

# Rules and Regulations

Federal Register

Vol. 64, No. 168

Tuesday, August 31, 1999

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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 57 and 75

#### Inspection of Eggs and Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds

##### CFR Correction

In Title 7 of the Code of Federal Regulations, parts 53 to 209, revised as of Jan. 1, 1999, page 80, § 57.760 is corrected by reinstating text missing from the end of the section, the source note, and the effective date; and page 193, which is duplicate text, is removed. The reinstated text follows:

##### § 57.760 Inspection of egg handlers.

\* \* \* any place of business, plant, or transport vehicle subject to inspection under the provisions of the Act.

[63 FR 45675, Aug. 27, 1998. Redesignated at 63 FR 69970, Dec. 17, 1998]

Effective Date Note: At 63 FR 69970, Dec. 17, 1998, § 57.760 was redesignated from § 59.760. At 63 FR 45675, Aug. 27, 1998, § 59.760 was revised, effective Aug. 27, 1999. For the convenience of the user, the superseded text is set forth as follows:

[FR Doc. 99-55527 Filed 8-30-99; 8:45am]

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV99-906-3 IFR]

#### Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changes to Pack Requirements

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

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

**SUMMARY:** This rule changes the pack requirements currently prescribed under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The marketing order regulates the handling of such fruit and is administered locally by the Texas Valley Citrus Committee (Committee). This rule changes the orange and grapefruit pack sizes so that each pack size will reflect the actual number of fruit in a 7/10 bushel carton. It also more closely aligns the pack sizes for Texas oranges with the pack sizes used by shippers of California oranges. These changes will enable Texas handlers to compete more effectively in the marketplace. The rule also makes conforming changes to the pack size references in the minimum size regulations to keep the minimum size requirements for orange and grapefruit the same as currently specified.

**DATES:** Effective September 1, 1999; comments received by November 1, 1999 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 to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. 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:** Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906, as amended (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 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."

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.

This rule changes the current orange and grapefruit pack sizes from a 1½ bushel box basis to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton. The orange pack

sizes also will be more closely aligned to the pack sizes and size tolerances used by California orange shippers. The rule also makes conforming changes to the pack size references in the minimum size regulations for oranges and grapefruit to keep the minimum size requirements the same as currently specified. This rule will enable handlers to compete more effectively in the marketplace.

The Committee's Grade and Size Subcommittee met on April 20 and 29 and May 4, 1999, to discuss possible changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations.

(1) Eliminate two pack size tables for different orange varieties, change the pack sizes to a  $\frac{7}{10}$  bushel carton basis for all orange varieties to be consistent with California pack sizes, and add a pack size 64 to the California sizes. The changes will result in one pack size

chart ranging from pack size 24 to 138 with minimum and maximum diameter size ranges for all oranges, and, when packed in  $\frac{7}{10}$  bushel containers, the pack sizes will reflect the actual number of fruit in the container;

(2) Replace the  $1\frac{2}{5}$  bushel box references in the regulations with  $\frac{7}{10}$  bushel carton references;

(3) Change current grapefruit pack sizes based on a  $1\frac{2}{5}$  bushel box to pack sizes based upon the actual number of fruit packed in a  $\frac{7}{10}$  bushel carton; and

(4) Make conforming changes to the size requirements in § 906.365 based on the above changes to keep the minimum size requirements for oranges and grapefruit the same as currently specified.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit.

### Changes to the Pack Requirements for Oranges

Section 906.340(a)(2)(i) specifies pack requirements for oranges. It includes two tables specifying pack sizes in terms of minimum and maximum diameters for each specified pack size, for different varieties of oranges. Packing tolerances for off-size are specified, as are standard pack requirements.

Currently, oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia, and similar late-type oranges, and (2) all other varieties of oranges. For all types of oranges, 13 pack sizes ranging from pack size 46 (the largest fruit) to pack size 324 (the smallest fruit) are specified. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes are  $\frac{2}{16}$  inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes are the same. All oranges, however, must at least be pack size 288, except that the minimum diameter limit is  $2\frac{6}{16}$  inches.

