

List of Subjects in 7 CFR Part 905

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

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 64 FR 51888 on September 27, 1999, is adopted as a final rule without change.

Dated: December 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 906**

[Docket No. FV99-906-3 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which changed the pack requirements 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 continues in effect the changes to the orange and grapefruit pack sizes so that each pack size reflects the actual number of fruit in a $\frac{7}{10}$ bushel carton. It also more closely aligns the pack sizes for Texas oranges with the pack sizes used by shippers of California oranges. The rule also continues in effect conforming changes to the pack size references in the minimum size regulations. Continuation of these changes will enable Texas handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: January 12, 2000.

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 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.

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 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 continues in effect the changes to the previous orange and

grapefruit pack sizes from a $1\frac{1}{2}$ bushel box basis to pack sizes based upon the actual number of fruit packed in a $\frac{7}{10}$ bushel carton. The orange pack sizes will also be more closely aligned to the pack sizes and size tolerances used by California orange shippers. The rule also continues in effect the conforming changes to the pack size references in the minimum size regulations for oranges and grapefruit so the minimum size requirements remain the same as previously specified. Continuation of these changes 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, and discussed 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 resulted 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 reflect the actual number of fruit in the container;

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

(3) Change the grapefruit pack sizes based on a $1\frac{1}{2}$ 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 previously 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 previously included 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 continue to be specified, together with standard pack requirements.

Previously, oranges were 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) were specified. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes were $\frac{2}{16}$ inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes were the same.

All oranges, however, must have been at least pack size 288, except that the minimum diameter limit was $\frac{2}{16}$ inches.

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

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

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

Table II (Section 906.340(a)(2)(i)(c))**TABLE II—NAVELS, VALENCIA AND SIMILAR LATE-TYPE ORANGES**[1 $\frac{1}{2}$ bushel box]

Pack size	Diameter in inches	
	Minimum	Maximum
46	$\frac{4}{16}$	5
54	4	$\frac{4}{12}$

TABLE II—NAVELS, VALENCIA AND SIMILAR LATE-TYPE ORANGES—Continued[1 $\frac{1}{2}$ bushel box]

Pack size	Diameter in inches	
	Minimum	Maximum
64	$\frac{3}{16}$	$\frac{4}{8}$
70 or 72	$\frac{3}{16}$	$\frac{4}{8}$
80	$\frac{3}{16}$	$\frac{4}{8}$
100	$\frac{3}{16}$	$\frac{3}{8}$
112	$\frac{3}{16}$	$\frac{3}{8}$
125	$\frac{3}{16}$	$\frac{3}{8}$
163	$\frac{2}{16}$	$\frac{3}{8}$
200	$\frac{2}{16}$	$\frac{3}{8}$
252	$\frac{2}{16}$	$\frac{2}{8}$
288	$\frac{2}{16}$	$\frac{2}{8}$

All oranges must have been at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot was $\frac{2}{16}$ inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicated 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. Previously, the pack sizes for California oranges were different from those for Texas oranges. Furthermore, as mentioned before, Texas previously had two orange size tables—one for Navel, Valencia, 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 previously used by the Texas citrus industry. Buyers' computers tended to have California pack sizes listed, but not Texas'. This put handlers of Texas oranges at a competitive disadvantage. Further, Texas did not previously pack a size 138 orange because this size was not a specified pack size. The closest Texas sizes were 126 and 144. As a result, the Texas orange industry could not take advantage of size 138 business.

Moreover, retailers, wholesalers, food service distributors, and brokers were 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 was a marketing problem that affected

all producers and handlers and caused the Texas industry to lose fresh orange sales. The Committee believed that the Texas pack sizes needed 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 $\frac{2}{16}$ inches to a maximum of $\frac{3}{16}$ inches.

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

ORANGES[$\frac{7}{10}$ BUSHEL CARTON]

Pack size/ number of oranges	Diameter in inches	
	Minimum	Maximum
24	$\frac{3}{16}$	$\frac{5}{16}$
32	$\frac{3}{16}$	$\frac{4}{8}$
36	$\frac{3}{16}$	$\frac{4}{8}$
40	$\frac{3}{16}$	$\frac{4}{8}$
48	$\frac{2}{16}$	4
56	$\frac{2}{16}$	$\frac{3}{8}$
64	$\frac{2}{16}$	$\frac{3}{8}$
72	$\frac{2}{16}$	$\frac{3}{8}$
88	$\frac{2}{16}$	$\frac{3}{8}$
113	$\frac{2}{16}$	3
138	$\frac{2}{16}$	$\frac{2}{8}$

Previously, Texas had minimum and maximum orange size diameters in inches and fractions of an inch for each pack size based on the 1 $\frac{1}{2}$ bushel box. The Committee recommended changes to the minimum and maximum diameter size ranges for the proposed pack sizes to a $\frac{7}{10}$ bushel carton basis as shown in the foregoing table because 1 $\frac{1}{2}$ bushel boxes were no longer used by the industry.

