



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 905 and 944**

**[Doc. AMS-SC-18-0046; SC18-905-3 PR]**

**Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida and Imported Grapefruit; Change in Grade and Size Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation from the Citrus Administrative Committee (Committee) to relax the minimum grade requirements for oranges and tangerines, remove grade and size requirements for Ambersweet and Temple oranges, and simplify the tables outlining the grade and size requirements for interstate and export shipments currently prescribed under the marketing order for oranges, grapefruit, tangerines, and pummelos grown in Florida. A corresponding change would be made to the grapefruit import regulation as required by section 8e of the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. All comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: [Abigail.Campos@ams.usda.gov](mailto:Abigail.Campos@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers of citrus operating within the area of production, and a public member.

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the

United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 USDA 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, USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule invites comments on changes to the grade and size requirements under the Order. This proposal would relax the minimum grade requirements for oranges and Fall-glo, Sunburst, and Honey tangerines from U.S. No. 1 to U.S. No. 2. This action would also remove grade and size requirements for Ambersweet and Temple oranges and simplify the tables outlining the grade and size requirements for interstate and export shipments. These actions would maximize shipments by allowing more citrus to be shipped to

the fresh market and would help increase returns to growers and handlers. These changes were unanimously recommended by the Committee on April 26, 2018.

Section 905.52 provides authority to establish minimum grade requirements for Florida citrus. Section 905.306 specifies, in part, the minimum grade requirements for citrus. Requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a) and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect pursuant to § 944.106.

The Committee met on April 26, 2018, and discussed ways to provide additional supplies of Florida citrus to the marketplace and increase grower and handler returns. Committee members recognized that with the ongoing impacts of citrus greening, some adjustments should be made to assist growers and handlers and provide for the utilization of additional volume of Florida citrus in the fresh market.

Citrus greening has caused the steady decline in Florida citrus production and has spread to all citrus producing counties in Florida. From the 2011-12 to the 2016-17 season, citrus greening has reduced Florida's orange production by 53 percent and tangerine production by

67 percent. During the same period, fresh shipments have declined by 54 percent for oranges and 80 percent for tangerines.

The industry suffered additional production losses as a result of damage from Hurricane Irma in September 2017. According to USDA's National Agricultural Statistics Service (NASS), production for the 2016-17 season totaled 68.8 million boxes for oranges and 1.6 million boxes for tangerines. For the 2017-18 season, the forecasted production is expected to decrease by 34 percent for oranges and 53 percent for tangerines. Also, the citrus trees may take several seasons to recover from the hurricane damage, further impacting production and supply.

Given the decrease in production, the Committee recommended relaxing the minimum grade requirements for oranges and Fallglo, Sunburst, and Honey tangerines from U.S. No. 1 to U.S. No. 2. During the discussion of this change, one Committee member stated the reduction in grade could help address the limited volumes of fruit available in the market. It was also stated that there was a good fresh juice market for the U.S. No. 2 orange and that this change could help promote the sale of more oranges for the fresh juice market.

For tangerines, it was stated that the very limited volume of tangerines being produced in Florida was causing a supply concern for shippers. Members agreed that lowering the grade for tangerines would promote increased shipments.

The Committee believes relaxing the grade from U.S. No. 1 to U.S. No. 2 for oranges and Fallglo, Sunburst, and Honey tangerines would allow growers and handlers to utilize a greater percentage of the crop and would make more fruit available for shipment. By implementing this change, the industry would be able to put an additional 300,000 cartons or more into the fresh market, helping to maximize shipments and to increase grower and handler returns.

The Committee also discussed the limited production of Ambersweet and Temple oranges (also known as Royal tangerines). In the past, the Committee has considered removing the grade and size requirements for varieties with limited commercial value due to the very limited supplies available for shipment. Last season, Ambersweet oranges accounted for 4,280 cartons and Temple oranges accounted for a total of 40,227 cartons sold. Given the decline in production, the Committee recommended removing restrictions

on grade and size for Ambersweet and Temple oranges to maximize remaining shipments.