The current orange pack sizes and minimum and maximum diameters are shown in the following tables:

**Table 1 (Section 906.304(a)(2)(i)(a))**

TABLE 1.—ORANGES, EXCEPT NAVELS, VALENCIAS, & SIMILAR LATE-TYPE ORANGES  
[ $1\frac{2}{5}$  Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46's .....	$4\frac{5}{16}$	5
54's or 56's .....	$4\frac{7}{16}$	$4\frac{12}{16}$
64's .....	$3\frac{5}{16}$	$4\frac{8}{16}$
70's or 72's .....	$3\frac{13}{16}$	$4\frac{5}{16}$
80's .....	$3\frac{9}{16}$	$4\frac{2}{16}$
100's .....	$3\frac{7}{16}$	$3\frac{13}{16}$
112's .....	$3\frac{5}{16}$	$3\frac{11}{16}$
125's .....	$3\frac{3}{16}$	$3\frac{9}{16}$
163's .....	$2\frac{15}{16}$	$3\frac{5}{16}$
200's .....	$2\frac{11}{16}$	$3\frac{1}{16}$
252's .....	$2\frac{7}{16}$	$2\frac{12}{16}$
288's .....	$2\frac{4}{16}$	$2\frac{9}{16}$
324's .....	$2\frac{3}{16}$	$2\frac{8}{16}$

**Table II (Section 906.340(a)(2)(i)(c))**

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES  
[ $1\frac{2}{5}$  Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46 .....	$4\frac{3}{16}$	5
54 .....	4	$4\frac{12}{16}$
64 .....	$3\frac{13}{16}$	$4\frac{8}{16}$
70 or 72 .....	$3\frac{11}{16}$	$4\frac{5}{16}$
80 .....	$3\frac{8}{16}$	$4\frac{2}{16}$

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES—Continued  
[1½ Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
100 .....	3 <sup>5</sup> / <sub>16</sub>	3 <sup>13</sup> / <sub>16</sub>
112 .....	3 <sup>3</sup> / <sub>16</sub>	3 <sup>11</sup> / <sub>16</sub>
125 .....	3 <sup>1</sup> / <sub>16</sub>	3 <sup>9</sup> / <sub>16</sub>
163 .....	2 <sup>13</sup> / <sub>16</sub>	3 <sup>5</sup> / <sub>16</sub>
200 .....	2 <sup>9</sup> / <sub>16</sub>	3 <sup>1</sup> / <sub>16</sub>
252 .....	2 <sup>5</sup> / <sub>16</sub>	2 <sup>12</sup> / <sub>16</sub>
288 .....	2 <sup>2</sup> / <sub>16</sub>	2 <sup>9</sup> / <sub>16</sub>

All oranges must be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot shall be 2<sup>6</sup>/<sub>16</sub> inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicates that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent of Texas oranges are marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Presently, the pack sizes for California oranges are different from those for Texas oranges. Furthermore, Texas presently has the two previously

mentioned orange size tables—one for Navels, Valencias, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes used by the Texas citrus industry. Buyers' computers tend to have California pack sizes listed, but not Texas. This puts handlers of Texas oranges at a competitive disadvantage. Further, Texas does not currently pack a size 138 orange, because this size is not a specified pack size. The closest Texas sizes are 126 and 144. As a result, the Texas orange industry cannot take advantage of size 138 business.

Moreover, retailers, wholesalers, food service distributors, and brokers are much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a

much larger volume and is present in the marketplace year-round. Having pack sizes different from California's is a marketing problem that affects all producers and handlers and could cause the Texas industry to lose fresh orange sales. The Committee believes that the Texas pack sizes need to be more closely aligned with the California pack sizes. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2<sup>11</sup>/<sub>16</sub> inches to a maximum of 3<sup>10</sup>/<sub>16</sub> inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton and the actual number of fruit in that size carton, as shown in the following table:

## ORANGES

[7/10 bushel carton]

Pack size/Number of oranges	Diameter in inches	
	Minimum	Maximum
24 .....	3 <sup>12</sup> / <sub>16</sub>	5 <sup>1</sup> / <sub>16</sub>
32 .....	3 <sup>6</sup> / <sub>16</sub>	4 <sup>9</sup> / <sub>16</sub>
36 .....	3 <sup>4</sup> / <sub>16</sub>	4 <sup>8</sup> / <sub>16</sub>
40 .....	3 <sup>2</sup> / <sub>16</sub>	4 <sup>4</sup> / <sub>16</sub>
48 .....	2 <sup>15</sup> / <sub>16</sub>	4
56 .....	2 <sup>13</sup> / <sub>16</sub>	3 <sup>13</sup> / <sub>16</sub>
64 .....	2 <sup>11</sup> / <sub>16</sub>	3 <sup>10</sup> / <sub>16</sub>
72 .....	2 <sup>9</sup> / <sub>16</sub>	3 <sup>8</sup> / <sub>16</sub>
88 .....	2 <sup>8</sup> / <sub>16</sub>	3 <sup>4</sup> / <sub>16</sub>
113 .....	2 <sup>7</sup> / <sub>16</sub>	3
138 .....	2 <sup>9</sup> / <sub>16</sub>	2 <sup>12</sup> / <sub>16</sub>

Currently, Texas has minimum and maximum orange size diameters in inches and fractions of an inch for each pack size based on the 1½ bushel box. The Committee recommended changing the minimum and maximum diameter size ranges for the proposed pack sizes to a 7/10 bushel carton basis as shown in the foregoing table because 1½ bushel

boxes are no longer used by the industry.