Adopting the California orange pack sizes for all varieties of oranges eliminated the two separate pack size tables previously in the orange pack regulations. Separate tables for different varieties of oranges had been 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 were no longer necessary.

Language was 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 the $\frac{7}{10}$ 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 Texas orange and grapefruit regulations previously referred to a 1 $\frac{1}{2}$ bushel box. The 1 $\frac{1}{2}$ bushel box was 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 were confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents reference the $\frac{7}{10}$ bushel carton equivalent. With the elimination of the 1 $\frac{1}{2}$ bushel box, the orange pack sizes are 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 pack as to count of fruit in the box. Eliminating all references to the 1 $\frac{1}{2}$ bushel box and related pack sizes minimizes 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 was previously 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 were that the minimum diameter limit for pack size 96 grapefruit was $3\frac{3}{16}$ inches, and for pack size 112 grapefruit, the minimum diameter was $3\frac{5}{16}$ inches. The standard pack and standard sizing requirements, and packing tolerances 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 included a size 36 grapefruit, which ranged from $4\frac{15}{16}$ to $5\frac{9}{16}$ inches in diameter. This pack size was not in the grapefruit standards. The minimum diameters for pack sizes 96 and 112 were different from those specified in the grapefruit standards. The grapefruit standards specify $3\frac{3}{16}$ inches and $3\frac{7}{16}$ inches, and the order requirements specify $3\frac{3}{16}$ 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 was obsolete and confusing. As mentioned earlier, the Texas citrus industry for many years had used the $\frac{7}{10}$ bushel carton as its standard shipping container. Previously, any reference to a 1 $\frac{1}{2}$ bushel of fruit had to be converted to $\frac{7}{10}$ bushel equivalents. With the elimination of the 1 $\frac{1}{2}$ bushel box, grapefruit pack sizes 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($5\frac{4}{56}$)	$4\frac{2}{16}$	$4\frac{12}{16}$
32(64)	$3\frac{15}{16}$	$4\frac{8}{16}$
36($7\frac{0}{72}$)	$3\frac{3}{16}$	$4\frac{5}{16}$
40(80)	$3\frac{1}{16}$	$4\frac{2}{16}$
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 previous pack sizes.) Minimum and maximum diameter ranges for the new pack sizes (not in parentheses) are the same as currently specified.

Language was also added by the interim final rule 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 required conforming changes to

the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed changed from pack size 288 to the new pack size 138, but the minimum size permitted remained $2\frac{6}{16}$ 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 required conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size changed from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped remained $3\frac{3}{16}$ inches. A reference to the previous pack size 112 in § 906.365(a)(4) was changed to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of $3\frac{5}{16}$ inches) may be packed and shipped if the fruit grades at least U.S. No. 1.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final 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 continues in effect the changes to 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 were also made to the pack size references in the size regulations for oranges and grapefruit so the minimum sizes permitted to be shipped remain the same as previously specified.

The Grade and Size Subcommittee met on April 20 and 29, and May 4, 1999, and discussed 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 previously were based on $1\frac{1}{2}$ 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 the grapefruit pack sizes based on a $1\frac{1}{2}$ 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)(i) specifies pack requirements for oranges and previously included two tables with pack sizes and minimum and maximum diameter size ranges for different varieties of oranges. These requirements provided, among other things, that oranges be packed in accordance with certain minimum and maximum diameters.

Previously, oranges were 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 were to 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 were $\frac{2}{16}$ inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes were the same. The minimum diameter, however, for all oranges was pack size 288 with a minimum diameter limit of $2\frac{2}{16}$ inches.

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

Table I (Section 906.304 (a)(2)(i)(a))

TABLE I.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES
[$1\frac{1}{2}$ 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	$3\frac{7}{16}$	$3\frac{3}{16}$
112's	$3\frac{5}{16}$	$3\frac{1}{16}$
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, AND SIMILAR LATE-TYPE ORANGES
[$1\frac{1}{2}$ 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	$3\frac{9}{16}$	$4\frac{2}{16}$
100	$3\frac{5}{16}$	$3\frac{13}{16}$
112	$3\frac{3}{16}$	$3\frac{11}{16}$
125	$3\frac{1}{16}$	$3\frac{9}{16}$
163	$2\frac{13}{16}$	$3\frac{5}{16}$
200	$2\frac{9}{16}$	$3\frac{1}{16}$
252	$2\frac{5}{16}$	$2\frac{12}{16}$
288	$2\frac{2}{16}$	$2\frac{9}{16}$

All oranges had to be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot was $2\frac{2}{16}$ inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicated 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. Previously, oranges from California were sized differently from oranges available from Texas. Furthermore, as mentioned before, Texas had two orange size tables—one for Navels, Valencia, 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 previously used by the Texas citrus industry. Buyers' computers tended to have California pack sizes listed, but not Texas'. This put handlers of Texas oranges at a competitive disadvantage. Further, Texas did not previously pack a size 138 orange. The closest Texas sizes were 126 and 144. As a result, the Texas orange industry could not supply buyers interested in purchasing size 138.

