

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV96-906-31FR]

#### Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Interim Final Rule To Revise Pack and Size Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule revises pack requirements for grapefruit and certain types of oranges under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas to allow larger sizes of fruit to be marketed in fresh channels. This rule also reduces current minimum size requirements for Texas grapefruit. These actions were recommended by the Texas Valley Citrus Committee (TVCC), the agency responsible for local administration of the marketing order. These changes will enable the industry to market a wider range of sizes of citrus fruit in fresh market channels, thereby meeting consumer demand, increasing sales, and improving returns to growers.

**DATES:** Effective on August 22, 1996; comments received by September 20, 1996 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, or by facsimile at (202) 720-5698. Comments should reference this docket number and the date and page number of this issue of the Federal Register and will be made available for public

inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:**

Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 690-3670; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1331 E. Hackberry Street, McAllen, Texas 78501; telephone (210) 682-2833. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906 [7 CFR Part 906], as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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."

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

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final 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 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 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 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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.

There are approximately 20 handlers of oranges and grapefruit subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. A majority of Texas citrus handlers and producers may be classified as small entities.

This interim final rule revises pack requirements for grapefruit and certain varieties of oranges to allow larger sizes to be marketed in fresh channels. It also reduces the minimum size requirements in effect for grapefruit. This rule will enable handlers to market a broader range of sizes of citrus fruit in fresh market outlets, thereby meeting consumer demand, increasing fresh fruit sales, and enhancing returns to handlers and producers.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action is in accordance with § 906.40(a) of the order. This section authorizes the Secretary to limit the

handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of fruit during a specified period or periods. Currently, minimum grade and size requirements, as well as pack and container requirements, are in effect for both grapefruit and oranges throughout the season. Shipments for certain purposes, including processing, are exempt from these requirements.

The TVCC met on May 29, 1996, and unanimously recommended changes in current pack and minimum size requirements. The TVCC meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. TVCC meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews TVCC recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

#### Revision of Pack Requirements

Pack requirements for oranges and grapefruit are in effect under § 906.340 of the order's rules and regulations. These requirements provide, among other things, that oranges and grapefruit be packed in accordance with certain size designations. These size designations are defined in terms of minimum and maximum diameters.

Oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other oranges. Navel, Valencia and similar late-type oranges must be packed in accordance with 13 size designations. The smallest of these is Size 324, which ranges from  $2\frac{1}{16}$  to  $2\frac{7}{16}$  inches in diameter. The largest size defined is Size 46, which ranges from  $4\frac{3}{16}$  to 5 inches in diameter. Oranges other than navel, Valencia and similar late-type oranges are required to be packed in accordance with the various pack sizes in section 51.691(c) of the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the "orange standards."

The orange standards define seven pack sizes, from Size 324 ( $2\frac{3}{16}$  to  $2\frac{7}{16}$  inches in diameter) to Size 100 ( $3\frac{7}{16}$  to  $3\frac{13}{16}$  inches in diameter). To allow for variations incident to proper packing, a tolerance for undersized and oversized fruit is provided. The tolerance is in terms of the number of fruit in a sample that may be off-size—with the actual

number increasing as the sample size increases. Otherwise oversized oranges other than navel, Valencia and similar late-type oranges would be diverted to exempt outlets, such as processing.

The TVCC recommended revising the orange pack regulations to allow all types of oranges to be packed in the full range of sizes—from Size 324 to Size 46. Thus, this rule revises Section 906.340(a)(2)(i)(a), which specifies pack requirements for oranges other than navel, Valencia and similar late-type oranges, to define the 13 size designations authorized for such oranges. The seven smallest sizes are defined in the same way they are in the orange standards. (The minimum diameters are  $\frac{2}{16}$  inch larger than those specified for navels, Valencias and similar late-type oranges, while the maximum diameters are the same.) The six sizes added for these oranges are defined similarly (that is, the minimum diameters differ, but the maximum diameters are the same). The differences in the minimum diameters take into account varietal differences between these two categories of oranges and current industry practice.

Grapefruit are required to be packed within the diameter limits specified for the various pack sizes defined in § 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the grapefruit standards. Exceptions are that the minimum diameter for pack size 96 grapefruit is  $3\frac{9}{16}$  inches, and for pack size 112 grapefruit, the minimum diameter is  $3\frac{5}{16}$  inches.

