

§ 318.60(c). Therefore, in the final rule, we should have also included an exception for “Subpart—Sand, Soil, or Earth, with Plants from Territories and Districts” in § 318.13–1(b). We are correcting that error in this technical amendment.

#### List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

■ Accordingly, we are amending 7 CFR part 318 as follows:

#### PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

■ 1. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 318.13–1, paragraph (b) is amended by adding the words “and ‘Subpart—Sand, Soil, or Earth, with Plants from Territories and Districts’” after the word “Products”.

Done in Washington, DC, this 1st day of April 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Parts 905 and 944

[Doc. No. AMS–FV–09–0002; FV09–905–1 IFR]

#### Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of Size Requirements for Grapefruit

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

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

**SUMMARY:** This rule relaxes the minimum size requirement for white seedless grapefruit grown in Florida and for white seedless grapefruit imported into the United States for the fresh market. The Citrus Administrative Committee (Committee) which locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order) recommended this change for Florida grapefruit. The corresponding change in the import regulation is required under

section 8e of the Agricultural Marketing Agreement Act of 1937. This rule relaxes the minimum size requirement for domestic shipments, making it the same as required for export shipments. This change is expected to maximize fresh white seedless grapefruit shipments and provide greater flexibility to handlers.

**DATES:** Effective April 8, 2009; comments received by June 8, 2009 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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:

Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@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 Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended

(7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

The Department of Agriculture (USDA) 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 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 which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes the minimum size requirement for white seedless grapefruit grown in Florida and for white seedless grapefruit imported into the United States for the fresh market. This rule relaxes the minimum size requirement for shipments to the 48 contiguous States and the District of Columbia so the minimum size requirement is the same for both the domestic and export markets. This change is expected to maximize fresh white seedless grapefruit shipments and provide greater flexibility to handlers. The Committee met on December 16,

2008, and unanimously recommended this change.

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

The current minimum size requirement for domestic shipments of white seedless grapefruit is 3<sup>3</sup>/<sub>16</sub> inches. This rule relaxes the minimum size requirement from 3<sup>3</sup>/<sub>16</sub> inches (size 48) to 3<sup>5</sup>/<sub>16</sub> inches (size 56).

Currently, white seedless grapefruit shipped to the domestic market must meet a more restrictive minimum size requirement than fruit shipped to the export market. The more restrictive size requirement for domestic shipments was established in response to market preference for larger sized fruit and to help maintain better grower prices for the larger sizes. The industry believed that absent the larger minimum size requirement the domestic market would be oversupplied with small sized, lower-priced fruit, which would reduce the price for the larger sizes. Conversely, the export market favored the smaller sized fruit. Therefore, establishing the different minimum size requirements satisfied both markets.

However, over the last decade, the total supply of white seedless grapefruit has declined. Total production of white seedless grapefruit grown in Florida during the 1999–2000 season was approximately 20,510,000 1<sup>3</sup>/<sub>8</sub> bushel boxes compared to 8,539,000 boxes produced during the 2007–08 season. This represents a 58 percent decrease in Florida white seedless grapefruit production from 1999 to 2008.

Shipments of fresh white seedless grapefruit have also been declining. Since the 1999–2000 season, fresh shipments have declined by more than 70 percent. During the 2007–08 season, domestic shipments of white seedless grapefruit accounted for only one percent of total fresh grapefruit shipments. The export markets have traditionally been good markets for size 56 white seedless grapefruit. However, fresh shipments of white seedless grapefruit to export markets have also declined.

With the changes in supply and demand, the Committee believes the larger minimum size requirement for domestic shipments is no longer needed. Further, Committee members

agreed that with the demand for white seedless grapefruit declining, handlers need to be able to ship fruit to whichever markets become available. However, the different minimum size requirements for domestic and export markets have presented problems for handlers trying to take advantage of available markets. Fruit packed for the export market cannot be shipped to the domestic market without first being repacked to ensure it meets the more restrictive size requirements. Repacking the fruit is a cost burden on handlers and reduces returns to growers.

