Rules and Regulations

Federal Register
Vol. 70, No. 23
Friday, February 4, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–3 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the weekly percentages established for the first 22 weeks of the 2004–05 season beginning September 20, 2004. The Citrus Administrative Committee voted to take this action following the crop losses the industry sustained from Hurricanes Charley, Frances, and Jeanne. It is expected that this action will provide more red seedless grapefruit for shipment to the fresh fruit market.

DATES: Effective February 5, 2005.

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; 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.*

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 marketing agreement and order are 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 removes the weekly percentages established for the first 22 weeks of the 2004–05 season beginning September 20, 2004. 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 terminates an interim final rule published in the **Federal Register** on August 16, 2004 (69 FR 50269) which established limits on the volume of small red seedless grapefruit entering the fresh market. This rule removes the weekly percentages established for the first 22 weeks of the 2004–05 season beginning September 20, 2004. The Committee voted to terminate this action following its crop losses from Hurricanes Charley, Frances, and Jeanne. It is expected that this action will provide more red seedless grapefruit for shipment to the fresh fruit market.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage.

An interim final rule was published in the **Federal Register** which limited the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2004–05 season. The rule established weekly percentages at 45 percent for the first three weeks (September 20, 2004 through October 10, 2004, 36 percent for weeks 4 through 18 (October 11, 2004 through January 23, 2005), 40 percent for weeks 19 and 20 (January 23, 2005 through February 6, 2005), and 45 percent for weeks 21 and 22 (February 7, 2005 through February 20, 2005). The Committee recommended this action unanimously at a meeting June 15, 2004. Similar limitations were implemented during the previous seven seasons.

On August 13, 2004, Hurricane Charley hit the west coast of Florida, doing considerable damage to the 2004 citrus crop. On September 5, 2004, Hurricane Frances hit the east coast of

Florida, the primary growing region for red seedless grapefruit. Again, there was a great deal of damage to the citrus industry. Then on September 26, 2004, Hurricane Jeanne hit Florida, nearly following the same path as Hurricane Frances, further damaging the citrus crop. The extent of the loss is evident in the official USDA crop estimate for grapefruit during the 2004–05 season. The estimate is now 13 million 4/5 bushel cartons. This is about 70 percent less than last year's estimate.

At its November 16, 2004, meeting, the Committee discussed the percentage of size rule which went into effect on September 20, 2004. The percentage of size regulation helps reduce the detrimental market effects of small-sized red seedless grapefruit over-supplies. With the loss of so much of the red seedless grapefruit crop due to the hurricanes, the Committee believes that a percentage size regulation for 2004–05 is not needed. In fact, the Committee believes that there may be an insufficient amount of fruit to supply the demand for fresh fruit. There will be less large-sized red seedless grapefruit in 2004–05, so more of the smaller sizes will be needed to supply consumer demand. Consequently, the reasons for regulating the amount of small red seedless grapefruit entering the fresh market during the 2004–05 season are no longer applicable.

Therefore, the Committee unanimously recommended terminating the rule currently in effect.

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 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 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2003–04 season was approximately $7.58 per 4/5-bushel carton, and total fresh shipments for the 2003–04 season are estimated at 24.7 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 80 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

This rule terminates an interim final rule published in the **Federal Register** on August 16, 2004, (69 FR 50269) which set limits on the volume of small red seedless grapefruit entering the fresh market. The interim final rule established weekly percentages in § 905.350 for the first 22 weeks of the 2004–05 season beginning September 20, 2004, under the provisions of § 905.153. Authority for this action is provided in § 905.52. USDA may terminate a regulation if it does not tend to effectuate the declared policy of the Act. The Committee unanimously voted to terminate the interim final rule and the percentage size regulation at a meeting held on November 16, 2004.

During the months of August and September the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The strong winds from the storms blew substantial volumes of the setting fruit off the trees. The impact of the storms also produced a much higher than normal fruit drop. The extent of the loss is evident in the official USDA crop estimate supplied for this season which reflects a 70 percent decrease from last year's estimate. With the available volume of red seedless grapefruit substantially reduced, there is no longer any need to regulate volume for the 2004–05 season. Consequently, the Committee voted to terminate this action. This action will not create any additional costs for growers or handlers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. 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 meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 15, 2004, and November 16, 2004, meetings were public meetings 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 August 16, 2004. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 30-day comment period which ended September 15, 2004. One comment was received.

The commenter expressed concern that limiting the volume of grapefruit in order to raise prices negatively affected the consumer. The comment has been noted. However, the Committee has recommended terminating this action, effectively eliminating volume regulations for the 2004–05 season. Therefore, no changes will be made as a result of the comment.

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 terminating the interim final rule, as published in the **Federal Register** (69 FR 502769, August 16, 2004) will tend to effectuate the declared policy of the Act. Further, it also is found that implementation of the percentage size regulation during the 2004–05 season would not effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule terminates percentage size regulations which were not needed for the first 22 weeks of the 2004–05 shipping season.

List of Subjects in 7 CFR Part 905

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

■ For the reasons discussed 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 part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.350 [Removed and reserved]

■ 2. Section 905.350 is removed and reserved.

Dated: January 31, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2154 Filed 2–3–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19201; Directorate Identifier 2003–NM–100–AD; Amendment 39–13959; AD 2005–03–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires examination of maintenance records to determine if Titanine JC5A (also known as Desoto 823E508) corrosion inhibiting compound (''C.I.C.'') was ever used; inspection for cracks or corrosion and corrective action, if applicable; repetitive inspections and C.I.C. applications; and modification of the aft trunnion area of the outer cylinder, which terminates the need for the repetitive inspections and C.I.C. applications. This new AD also requires, for certain other airplanes, repetitive inspections for cracks or corrosion, corrective action if necessary, and repetitive C.I.C. applications. This AD is prompted by a report that JC5A was used on more airplanes during production than previously identified. We are issuing this AD to prevent severe corrosion in the main landing gear (MLG) outer cylinder at the aft trunnion, which could develop into stress corrosion cracking and consequent collapse of the MLG.

DATES: This AD becomes effective March 11, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of March 11, 2005.

On May 6, 2002 (67 FR 19322, April 19, 2002), the Director of the Federal Register approved the incorporation by reference of a certain other publication.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19201; the directorate identifier for this docket is 2003–NM–100–AD.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2002–08–07, amendment 39–12715, (67 FR 19322, April 19, 2002). The existing AD applies to all Boeing Model 767–200, –300, and –00F series airplanes. The proposed AD was published in the **Federal Register** on September 29, 2004 (69 FR 58103). That action proposed to continue to require examination of maintenance records to determine if Titanine JC5A (also known as Desoto 823E508) corrosion inhibiting compound (''C.I.C.'') was ever used; inspection for cracks or corrosion and corrective action, if applicable; repetitive inspections and C.I.C. applications; and modification of the aft trunnion area of the outer cylinder, which terminates the need for the repetitive inspections and C.I.C. applications. The action also proposed to require, for certain other airplanes, repetitive inspections for cracks or corrosion, corrective action if necessary, and repetitive C.I.C. applications.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Add Compliance Statement

One commenter requests that we add the verbiage, ''required as indicated, unless accomplished previously,'' to the compliance section of the proposed AD. The commenter believes this statement is needed to obtain credit for the inspections and repetitive C.I.C applications it accomplished, prior to issuance of the proposed AD, on its airplanes in accordance with Boeing Alert Service Bulletin 767–32A0192, Revision 1, dated March 13, 2003.

We partially agree, since similar language to that suggested by the commenter is found in paragraph (e) of this AD. As part of our effort to use plain language in ADs, we have rewritten the compliance statement as follows: ''You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.'' While the language has changed, the intent of the statement is the same. Therefore, no further change to this AD is necessary in this regard.

Request To Add Credit for Previous Accomplishment

One commenter requests that we add a note to the proposed AD, which would give credit for work accomplished in compliance with AD 2002–08–07. The commenter suggests the following note, or language similar to this: ''Accomplishment of the actions required by paragraph[s] (a) through (l) of AD 2002–08–07 amendment 39–12715, is acceptable for compliance