

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 905 and 944

[Docket No. FV96-905-4 IFR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule makes a change in regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit from  $3\frac{9}{16}$  inches in diameter (size 48) to  $3\frac{5}{16}$  inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1996-97 season.

**DATES:** Effective on November 11, 1996; comments received by January 3, 1997 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 sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, D.C. 20090-6456, Fax # (202) 720-5698. All comments should reference the 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:**

Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-8139, Fax # (202) 720-5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax # (941) 299-5169. 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 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, 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.

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) 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 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 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 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 those established under Federal marketing orders.

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 11,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are 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 handlers, producers, and importers of Florida citrus may be classified as small entities.

This rule relaxes the minimum size for the period November 11, 1996, through November 9, 1997. This rule is expected to have a positive impact on handlers and importers, as it will permit the shipment of smaller size grapefruit, allowing the industry to meet market needs. The relaxed minimum size requirement would be applied to both small and large handlers and importers in the same way. This size relaxation will enable Florida grapefruit shippers and importers of grapefruit to continue shipping size 56 red seedless grapefruit to the domestic market. This is consistent with current and anticipated demand in those markets for the 1996-97 season, which will provide for the maximization of shipments to fresh market channels and increase grower returns. 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.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

This interim final rule invites comments on a change to the order's rules and regulations to relax the minimum size requirement for red seedless grapefruit allowing for the continued shipment of size 56 grapefruit. The Committee met October 8, 1996, and unanimously recommended this action.

This rule relaxes the red seedless grapefruit minimum size requirement from size 48 ( $3\frac{9}{16}$  inches diameter) to size 56 ( $3\frac{5}{16}$  inches diameter) for the period November 11, 1996, through November 9, 1997. Absent this change, the size will revert back to size 48 ( $3\frac{9}{16}$  inches diameter), on November 11, 1996.

Section 905.52, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in Section 905.306 in Table I of paragraph (a), and for export

shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. According to both the National Agricultural Statistics Service and the Committee, production of red seedless grapefruit is expected to increase in comparison to last year (1995-96). Both sources estimate an increase in production for this season (1996-97) of about 10 percent to 31.5 million boxes and about 3 percent to 29 million boxes, respectively. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1996-97 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1996-97 season, and will provide for the maximization of shipments to fresh market channels.

There are some exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day. Handlers may also ship unlimited gift packages of up to 2 standard packed cartons of fruit per day, which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This rule relaxes the minimum size requirements for imported red seedless grapefruit to  $3\frac{5}{16}$  inches in diameter (size 56) for the period November 11, 1996, through November 9, 1997, to reflect the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

During the last 5 years (1991-1995) imports to the United States of fresh grapefruit averaged less than 2 percent of total domestic consumption or less than 15,000 tons per year. Based on Departmental data, domestic consumption averaged 766,000 tons per year for that period. The major exporter of grapefruit to the United States was the Bahamas. The Bahamas shipped an average of 95 percent of all grapefruit imports to the United States during that time period. Other exporters of grapefruit to the United States included; Mexico, Jamaica, Dominican Republic, Netherlands, Israel, and Thailand.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee'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) This rule relaxes the minimum size requirements that would otherwise be in effect November 11, 1996, for grapefruit grown in Florida; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) Florida grapefruit shipments began on September 1, 1996, and the season will be well underway by November 11, 1996; and (4) this rule provides a 30-day comment period and any comments

received will be considered prior to finalization of this interim final rule.

List of Subjects

7 CFR Part 905

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

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

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

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

2. Section 905.306 is amended by revising the entries for grapefruit in paragraph (a), Table I, to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.**

(a) \* \* \*

TABLE I

Variety (1)	Regulation period (2)	Minimum Grade (3)	Minimum diameter (inches) (4)
* * * * *			
Grapefruit:			
Seeded, red .....	Except on and after 9/01/94 .....	U.S. No. 1 .....	3-12/16
Seeded, red .....	On and after 9/01/94 .....	U.S. No. 1 .....	3-12/16
Seedless, red .....	11/13/95-11/10/96 .....	U.S. No. 1 .....	3-5/16
	11/11/96-11/9/97 .....	U.S. No. 1 .....	3-5/16
	On and after 11/10/97 .....	U.S. No. 1 .....	3-9/16
Seedless, except red .....	On and after 9/01/94 .....	U.S. No. 1 .....	3-9/16
* * * * *			

**PART 944—FRUITS; IMPORT REGULATIONS**

4. In § 944.106, paragraph (a) is revised to read as follows:

**§ 944.106 Grapefruit import regulation.**

(a) Pursuant to Section 8e [7 U.S.C. Section 608e-1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], and Part 944—Fruits; Import Regulations, the

importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Seeded .....	On and after 9/1/94 .....	U.S. No. 1 .....	3-12/16
Seedless, red .....	11/13/95-11/10/96 .....	U.S. No. 1 .....	3-5/16
	11/11/96-11/9/97 .....	U.S. No. 1 .....	3-5/16
	On and after 11/10/97 .....	U.S. No. 1 .....	3-9/16
Seedless, except red .....	On and after 9/1/94 .....	U.S. No. 1 .....	3-9/16

Dated: November 27, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-30861 Filed 12-3-96; 8:45 am]

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**7 CFR Part 906**

[Docket No. FV96-906-2FR]

**Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Change in Reporting Requirements**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the reporting requirements currently

prescribed under the Texas orange and grapefruit marketing order. The marketing order regulates the handling of oranges and grapefruit grown in three counties in the Lower Rio Grande Valley in Texas and is administered locally by the Texas Valley Citrus Committee (committee). Shipments of oranges and grapefruit out of the production area must meet minimum standards of grade, size, quality, and pack. Such shipments are subject to mandatory inspection. This final rule adds language in the