Retailers, wholesalers, food service distributors, and brokers were 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 was a marketing problem that affected all producers and handlers and caused the Texas industry to lose fresh orange sales. The Committee believed 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 $2\frac{11}{16}$ inches to a maximum of $3\frac{10}{16}$ inches.

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

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

Pack size/number of grapefruit	Diameter in Inches	
	Minimum	Maximum
24	$3\frac{12}{16}$	$5\frac{1}{16}$
32	$3\frac{9}{16}$	$4\frac{9}{16}$
36	$3\frac{3}{16}$	$4\frac{6}{16}$
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	$2\frac{6}{16}$	$2\frac{12}{16}$

Previously, Texas had minimum and maximum orange diameters size ranges in inches and fractions of an inch for each pack size. The Committee recommended changes to the minimum and maximum diameters for the pack sizes to a $\frac{7}{10}$ bushel carton basis as shown in the foregoing table.

Adopting the California orange pack sizes for all varieties of oranges eliminated the two separate pack size tables previously in the orange pack regulations. The separate tables for different varieties of oranges had been 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 were no longer necessary.

For purposes of clarity, language was added under Table I indicating 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 $1\frac{2}{5}$ Bushel Box with a $\frac{7}{10}$ Bushel Carton

The previous Texas orange and grapefruit pack size regulations referred to a $1\frac{2}{5}$ bushel box. The $1\frac{2}{5}$ bushel box was 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 $1\frac{2}{5}$ bushel box to a $\frac{7}{10}$ bushel carton. References to the $1\frac{2}{5}$ bushel box and associated fruit pack sizes based on that container were confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents reference the $\frac{7}{10}$ bushel carton or equivalent. With the elimination of the $1\frac{2}{5}$ bushel box, the orange pack sizes are in accordance with the count in a $\frac{7}{10}$ bushel carton.

The $\frac{7}{10}$ 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 $1\frac{2}{5}$ bushel box and related pack sizes minimizes 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 was previously 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 $1\frac{2}{5}$ bushel box. The standard pack and standard sizing requirements, and packing tolerances remain unchanged.

The grapefruit standards define eight pack sizes. The smallest is size $1\frac{25}{126}$, 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 also included a size 36 grapefruit, which ranged from $4\frac{5}{16}$ to $5\frac{9}{16}$ inches in diameter. The minimum diameters for pack sizes 96 and 112 were modified from $3\frac{6}{16}$ inches and $3\frac{2}{16}$ inches as specified in the grapefruit standards to $3\frac{9}{16}$ and $3\frac{5}{16}$ inches, respectively, and these exceptions continue in effect.

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 $1\frac{2}{5}$ bushel box, because the latter basis was obsolete and confusing. The Texas citrus industry for many years used the $\frac{7}{10}$ bushel carton as the standard. Previously, any reference to a $1\frac{2}{5}$ bushel of fruit had to be converted to $\frac{7}{10}$ bushel equivalents. With the elimination of the $1\frac{2}{5}$ bushel box, grapefruit pack sizes 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 previous pack sizes.) Minimum and maximum diameter size ranges for the new pack sizes remain the same as previously specified.

For purposes of clarity, language was added after Table II specifying 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 required conforming changes to the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed changed from pack size 288 to the new pack size 138,

but the minimum diameter permitted to be shipped remained 2 $\frac{1}{16}$ inches.

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 required conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size changed from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped remained 3 $\frac{9}{16}$ inches. A reference to the previous pack size 112 in § 906.365(a)(4) was changed to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3 $\frac{5}{16}$ 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 previously were 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 $\frac{1}{2}$ bushel box in the regulations does not have any effect upon producer returns or sales. It simply eliminated an antiquated unit of measure from the regulations, prevents confusion, and eliminates the need for converting 1 $\frac{1}{2}$ bushel box references to the standard $\frac{7}{10}$ bushel carton.

Changing the grapefruit pack sizes consistent with the changes being recommended in the orange pack sizes prevents 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 $\frac{7}{10}$ 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 changes offer benefits to the entire Texas citrus industry. The changes enable handlers to compete more effectively in the marketplace. They 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 benefits producers, handlers, buyers, and consumers of Texas citrus. Accordingly, in assessing alternatives to the changes provided in the interim final rule, this final action continues to provide the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. 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.

An interim final rule concerning this action was published in the **Federal Register** on August 31, 1999. The Committee's staff mailed copies of the rule to all Committee members and orange and grapefruit handlers and producers. In addition, the Office of the Federal Register made the rule available through the Internet. That rule provided for a 60-day comment period which ended November 1, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 47349, August 31, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

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

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

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 64 FR 47349 on August 31, 1999, is adopted as a final rule without change.

Dated: December 8, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00-915-1 IFR]

Avocados Grown in South Florida; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the container and pack requirements currently prescribed under the Florida avocado marketing order. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). Currently, avocados packed in 33-pound containers must weigh at least 16 ounces. Avocados weighing less than 16 ounces must be packed in smaller containers. This rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change will provide greater flexibility in avocado packing operations.

DATES: Effective December 14, 1999; comments received by February 11, 2000 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.