Adopting the California orange pack sizes for all varieties of oranges will eliminate the two separate pack size tables currently in the orange pack regulations. Separate tables for different varieties of oranges were established to allow for varietal size differences. Some varieties tend to be round and others

slightly oblong, and older mechanical fruit sizing equipment could not accurately size the differently shaped fruit. Present day mechanical fruit sizers, however, accurately size all varieties of oranges regardless of shape, and two separate pack size tables for different orange varieties are no longer necessary.

Language also is being added to clarify that if  $\frac{7}{10}$  bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than  $\frac{7}{10}$  bushel, the pack sizes applicable to  $\frac{7}{10}$  bushel containers shall also apply to such containers.

**Replace References to the 1 $\frac{1}{2}$  Bushel Box With a  $\frac{7}{10}$  Bushel Carton**

As discussed earlier, the current Texas orange and grapefruit regulations refer to a 1 $\frac{1}{2}$  bushel box. The 1 $\frac{1}{2}$  bushel box is a carryover from past years when fruit was packed in a wooden "Bruce" box, which is twice the size of the common  $\frac{7}{10}$  bushel carton presently used in commercial business. The Committee recommended changing all references to the 1 $\frac{1}{2}$  bushel box to a  $\frac{7}{10}$  bushel carton. References to the 1 $\frac{1}{2}$  bushel box and associated fruit pack sizes based on that container are confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents currently reference the  $\frac{7}{10}$  bushel carton equivalent. With the elimination of the 1 $\frac{1}{2}$  bushel box, the orange pack sizes

would be in accordance with the count in a  $\frac{7}{10}$  bushel carton.

The  $\frac{7}{10}$  bushel carton equivalent and fruit count per carton is now the accepted unit of measure for oranges and grapefruit within the Texas industry. Handlers actually currently pack as to count of fruit in the box. Eliminating all references to the 1 $\frac{1}{2}$  bushel box and related pack sizes will minimize confusion among all producers and handlers.

**Changes to the Pack Requirements for Grapefruit**

Section 906.340(a)(2)(ii) specifies pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the "grapefruit standards", with some exceptions. Grapefruit are currently required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 51.630(c) of the grapefruit standards, based on a 1 $\frac{1}{2}$  bushel box. Exceptions are that the minimum diameter limit 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 current standard pack and standard sizing requirements, and packing tolerances will remain unchanged.

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  $3\frac{8}{16}$  inches in diameter. The largest is size 46 which ranges from  $4\frac{5}{16}$  to 5 inches in diameter. The Texas grapefruit pack regulations include a size 36 grapefruit, which ranges from  $4\frac{15}{16}$  to  $5\frac{9}{16}$  inches in diameter. This pack size is not in the grapefruit standards. The minimum diameters for pack sizes 96 and 112 are different from those specified in the grapefruit standards. The grapefruit standards specify  $3\frac{9}{16}$  inches and  $3\frac{2}{16}$  inches, and the order requirements specify  $3\frac{9}{16}$  inches and  $3\frac{5}{16}$  inches, respectively. The maximum diameters are the same.

The Committee recommended revising the grapefruit pack sizes based on a  $\frac{7}{10}$  bushel carton as shown in the following table rather than the 1 $\frac{1}{2}$  bushel box, which is obsolete and confusing. As mentioned earlier, the Texas citrus industry for many years has used the  $\frac{7}{10}$  bushel carton as its standard shipping container. Presently, any reference to a 1 $\frac{1}{2}$  bushel of fruit has to be converted to  $\frac{7}{10}$  bushel equivalents. With the elimination of the 1 $\frac{1}{2}$  bushel box, grapefruit pack sizes will reference the number of grapefruit that will pack in a  $\frac{7}{10}$  bushel carton.