Consequently, the Committee recommended that the minimum size requirement for domestic shipments of white seedless grapefruit be relaxed from size 48 to size 56. This change makes the minimum size requirement the same for both the domestic and export markets. Having the same minimum size requirement for both domestic and export shipments will make it easier to move fruit to available markets without having to repack fruit to meet the differing size requirements. This reduces costs and provides greater flexibility for handlers. In addition, this change makes more fruit available for shipment to the domestic market helping to maximize fresh shipments, which may increase grower returns.

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

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This change relaxes the minimum size requirement for imported white seedless grapefruit from 3<sup>3</sup>/<sub>16</sub> inches (size 48) to 3<sup>5</sup>/<sub>16</sub> inches (size 56). The relaxation in the minimum size requirement also has a beneficial impact for importers of white seedless grapefruit. This change allows size 56 white seedless grapefruit to be shipped to the United States increasing the amount of fruit available for shipment to the fresh market, thus benefiting importers.

#### Initial Regulatory Flexibility Analysis

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

There are approximately 40 Florida grapefruit handlers subject to regulation under the marketing order and about 8,000 citrus producers in the production area. There are approximately 10 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

According to industry and Committee data, the average annual f.o.b. price for fresh Florida white seedless grapefruit during the 2007–08 season was \$10.30 per 4<sup>5</sup>/<sub>8</sub>-bushel carton, and total fresh shipments were around 3.3 million cartons. Based on the average f.o.b. price, a majority of Florida white seedless grapefruit handlers could be considered small businesses under SBA's definition. In addition, based on production and grower prices reported by the National Agricultural Statistics Service and the total number of Florida citrus producers, the average annual producer revenue is less than \$750,000. Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh grapefruit ranged from approximately \$2.14 million in 2006 to \$2.06 million in 2008. Using these values, all importers would have annual receipts of less than \$7 million for grapefruit. Therefore, the majority of handlers, producers and importers of white seedless grapefruit may be classified as small entities.

The Bahamas, Mexico, and Israel are the major grapefruit producing countries exporting grapefruit to the United States. In 2008, shipments of grapefruit imported into the United States totaled 14,257 metric tons. The Bahamas accounted for 10,362 metric tons, 2,741 metric tons were imported from Mexico, and 104 metric tons arrived from Israel.

This rule relaxes the minimum size requirement for white seedless grapefruit grown in Florida and for white seedless grapefruit imported into

the United States for the fresh market. This rule relaxes the minimum size requirement for domestic shipments to the 48 contiguous States and the District of Columbia from  $3\frac{9}{16}$  inches (size 48) to  $3\frac{5}{16}$  inches (size 56) making the minimum size requirement the same for both the domestic and export markets. This rule also relaxes the minimum size requirement for imports of fresh white seedless grapefruit from  $3\frac{9}{16}$  inches (size 48) to  $3\frac{5}{16}$  inches (size 56). This change is expected to maximize fresh white seedless grapefruit shipments and provide greater flexibility to handlers. Authority for this action is provided in § 905.52. This rule amends the provisions of §§ 905.306 and 944.106. The Committee unanimously recommended this change at its December 16, 2008, meeting. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase costs associated with the order requirements or the grapefruit import regulation. Rather, this action represents a cost savings for handlers and has the potential to increase industry returns. This change makes the minimum size requirement the same for both the domestic and export markets. Having the same minimum size requirement for both domestic and export shipments will make it easier to move fruit to available markets without having to repack fruit to meet the differing size requirements. This reduces costs and provides greater flexibility for handlers. The Committee believes this change will help improve the marketing of white seedless grapefruit and maximize shipments to fresh market channels.

The on-tree price for processed white seedless grapefruit for the 2007–08 season was \$0.33 per box compared to \$10.05 per box for fruit sold to the fresh market. With limited returns for processed grapefruit, reducing the minimum size requirement for the domestic market could shift an additional volume of small sizes to the fresh market. This will help maximize fresh shipments and should increase industry returns. Importers will also benefit from this change, as a greater volume of fruit will be available for shipment to the United States. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers, regardless of their size.

The only alternative to this action discussed by the Committee was to

maintain the current minimum size requirement for domestic shipments. However, the Committee agreed that relaxing the minimum size would make additional white seedless grapefruit available for the fresh market, would provide more flexibility to handlers, and could result in better returns. Therefore, the alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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 sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

Further, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the minimum size requirements currently prescribed under the Florida citrus marketing order and the import requirements for grapefruit. Any comments received will be considered prior to finalization of this rule.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final 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) The shipping season for white seedless grapefruit has already started; (2) this rule represents a relaxation of the minimum size requirements; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 905

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

##### 7 CFR Part 944

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

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

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

Authority: 7 U.S.C. 601–674.

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

■ 2. In § 905.306, Table I in paragraph (a) is amended by revising the entry for “Seedless, except red” under “Grapefruit,” to read as follows:

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

(a) \* \* \*

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
Grapefruit.			
* * *	* * *	* * *	* * *
Seedless, except red .....	On and after 9/01/94 .....	U.S. No. 1 .....	3 <sup>5</sup> / <sub>16</sub>
* * *	* * *	* * *	* * *

\* \* \* \* \*

**PART 944—FRUITS; IMPORT REGULATIONS**

■ 3. In § 944.106, the table in paragraph (a) is amended by revising the entry for

“Seedless, except red” to read as follows:

**§ 944.106 Grapefruit import regulation.**  
(a) \* \* \*

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
Seedless, except red .....	On and after 9/01/94 .....	U.S. No. 1 .....	3 <sup>5</sup> / <sub>16</sub>

\* \* \* \* \*

Dated: April 1, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9-7822 Filed 4-6-09; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Parts 1421 and 1434**

**RIN 0560-AH87**

**Marketing Assistance Loans and Loan Deficiency Payments**

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

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) is revising regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to administer the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) programs for wheat, feed grains, soybeans, other oilseeds, peanuts, pulse crops, honey, wool and mohair. The 2008 Farm Bill generally extends the

existing programs with some changes that are implemented in this rule. The amendments in this rule will add large chickpeas, beginning with the 2009 crop year, to the list of pulse crops eligible for assistance and provide separate rates for long and medium grain rice beginning with the 2008 crop year. The addition of large chickpeas may increase the number of farmers and ranchers who may receive FSA and CCC program benefits. The amendments will also, in addition, to other amendments to the old rule and clarifications, allow producers to store collateral in Federally and State-licensed warehouses that do not have a CCC storage agreement, which may reduce redundant licensing costs for warehouse operators while allowing producers a greater choice of warehouses.

**DATES:** *Effective Date:* April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jose R. Gonzalez, Program Manager, Marketing Assistance Loans and Loan Deficiency Payment Programs or Tonye B. Gross, Program Manager, Peanut Program, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC 20250-0512; telephone (202) 690-2534; or (202) 720-4319, facsimile (202) 690-3307; e-mails: [Jose.Gonzalez@wdc.usda.gov](mailto:Jose.Gonzalez@wdc.usda.gov) or

[Tonye.Gross@wdc.usda.gov](mailto:Tonye.Gross@wdc.usda.gov). Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:****Background**

The 2008 Farm Bill extends MAL and LDP programs for the 2008 through 2012 crop years. The 2008 Farm Bill generally extends the existing programs, with some minor changes that are implemented in this rule. In some cases, the 2008 Farm Bill gives the Secretary discretion to select among different policy options; this rule implements such discretionary changes. This rule also makes numerous housekeeping changes to make administrative improvements, correct typographical errors, remove expired regulations, and improve organization.

Producers of eligible commodities that are eligible for loans can request MALs or LDPs on their commodities. MALs and LDPs are available to eligible producers beginning with harvest or shearing season and extending through the marketing year. MALs are 9-month loans with the commodity pledged as collateral for the loan. MALs and LDPs must be requested on or before the final