The Committee also recommended simplifying Table I and Table II in § 905.306, which outline the grade and size requirements for interstate and export shipments, to have them better reflect current industry requirements. Over the past few years, the Committee has made ongoing changes to both grade and size for a number of Florida citrus varieties. These changes have moved grade and size requirements toward greater commonality for both oranges and grapefruit.

With the grade change considered above, there would be no differences in grade and size requirements for the various types and varieties of oranges listed in the table. Therefore, the Committee recommended that "Early and midseason" oranges be consolidated with "Navel" and "Valencia and other late type" oranges into one "Oranges" classification. For grapefruit, the grade and size requirements for the two listed categories are already the same. "Seedless, red" and "Seedless, except red" would be combined into one "Grapefruit, seedless" classification.

In addition, the Committee recommended removing the "Regulation Period" column from the two tables. With the

exception of the dates listed in Table I for Valencia and other late type oranges, the various dates listed are no longer applicable and are not reflective of the current industry. The grade change proposed for oranges would also negate the need for the current dates listed for Valencia and other late type oranges. The Committee made these recommendations to simplify the tables to reflect changes in the industry.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this proposed rule would combine "Seedless, red" and "Seedless, except red" into one classification for grapefruit in the two domestic handling regulation tables as well as remove the "Regulation Period" column from those tables, a corresponding change to the table in the grapefruit import regulations would be required.

Further, two minor administrative changes would be made to § 944.106. In § 944.106(c), the reference to "§ 905.306" would be revised to read "§ 905.306(a) through (d)" so that the requirements specifically applicable to

imports are more clearly defined. Additionally, § 944.106(d) would be updated to reflect the revised name of the Agricultural Marketing Service (AMS) program area that oversees federal marketing orders.

The Committee also recommended establishing new reporting requirements under the Order. That change is being considered under a separate rulemaking action.

### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses 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.

There are approximately 20 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area.

There are approximately 50 citrus importers. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to data from NASS, the industry, and the Committee, the weighted average f.o.b. price for Florida citrus for the 2016-17 season was approximately \$15.20 per carton with total shipments of 12.6 million cartons. Using the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than \$7,500,000 ( $\$15.20 \times 12.6 \text{ million} = \$191,520,000$  divided by 20 handlers equals \$9,576,000 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2016-17 season was around \$8.30 per carton of citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, and assuming a normal distribution, the average annual grower revenue is below \$750,000 ( $\$8.30 \times 12.6 \text{ million} = \$104,580,000$  divided by 500 growers equals \$209,160 per grower).

South Africa, Peru, and Mexico are the major grapefruit-producing countries exporting grapefruit to the United States. In 2016, shipments of grapefruit imported into the United States totaled approximately 24,000 metric tons. Information from USDA's Foreign Agricultural Service indicates that the dollar value of imported fresh grapefruit was approximately \$11.2 million in 2016. Using this value and the number of importers (approximately 50), most importers would have annual receipts of less than \$7,500,000 for grapefruit.

Based on the previously described estimates, the majority of handlers of Florida citrus may be classified as large entities, while the majority of growers and importers may be classified as small entities.

This proposed rule would relax the minimum grade requirements for oranges and tangerines from U.S. No. 1 to U.S. No. 2, remove grade and size requirements for Ambersweet and Temple oranges, and simplify the tables outlining the grade and size requirements for interstate and export shipments. These changes would help maximize shipments by allowing more citrus to be shipped to the fresh market and would provide some additional fruit to address the losses resulting from citrus greening and the

September 2017 hurricane. This proposed rule would revise § 905.306. Authority for this change is provided in § 905.52. This proposed rule would also change § 944.106 in the grapefruit import regulation and is required by section 8e of the Act.

This action is not expected to increase the costs associated with the Order's requirements or the grapefruit import regulation. Rather, it is anticipated that this action would have a beneficial impact. Reducing the grade requirements would make additional fruit available for shipment to the fresh market, provide an outlet for fruit that may otherwise go unharvested, and afford more opportunity to meet consumer demand. These changes would provide additional fruit to fill the shortage caused by citrus greening and by Hurricane Irma. By maximizing shipments, this action would help provide additional returns to growers and handlers. Further, removing the grade and size requirements for Ambersweet and Temple oranges would also help maximize shipments of these varieties impacted by declining production.

The benefits of this rule would also be equally available to all growers, handlers, and importers, regardless of their size.

An alternative to this action would be to maintain the current minimum grade requirements for domestic shipments of oranges and tangerines. However, leaving the requirements unchanged would not make additional fruit available for shipment. Following the significant damage experienced by the industry from citrus greening and the September 2017 hurricane, maximizing shipments would help provide additional returns to growers and handlers. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the citrus industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 26, 2018, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the

previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### **List of Subjects**

7 CFR Part 905

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

7 CFR Part 944

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

For the reasons set forth in the preamble, parts 905 and 944 are proposed to be amended as follows:

PART 905 - ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS  
GROWN IN FLORIDA

1. The authority citation for part 905 and part 944 continues to read as follows:

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

2. Amend § 905.306 by

a. Revising paragraph (a), Table I to paragraph (a), paragraph (b), and Table II to paragraph (b); and

b. Redesignating Table III as Table III to paragraph (e) and in paragraph (e)(1) adding the words "to paragraph (e)" after "Table III.":

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

**Regulation.**

(a) No handler shall ship between the production area and any point outside thereof, in the 48 contiguous States and the District of Columbia of the United States, any variety of fruit listed in column (1) of Table I to paragraph (a), except for Ambersweet and Temple, unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section) specified for such variety in columns (2) and (3) of Table I to paragraph (a): Provided, That all grapefruit meet the minimum maturity requirements specified in paragraph (e) of this section.

Table I to paragraph (a)

Variety	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)
Oranges	U.S. No. 2	2-4/16
Grapefruit, Seedless	U.S. No. 1	3
Tangerines		
Fallglo	U.S. No. 2	2-6/16
Honey	U.S. No. 2	2-6/16
Sunburst	U.S. No. 2	2-6/16
Tangelos	U.S. No. 1	2-8/16

(b) No handler shall ship to any destination outside the 48 contiguous States and the District of Columbia of the United States any variety of fruit listed in column (1) of Table II to paragraph (b), except for Ambersweet and Temple, unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section) specified for such variety in columns (2) and (3) of Table II to paragraph (b): Provided, That all grapefruit meet the minimum maturity requirements specified in paragraph (e) of this section.

Table II to paragraph (b)

Variety	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)
Oranges	U.S. No. 2	2-4/16
Grapefruit, Seedless	U.S. No. 1	3
Tangerines		
Fallglo	U.S. No. 2	2-6/16
Honey	U.S. No. 2	2-6/16
Sunburst	U.S. No. 2	2-6/16
Tangelos	U.S. No. 1	2-8/16

\* \* \* \* \*

PART 944 - FRUITS; IMPORT REGULATIONS

3. In § 944.106

a. Revise the table in paragraph (a) and designate it as Table 1 to § 944.106;

b. Revise paragraph (c) and the first sentence in paragraph (d).

The revisions to read as follows:

**§ 944.106 Grapefruit import regulation.**

(a) \* \* \*

Table 1 to § 944.106

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Grapefruit classification (1)	Minimum grade (2)	Minimum diameter (inches) (3)
Grapefruit, seedless	U.S. No. 1	3

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\* \* \* \* \*

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Florida Grapefruit (7 CFR 51.750-51.784), and in Marketing Order No. 905 (7 CFR 905.18 and 905.306(a) through (d)), shall be applicable herein.

(d) The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit imported into the United States. \* \* \*

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Dated: October 15, 2018

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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