GRAPEFRUIT  
[ $\frac{7}{10}$  bushel carton]

Pack size/ Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18(36) .....	$4\frac{15}{16}$	$5\frac{9}{16}$
23(46) .....	$4\frac{5}{16}$	5
27(54/56) .....	$4\frac{2}{16}$	$4\frac{12}{16}$
32(64) .....	$3\frac{15}{16}$	$4\frac{8}{16}$
36(70/72) .....	$3\frac{13}{16}$	$4\frac{5}{16}$
40(80) .....	$3\frac{10}{16}$	$4\frac{2}{16}$
48(96) .....	$3\frac{9}{16}$	$3\frac{14}{16}$
56(112/113) .....	$3\frac{5}{16}$	$3\frac{10}{16}$

(Numbers in parentheses represent current pack sizes.) Minimum and maximum diameter ranges for the new pack sizes (not in parentheses) are the same as currently specified.

Language also is being added to clarify that if  $\frac{7}{10}$  bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than  $\frac{7}{10}$  bushel, the pack sizes applicable to  $\frac{7}{10}$  bushel

containers shall also apply to such containers.

**Conforming Changes to the Size Regulations**

Changing the orange pack sizes and minimum and maximum diameter size ranges requires conforming changes to the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed will change from pack size 288 to the new pack size 138, but the minimum size permitted will continue to be a  $2\frac{6}{16}$  inch minimum diameter.

Changing the grapefruit pack sizes from a 1 $\frac{1}{2}$  bushel box basis to pack

sizes based on the  $\frac{7}{10}$  bushel carton also requires conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size will change from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped will remain  $3\frac{9}{16}$  inches. A reference to current pack size 112 in § 906.365(a) will change to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of  $3\frac{5}{16}$  inches) may be shipped if the fruit grades at least U.S. No. 1.

**Initial 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 initial 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 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000  $\frac{7}{10}$  bushel cartons of oranges and grapefruit. Using an average f.o.b. price of \$8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of \$500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

Many producers are still recovering from the 1983 and 1989 devastating

freezes that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and the profit to the producers is marginal. The 1998-99 season grapefruit and orange production levels were 59 percent and 36 percent of the pre-1983 freeze levels.

This rule changes the orange and grapefruit pack sizes currently prescribed under the order to pack sizes based upon the actual number of fruit packed in a  $\frac{7}{10}$  bushel carton. It also more closely aligns the pack sizes for Texas oranges to those used by shippers of oranges grown in California. Conforming changes are also made to the pack size references in the size regulations for oranges and grapefruit to the minimum sizes permitted to be shipped the same as currently specified. This rule will enable handlers to compete more effectively in the marketplace.

The Grade and Size Subcommittee met on April 20 and 29 and May 4, 1999, to discuss possible changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations:

(1) Eliminate two separate pack size tables for different orange varieties and establish one table for all orange varieties, change the pack sizes to a  $\frac{7}{10}$  bushel carton basis for all orange varieties consistent with California pack sizes (the Texas pack sizes currently are based on  $1\frac{2}{5}$  bushel boxes), and add a pack size 64 not specified in the California sizes. The new pack size table includes pack sizes for all orange varieties ranging from pack size 24 to 138, and each pack size has minimum and maximum diameter ranges;

(2) Change current grapefruit pack sizes based on a  $1\frac{2}{5}$  bushel box to pack sizes based upon the actual number of fruit packed in the  $\frac{7}{10}$  bushel carton; and (3) Make conforming changes to the size regulations based on the above recommendations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit. Size requirements are specified under § 906.365.

**Changes to the Pack Requirements for Oranges**

Section 906.340(a)(2) specifies pack requirements for oranges and includes two tables with pack sizes and minimum and maximum diameter size ranges for different varieties of oranges. These requirements provide, among other things, that oranges be packed in accordance with certain minimum and maximum diameters.

Currently, oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other varieties of oranges. All types of oranges must be packed in accordance with 13 pack sizes. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes are  $\frac{2}{16}$  inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes are the same. The minimum diameter, however, for all oranges is pack size 288 with a minimum diameter limit of  $2\frac{6}{16}$  inches.

The current orange pack sizes and minimum and maximum diameters are shown in the following tables:

**Table I (Section 906.304(a)(2)(i)(a))****TABLE 1.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES**  
[ $1\frac{2}{5}$  Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46's .....	$4\frac{5}{16}$	5
54's or 56's .....	$4\frac{2}{16}$	$4\frac{12}{16}$
64's .....	$3\frac{15}{16}$	$4\frac{8}{16}$
70's or 72's .....	$3\frac{13}{16}$	$4\frac{5}{16}$
80's .....	$3\frac{10}{16}$	$4\frac{2}{16}$
100's .....	$3\frac{7}{16}$	$3\frac{13}{16}$

TABLE 1.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES—Continued  
[1½ Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
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>

Table II (Section 906.340(a)(2)(i)(c))

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES  
[¾ Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46 .....	4 <sup>3</sup> / <sub>16</sub>	5
54 .....	4	4 <sup>12</sup> / <sub>16</sub>
64 .....	3 <sup>11</sup> / <sub>16</sub>	4 <sup>8</sup> / <sub>16</sub>
70 or 72 .....	3 <sup>1</sup> / <sub>16</sub>	4 <sup>5</sup> / <sub>16</sub>
80 .....	3 <sup>8</sup> / <sub>16</sub>	4 <sup>2</sup> / <sub>16</sub>
100 .....	3 <sup>5</sup> / <sub>16</sub>	3 <sup>13</sup> / <sub>16</sub>
112 .....	3 <sup>3</sup> / <sub>16</sub>	3 <sup>11</sup> / <sub>16</sub>
125 .....	3 <sup>1</sup> / <sub>16</sub>	3 <sup>9</sup> / <sub>16</sub>
163 .....	2 <sup>13</sup> / <sub>16</sub>	3 <sup>5</sup> / <sub>16</sub>
200 .....	2 <sup>9</sup> / <sub>16</sub>	3 <sup>1</sup> / <sub>16</sub>
252 .....	2 <sup>5</sup> / <sub>16</sub>	2 <sup>12</sup> / <sub>16</sub>
288 .....	2 <sup>2</sup> / <sub>16</sub>	2 <sup>9</sup> / <sub>16</sub>

All oranges must be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot shall be 2<sup>6</sup>/<sub>16</sub> inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicates that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent is marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Presently, oranges from California are sized differently from oranges available from Texas. Furthermore, as mentioned before, Texas has two orange size

tables—one for Navels, Valencia's, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes used by the Texas citrus industry. Buyers' computers tend to have California pack sizes listed, but not Texas'. This puts Texas oranges at a competitive disadvantage. Further, Texas does not currently pack a size 138 orange. The closest Texas sizes are 126 and 144. As a result, the Texas orange industry cannot supply buyers interested in purchasing size 138.

Retailers, wholesalers, food service distributors, and brokers are much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a much larger volume and is present in the marketplace year-round. Having pack

sizes different from California's is a marketing problem that affects all producers and handlers and could cause the Texas industry to lose fresh orange sales. The Committee believes that the pack sizes for Texas should be similar to those used by California shippers. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2<sup>11</sup>/<sub>16</sub> inches to a maximum of 3<sup>10</sup>/<sub>16</sub> inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton, which will refer to the actual number of fruit in the carton, as shown in the following table:

## ORANGES

[7/10 bushel carton]

Pack size/Number of grapefruit	(Diameter in Inches)	
	Minimum	Maximum
24 .....	3 <sup>12</sup> / <sub>16</sub>	5 <sup>1</sup> / <sub>16</sub>
32 .....	3 <sup>6</sup> / <sub>16</sub>	4 <sup>9</sup> / <sub>16</sub>

## ORANGES—Continued

[7/10 bushel carton]

Pack size/Number of grapefruit	(Diameter in Inches)	
	Minimum	Maximum
36 .....	3 <sup>4</sup> / <sub>16</sub>	4 <sup>9</sup> / <sub>16</sub>
40 .....	3 <sup>2</sup> / <sub>16</sub>	4 <sup>7</sup> / <sub>16</sub>
48 .....	2 <sup>15</sup> / <sub>16</sub>	4
56 .....	2 <sup>13</sup> / <sub>16</sub>	3 <sup>13</sup> / <sub>16</sub>
64 .....	2 <sup>11</sup> / <sub>16</sub>	3 <sup>10</sup> / <sub>16</sub>
72 .....	2 <sup>9</sup> / <sub>16</sub>	3 <sup>8</sup> / <sub>16</sub>
88 .....	2 <sup>8</sup> / <sub>16</sub>	3 <sup>4</sup> / <sub>16</sub>
113 .....	2 <sup>7</sup> / <sub>16</sub>	3
138 .....	2 <sup>6</sup> / <sub>16</sub>	2 <sup>12</sup> / <sub>16</sub>

Currently, Texas has minimum and maximum orange diameter size ranges in inches and fractions of an inch for each pack size. The Committee recommended changing the minimum and maximum diameters for the pack sizes to a 7/10 bushel carton basis as shown in the foregoing table.

Adopting the California orange pack sizes for all varieties of oranges would eliminate the two separate pack size tables currently in the orange pack regulations. The separate tables for different varieties of oranges were established to allow for varietal size differences. Some varieties tend to be round and others slightly oblong, which caused problems with older mechanical sizing equipment. Present day mechanical fruit sizing equipment, however, accurately sizes all varieties of oranges and two separate pack size tables for different orange varieties are no longer necessary.

For purposes of clarity, language is being added under Table I indicating that if 7/10 bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

#### Replace References to the 1<sup>2</sup>/<sub>5</sub> Bushel Box with a 7/10 Bushel Carton

The current Texas orange and grapefruit pack size regulations refer to

a 1<sup>2</sup>/<sub>5</sub> bushel box. The 1<sup>2</sup>/<sub>5</sub> bushel box is a carryover from past years when fruit was packed in a wooden "Bruce" box, which is twice the size of the common 7/10 bushel carton presently used in commercial business. The Committee recommended changing all references to the 1<sup>2</sup>/<sub>5</sub> bushel box to a 7/10 bushel carton. References to the 1<sup>2</sup>/<sub>5</sub> bushel box and associated fruit pack sizes based on that container are confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents currently reference the 7/10 bushel carton or equivalent. With the elimination of the 1<sup>2</sup>/<sub>5</sub> bushel box, the orange pack sizes would be in accordance with the count in a 7/10 bushel carton.

The 7/10 bushel carton and fruit count per carton is now the accepted standard for oranges and grapefruit within the Texas industry. Handlers currently pack as to the count of fruit in the box. Eliminating all references to the 1<sup>2</sup>/<sub>5</sub> bushel box and related pack sizes will minimize confusion among all producers and handlers.

#### Changes to the Pack Requirements for Grapefruit

Section 906.340(a)(2) also provides pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) with some exceptions. Grapefruit are currently required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 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, based on a 1<sup>2</sup>/<sub>5</sub> bushel box. Exceptions are that the minimum diameter for pack size 96 grapefruit is 3<sup>9</sup>/<sub>16</sub> inches, and for pack size 112 grapefruit, the minimum diameter is 3<sup>5</sup>/<sub>16</sub> inches. The current standard pack and standard sizing requirements, and packing tolerances will remain unchanged.

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<sup>8</sup>/<sub>16</sub> inches in diameter. The largest is size 46 which ranges from 4<sup>5</sup>/<sub>16</sub> to 5 inches in diameter. The Texas grapefruit pack regulations also include a size 36 grapefruit, which ranges from 4<sup>15</sup>/<sub>16</sub> to 5<sup>9</sup>/<sub>16</sub> inches in diameter. The minimum diameters for pack sizes 96 and 112 have been modified from 3<sup>9</sup>/<sub>16</sub> inches and 3<sup>2</sup>/<sub>16</sub> inches as specified in the grapefruit standards to 3<sup>9</sup>/<sub>16</sub> and 3<sup>5</sup>/<sub>16</sub> inches, respectively.

The Committee recommended revising the grapefruit pack sizes based on a 7/10 bushel carton, as shown in the following table, rather than the 1<sup>2</sup>/<sub>5</sub> bushel box, because the latter basis is obsolete and confusing. The Texas citrus industry for many years has used the 7/10 bushel carton as the standard. Presently, any reference to a 1<sup>2</sup>/<sub>5</sub> bushel of fruit has to be converted to 7/10 bushel equivalents. With the elimination of the 1<sup>2</sup>/<sub>5</sub> bushel box, grapefruit pack sizes will reference the number of grapefruit that will pack in a 7/10 bushel carton.

## GRAPEFRUIT

[7/10 bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18(36) .....	4 <sup>15</sup> / <sub>16</sub>	5 <sup>9</sup> / <sub>16</sub>

## GRAPEFRUIT—Continued

[7/10 bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
23(46) .....	4 <sup>5</sup> / <sub>16</sub>	5
27(54/56) .....	4 <sup>2</sup> / <sub>16</sub>	4 <sup>12</sup> / <sub>16</sub>
32(64) .....	3 <sup>15</sup> / <sub>16</sub>	4 <sup>8</sup> / <sub>16</sub>
36(70/72) .....	3 <sup>13</sup> / <sub>16</sub>	4 <sup>5</sup> / <sub>16</sub>
40(80) .....	3 <sup>10</sup> / <sub>16</sub>	4 <sup>2</sup> / <sub>16</sub>
48(96) .....	3 <sup>9</sup> / <sub>16</sub>	3 <sup>14</sup> / <sub>16</sub>
56(112/113) .....	3 <sup>5</sup> / <sub>16</sub>	3 <sup>10</sup> / <sub>16</sub>

(Numbers in parentheses represent current pack sizes.)

Minimum and maximum diameter size ranges for the new pack sizes will remain the same as currently specified.

For purposes of clarity, language is being added after Table II specifying that if 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

#### Conforming Changes to the Size Regulations

Changing the orange pack sizes and minimum and maximum diameter size ranges requires conforming changes to the size regulations for oranges in 906.365(a)(2). The minimum size which may be packed will change from pack size 288 to a new pack size 138, but the minimum diameter permitted to be shipped will continue to be 2<sup>5</sup>/<sub>16</sub> inches.

Changing the grapefruit pack sizes from a 1<sup>2</sup>/<sub>5</sub> bushel box basis to pack sizes based on the 7/10 bushel carton also requires conforming changes to the grapefruit size regulations in 906.365(a)(4). The minimum pack size will change from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped will remain 3<sup>9</sup>/<sub>16</sub> inches. A reference to current pack size 112 in 906.365(a)(4) will change to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3<sup>5</sup>/<sub>16</sub> inches) may be packed and shipped if the fruit grades at least U.S. No. 1.

The Committee concluded that leaving the pack sizes as they currently are could cause the Texas citrus industry to lose fresh orange sales. The pack size changes are expected to result in increased sales, but the amount of increase cannot be determined precisely.

Eliminating the references to the 1<sup>2</sup>/<sub>5</sub> bushel box in the regulations will not have any effect upon producer returns or sales. It simply eliminates an antiquated unit of measure from the regulations, will prevent confusion, and eliminate the need for converting 1<sup>2</sup>/<sub>5</sub> bushel box references to the standard 7/10 bushel carton.

Changing the grapefruit pack sizes consistent with the changes being recommended in the orange pack sizes would prevent confusion in the industry. The industry, both sellers and buyers, currently refer to the size of grapefruit (and oranges) by the number of fruit packed in a 7/10 bushel carton. The changes made by this action reflect this industry practice.

The opportunities and benefits of these changes are expected to be equally available to all Texas citrus producers and handlers regardless of their size of operation. The recommended changes offer benefits to the entire Texas citrus industry. These changes will enable handlers to compete more effectively in the marketplace. They will also contribute to the industry's long-term objective to market as much citrus as possible. These regulation changes are expected to lead to market expansion, which would benefit producers, handlers, buyers, and consumers of Texas citrus. Accordingly, in assessing alternatives to the changes provided in this interim final rule, this action provides the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department 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

Texas orange and grapefruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, and July 1, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Grade and Size Subcommittee met on April 20, April 29, and May 4, 1999, and discussed this issue in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on changes to the pack requirements and conforming changes to the size regulations currently prescribed under the Texas citrus marketing order. Any comments received will be considered prior to finalization of this rule.

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 changes pack requirements applied to handlers of Texas citrus grown in the production area to enable them to compete more



effectively in the marketplace; (2) the regulatory period begins September 1 and this action should be in effect promptly so handlers can plan accordingly; (3) the Committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; (4) Texas citrus handlers are aware of this action and are preparing to operate under the new pack sizes; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

Grapefruit, Marketing agreements, Oranges, 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 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. The subpart heading immediately preceding § 906.340 is revised to read “**Subpart—Container and Pack Requirements**”

3. In § 906.340, paragraphs (a)(2)(i)(b) and (a)(2)(i)(c) are removed, and paragraphs (a)(2)(i), Tables I and II, and (a)(2)(ii) are revised to read as follows:

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

(a) \* \* \*

(2) *Pack regulation.* (i) *Oranges.* (A) Oranges, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table I, and, when place packed in cartons or other containers, 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 in Table I and otherwise meet the requirements of standard sizing: *Provided*, That the packing tolerances in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed:

TABLE I.—ORANGES  
[ $\frac{7}{10}$  bushel carton]

Pack size/Number of oranges	Diameter in inches	
	Minimum	Maximum
24 .....	3 $\frac{12}{16}$	5 $\frac{1}{16}$
32 .....	3 $\frac{9}{16}$	4 $\frac{9}{16}$
36 .....	3 $\frac{4}{16}$	4 $\frac{9}{16}$
40 .....	3 $\frac{2}{16}$	4 $\frac{4}{16}$
48 .....	2 $\frac{15}{16}$	4
56 .....	2 $\frac{13}{16}$	3 $\frac{13}{16}$
64 .....	2 $\frac{11}{16}$	3 $\frac{10}{16}$
72 .....	2 $\frac{9}{16}$	3 $\frac{8}{16}$
88 .....	2 $\frac{8}{16}$	3 $\frac{4}{16}$
113 .....	2 $\frac{7}{16}$	3
138 .....	2 $\frac{6}{16}$	2 $\frac{12}{16}$

(B) If  $\frac{7}{10}$  bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. When packed in marked containers other than  $\frac{7}{10}$  bushel, the pack sizes applicable to  $\frac{7}{10}$  bushel containers shall also apply to such containers.

(ii) *Grapefruit.* (A) Grapefruit, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table II, except as otherwise provided in the regulations issued pursuant to this part, and when place packed in cartons or other containers 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 in Table II and otherwise meet the requirements of standard sizing: *Provided*, That the packing tolerances in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed:

TABLE II.—GRAPEFRUIT  
[ $\frac{7}{10}$  bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18 .....	4 $\frac{15}{16}$	5 $\frac{9}{16}$
23 .....	4 $\frac{5}{16}$	5
27 .....	4 $\frac{2}{16}$	4 $\frac{12}{16}$
32 .....	3 $\frac{15}{16}$	4 $\frac{8}{16}$
36 .....	3 $\frac{13}{16}$	4 $\frac{5}{16}$
40 .....	3 $\frac{9}{16}$	4 $\frac{2}{16}$
48 .....	3 $\frac{9}{16}$	3 $\frac{14}{16}$
56 .....	3 $\frac{5}{16}$	3 $\frac{10}{16}$

(B) If  $\frac{7}{10}$  bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. When packed in marked containers other than  $\frac{7}{10}$  bushel, the pack sizes applicable to  $\frac{7}{10}$  bushel containers shall also apply to such containers.

\* \* \* \* \*

3. Section 906.365 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

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

(a) \* \* \*

(2) Such oranges are at least pack size 138 with a minimum diameter limit of  $2\frac{9}{16}$  inches;

\* \* \* \* \*

(4) Such grapefruit are at least pack size 48 with a minimum diameter limit of  $3\frac{9}{16}$ : *Provided*, That any handler may handle grapefruit smaller than pack size 48, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 56 with a minimum diameter limit of  $3\frac{5}{16}$  inches.

\* \* \* \* \*

Dated: August 26, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-22666 Filed 8-30-99; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1439

RIN 0560-AF57

#### Flood Compensation Program

**AGENCY:** Commodity Credit Corporation, USDA.

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

**SUMMARY:** This rule provides relief for a special Flood Compensation Program for farmers in certain counties affected by long-term flooding. Twelve million dollars have been made available from proceeds from a disaster reserve under section 813 of the Agricultural Act of 1970. Another thirty million dollars have been made available using funds under section 1102(c) of the Agriculture, Rural Development, Food and Drug Administration, and Related Appropriations Act, 1999 (1999 Act). Farmers can, subject to certain payment limits, receive payment for the loss of the use of cropland or pastureland in

eligible counties during the period from October 1, 1997 through September 30, 1998. The county must have been declared a disaster area under a Presidential Declaration or Secretarial Designation during a period specified in the rules and land on at least one farm in the county must be cropland or pasture land that was flooded sometime after October 1, 1992. Other limitations also apply. Applicants for assistance must own or have a binding cash lease on the property and have owned it or leased it continuously since October 1, 1997. These rules are designed to address circumstances where changes in bodies of water may have produced widespread losses that might not otherwise generate assistance under other programs. At least \$12 million of the total \$42 million will be reserved for livestock producers because of the special needs of such producers.

**DATES:** Effective August 26, 1999.

Comments on this rule must be received by September 27, 1999 in order to be assured of consideration. Comments on the information collection must be received by October 25, 1999 in order to be assured of consideration.

**ADDRESSES:** Comments should be mailed to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250-0517, telephone (202) 720-7641, e-mail Diane\_SSharp@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PECD, Farm Service Agency (FSA), USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Helen Smith, at the above address, (202) 720-6601.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other provision of law to publish a

notice of proposed rulemaking with respect to the subject matter of this rule.

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the environment nor an adverse effect on human health on any population. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, administrative remedies must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act

Information will be collected for the program provided for in this notice. The information collected will be used to operate the Flood Compensation Program. In accordance with the Paperwork Reduction Act, the Commodity Credit Corporation will submit an emergency information collections request to OMB for approval of the Flood Compensation Program reports as necessary for the proper functioning of the program.

*Title:* Flood Compensation Program.

*OMB Control Number:* 0560—New.

*Type of Request:* Request for approval of a New Information Collection.

*Abstract:* Producers must have land in counties declared a disaster area by a Presidential Declaration or Secretarial Designation during the period January 1, 1997, through August 1, 1998, as a result of damage due to severe flooding or excess moisture in order to be eligible