The grapefruit standards define eight pack sizes. The smallest is Size 125/126, which ranges from a minimum of 3 inches to a maximum of  $3\frac{3}{16}$  inches in diameter. The largest is Size 46 which ranges from  $4\frac{5}{16}$  to 5 inches in diameter. This rule adds a new, larger Size 36 grapefruit, which ranges in size from  $4\frac{1}{16}$  to  $5\frac{1}{16}$  inches in diameter.

Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Current pack regulations preclude this fruit from being marketed in fresh channels (with the exception of small amounts allowed to exceed the maximum specified diameters), and it is generally diverted to the processing market. The processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an estimated 5 to 10 percent) to be marketed fresh should, therefore, enhance grower returns.

Additionally, the TVCC indicates that there has been increased demand from consumers in recent years for a broader range of sizes of oranges and grapefruit. Providing that these larger sizes may be shipped will provide greater supplies and more choices to consumers. It should also make the Texas citrus industry more competitive with other citrus-growing areas, which have adapted their marketing efforts to meet consumer demands.

Finally, varying growing conditions in Texas result in diverse size distributions of oranges and grapefruit from season to season. Severe drought conditions may cause a season's crop to be 5 to 10 percent small sizes. Conversely, a rainy season may result in 5 to 10 percent large sizes. These changes in pack requirements, to approve the shipment of all commercial sizes of oranges and grapefruit, will provide handlers with the flexibility to market available supplies in light of existing market conditions.

#### Revision of Minimum Size Requirements for Grapefruit

Minimum size requirements for grapefruit are in effect under § 906.365 of the order's rules and regulations. Currently, during the period November 16 through January 31 each season, grapefruit must be at least pack size 96, with a minimum diameter of  $3\frac{3}{16}$  inches. At other times, grapefruit that is pack size 112 (with a minimum diameter of  $3\frac{5}{16}$  inches), may be shipped if it grades at least U.S. No. 1. Otherwise, the minimum grade requirement for grapefruit is Texas Choice. The smaller fruit is subject to a higher grade requirement because experience indicates that a market exists for this smaller fruit only if it meets a higher quality standard.

This interim final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. The Texas citrus industry has found that there is a market for this smaller grapefruit, particularly in juice bars, health food stores, and other types of retail outlets that use smaller fruit for juicing. In addition, some markets, such as Canada, prefer smaller fruit.

Also, as previously indicated, drought conditions can lead to an abundance of smaller sizes. Such conditions currently exist in the Lower Rio Grande Valley in Texas. The expected small sized grapefruit, which cannot be marketed profitably in processing outlets, will be made available to meet fresh market needs through this rule. This action is

expected to result in improved grower returns.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 will enable Texas grapefruit handlers to meet market needs and compete with similar size grapefruit expected to be shipped from Florida.

These changes in pack and size requirements for Texas oranges and grapefruit are intended to broaden the range of sizes and increase the amount of fruit available to consumers and increase grower returns. An alternative to this rule is to leave the current regulations in place. However, that would result in more of the larger oranges and grapefruit and the smaller grapefruit going to processors, and less fruit going to the more lucrative fresh market, which yields higher returns to growers.

After consideration of all relevant material presented, including the TVCC's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) To be of maximum benefit, this action should be effective by September 1, the beginning of the 1996-97 season; (2) Texas citrus handlers are aware of this relaxation which was recommended by the TVCC at a public meeting, and they will need no additional time to comply with its requirements; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 906

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

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### **PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS**

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Paragraph (a)(2)(i)(a) of § 906.340 is revised to read as follows:

#### **§ 906.340 Container, pack, and container marking regulations.**

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(a) Oranges, except Navel oranges and Valencia and similar late-type oranges, when packed in any box, bag, or carton shall be sized in accordance with the sizes set forth in the following Table I, except as otherwise provided by regulations issued pursuant to this part, and otherwise meet the requirements of standard pack; and when in containers not packed according to a definite pattern shall be sized in accordance with the sizes set forth in the following Table I and otherwise meet the requirements of standard sizing: *Provided*, That the packing tolerances, which are set forth in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), shall be applicable to fruit so packed.

