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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Docket No. FV-95-906-1FR]

Oranges Grown in the Lower Rio Grande Valley in Texas and Imported Oranges; Suspension of Regulations for Domestic and Imported Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This rule suspends the handling regulations for oranges grown in the Lower Rio Grande Valley in Texas and the orange import regulations for the period July 1 through August 31 indefinitely. Currently, the effective period for both domestic and imported oranges is January 1 through December 31 of each year. The purpose of the suspension is to remove unnecessary handling regulations applicable to shipments of Texas oranges for the two month period July and August. The suspension of regulations applicable to imported oranges is necessary under section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This suspension is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of

oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order". The 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."

This suspension is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this suspension in conformance with Executive Order 12866.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This suspension is not intended to have retroactive effect. This action would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this suspension.

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 the Secretary 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 requesting 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, the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (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. Marketing orders issued pursuant to the Act, and 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. Import regulations issued under the Act are based on domestic grade, size, quality or maturity regulations established under Federal marketing orders.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in South Texas. In addition, there are approximately 20 importers of oranges subject to the requirements of the orange import requirements. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of these handlers, producers, and importers may be classified as small entities.

Oranges grown in the Lower Rio Grande Valley in Texas are subject to a minimum grade requirement of U.S. No. 2 and a minimum size requirement of 2⁵/₁₆ inches in diameter. These requirements are in effect throughout the year on a continuous basis. The grade and size requirements for oranges grown in the Lower Rio Grande Valley in Texas are found in § 906.365 (7 CFR part 906) under the order. In addition, there are container and pack requirements found in § 906.340.

The Texas Valley Citrus Committee (Committee), the agency responsible for local administration of the order, meets prior to and during each season to review the handling regulations effective on a continuous basis for oranges regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings.