 1022/9663) paragraphs (a) (1) and (b) (1) are revised to read as follows:

§ 905.566 Tangerine Regulation 48.

(a) * * *

(1) Any tangerines, grown in the production area, which do not grade at least U.S. No. 2; or

(b) * * *

(1) Any tangerines, grown in the production area, which do not grade at least U.S. No. 2; or

4. In § 905.567 (Tangelo Regulation 48; 41 FR 42177, 49474, 51029, 54917) the provisions of paragraphs (a) (1) and (b) (1) are revised to read as follows:

§ 905.567 Tangelo Regulation 48.

(a) * * *

(1) Any tangelos, grown in the production area, which do not grade at least U.S. No. 2; or

(b) * * *

(1) Any tangelos, grown in the production area, which do not grade at least U.S. No. 2; or

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: February 18, 1977, to become effective February 18, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and
Vegetable Division, Agricultural
Marketing Service.

[FR Doc. 77-5596 Filed 2-23-77; 8:45 am]

[Navel Orange Reg. 402]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that

may be shipped to fresh market during the weekly regulation period Feb. 25-Mar. 3, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.702 Navel Orange Regulation 402.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges continues to show weakness. Prices f.o.b. averaged \$3.76 a carton on a reported sales volume of 1,137 cartons last week, compared with \$3.77 per carton on sales of 1,214 cartons a week earlier. Track and rolling supplies at 697 cars were down 76 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time this section must become effective in order to effectuate the