TABLE I.—1½ BUSHEL BOX  
[Diameter in inches]

| Pack size          | Minimum                         | Maximum                         |
|--------------------|---------------------------------|---------------------------------|
| 46's .....         | 4 <sup>5</sup> / <sub>16</sub>  | 5                               |
| 54's or 56's ..... | 4 <sup>2</sup> / <sub>16</sub>  | 4 <sup>12</sup> / <sub>16</sub> |
| 64's .....         | 3 <sup>15</sup> / <sub>16</sub> | 4 <sup>9</sup> / <sub>16</sub>  |
| 70's or 72's ..... | 3 <sup>13</sup> / <sub>16</sub> | 4 <sup>5</sup> / <sub>16</sub>  |
| 80's .....         | 3 <sup>10</sup> / <sub>16</sub> | 4 <sup>2</sup> / <sub>16</sub>  |
| 100's .....        | 3 <sup>7</sup> / <sub>16</sub>  | 3 <sup>13</sup> / <sub>16</sub> |
| 112's .....        | 3 <sup>5</sup> / <sub>16</sub>  | 3 <sup>11</sup> / <sub>16</sub> |
| 125's .....        | 3 <sup>3</sup> / <sub>16</sub>  | 3 <sup>9</sup> / <sub>16</sub>  |
| 163's .....        | 2 <sup>15</sup> / <sub>16</sub> | 3 <sup>5</sup> / <sub>16</sub>  |
| 200's .....        | 2 <sup>11</sup> / <sub>16</sub> | 3 <sup>1</sup> / <sub>16</sub>  |
| 252's .....        | 2 <sup>7</sup> / <sub>16</sub>  | 2 <sup>12</sup> / <sub>16</sub> |
| 288's .....        | 2 <sup>4</sup> / <sub>16</sub>  | 2 <sup>9</sup> / <sub>16</sub>  |
| 324's .....        | 2 <sup>3</sup> / <sub>16</sub>  | 2 <sup>8</sup> / <sub>16</sub>  |

3. Paragraph (a)(2)(i)(c) of § 906.340 is amended by redesignating "Table I" as "Table II".

4. Paragraph (a)(2)(ii) of § 906.340 is revised to read as follows:

#### **§ 906.340 Container, pack, and container marking regulations.**

(a) \* \* \*

(2) \* \* \*

(ii) *Grapefruit*. Grapefruit, when packed in any box, bag or carton, shall be within the diameter limits specified for the various pack sizes in 7 CFR 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona): *Provided*, That the minimum diameter limit for pack size 36 grapefruit shall be 4<sup>15</sup>/<sub>16</sub> inches and the maximum diameter limit shall be 5<sup>9</sup>/<sub>16</sub> inches; *Provided*, That the minimum diameter limit for pack size 96 grapefruit shall be 3<sup>9</sup>/<sub>16</sub> inches and for pack size 112 grapefruit shall be 3<sup>5</sup>/<sub>16</sub> inches; and *Provided further*, That any

grapefruit in boxes or cartons shall be packed in accordance with the requirements of standard pack.

\* \* \* \* \*

5. Section 906.365 is amended by revising paragraph (a)(4) to read as follows:

#### **§ 906.365 Texas Orange and Grapefruit Regulation 34.**

(a) \* \* \*

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3<sup>9</sup>/<sub>16</sub> inches: *Provided*, that any handler may handle grapefruit, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3<sup>5</sup>/<sub>16</sub> inches.

\* \* \* \* \*

Dated: August 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-21331 Filed 8-20-96; 8:45 am]

BILLING CODE 3410-02-P

#### **7 CFR Parts 911 and 944**

[Docket No. FV96-911-2FR]

#### **Limes Grown in Florida and Imported Limes; Change in Regulatory Period**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; suspension.

**SUMMARY:** This rule suspends the regulatory period currently prescribed under the lime marketing order and the lime import regulations. The marketing order regulates the handling of limes grown in Florida and is administered locally by the Florida Lime Administrative Committee (committee). By temporarily reducing the regulatory period and its associated costs, this rule should decrease industry expenses and allow the committee to evaluate its impact. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATES:** June 1, 1997, through December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Aleck Jonas, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299-4770, Fax: (941) 299-5169; or Caroline Thorpe, Marketing Order Administration Branch, F&V, AMS, USDA, room