

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 905**

[Docket No. FV05-905-2 FIR]

**Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying Procedures and Establishing Regulations To Limit Shipments of Small Sizes of Red Seedless Grapefruit****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule limiting the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market and changing the procedures used for this purpose under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule continues in effect the action modifying the way a handler's average week is determined if crop conditions limit shipments from any of the three prior seasons. However, this final rule amends the interim final rule by removing the weekly percentages established for the first 22 weeks of the 2005-2006 season which began September 19, 2005, while maintaining the reporting requirement for small-sized red seedless grapefruit. The Committee voted to remove the weekly percentages following the crop losses from Hurricane Wilma. This action should provide more red seedless grapefruit for shipment to the fresh fruit market.

**DATES:** *Effective Date:* May 5, 2006.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, 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.

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@usda.gov](mailto:Jay.Guerber@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."

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.

This rule finalizes, with changes, an interim final rule published in the **Federal Register** on September 14, 2005 (70 FR 54235). That rule modified the procedures used to limit the volume of sizes 48 (3<sup>9</sup>/<sub>16</sub> inches minimum diameter) and 56 (3<sup>5</sup>/<sub>16</sub> inches minimum diameter) red seedless grapefruit entering the fresh market under the order. It provided that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be substituted in the three-season average. It also instituted weekly percentages for the first 22 weeks of the 2005-2006 season beginning September 19, 2005. The Committee unanimously recommended these actions at a meeting held on May 10, 2005.

This final rule continues in effect the action modifying the way a handler's average week is determined if crop conditions limit shipments from any of the three prior seasons. However, this final rule amends the interim final rule by removing the weekly percentages established for the first 22 weeks of the 2005-2006 season which began September 19, 2005. At a meeting held November 3, 2005, the Committee voted 11 in favor and 7 opposed to remove the weekly percentages following the crop losses sustained from Hurricane Wilma. Those opposed believed that the percentages should continue in spite of the crop losses. This action provides more red seedless grapefruit for shipment to the fresh fruit market. While the Committee recommended the removal of the weekly percentages, the Committee also voted unanimously to maintain the reporting requirement for small sizes so that it could obtain a clearer picture of market behavior following two consecutive years of crop damage and losses caused by adverse weather.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations specifies procedures for limiting the volume of small red seedless grapefruit entering the fresh market. These procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit can be made available for fresh shipment for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the recommended percentage is applied to each handler's average week to determine the quantity of sizes 48 and 56 red seedless grapefruit the handler may ship. The average week constitutes the prior period specified in § 905.52. Therefore, an average week is calculated for each handler.

Prior to the issuance of the interim final rule, an average week had to be calculated using the immediately preceding three seasons. The interim final rule added provisions to § 905.153 providing that if crop conditions limit shipments from any of the three prior

seasons, a prior season or seasons can be used for computing the three-season average.

An average week is calculated by adding the total red seedless grapefruit shipments by a handler during the 33-week period beginning the third Monday in September for the immediately preceding three seasons. This total was divided by three to establish an average season, and then divided by the 33 weeks in a season to derive the average week. When the Committee utilizes the provisions of § 905.153 and establishes percentages for the regulatory period, a handler's average week is multiplied by the applicable percentage to establish that handler's allotment for shipping small red seedless grapefruit during that particular week.

In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The official USDA crop estimate for the 2004–05 season reflected a 69 percent decrease from the previous season's estimate. Fresh shipments of red grapefruit for the 2004–05 season were reduced by more than 63 percent in comparison to the 2003–04 season. Consequently, the percentage of size regulation was not utilized for the 2004–05 season.

The Committee met May 10, 2005, to consider implementing a percentage of size regulation for red seedless grapefruit for the 2005–06 season. During its discussions, concerns were raised regarding the impact of the 2004–05 season when calculating a handler's average week. Most handlers' shipments reflected a significant decline in volume for the 2004–05 season, with some handlers shipping no volume at all due to the damage sustained by their packinghouses from the storms. The Committee believes using production figures from a season in which adverse crop conditions caused a reduction in the amount of fruit produced would distort the accuracy of a handler's average shipments. Committee members agreed including the 2004–05 season in the calculation of a handler's average week would result in averages that were not reflective of a handler's average shipments.

When a handler is fairly consistent in the amount of fruit shipped each season, one season of decreased volume has the potential to drastically reduce their shipment average. With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week on which the percentage of size regulation is based.

This in turn would decrease a handler's allotment of small grapefruit sizes.

Including the 2004–05 season in base calculations would have reduced the total base available to the industry by more than 20 percent. However, the impact on individual handlers could have been as great as reducing their base by a third. Therefore, the Committee voted unanimously to change § 905.153 to exclude the 2004–05 season when calculating a handler's average week for the 2005–06 regulation season.

To accommodate this recommendation and provide a method to handle similar situations should they occur during future seasons, this rule amends § 905.153 to provide that should shipments from any or all of the immediately preceding three seasons be limited because of crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. Under this change, the Committee will meet prior to the issuance of a percentage size regulation and determine which seasons are to be used to calculate a handler's average week. This change gives the Committee some additional flexibility to account for adverse crop conditions and assists in providing an average reflective of a handler's normal shipments.

The interim final rule also established limits on the volume of sizes 48 ( $3\frac{3}{16}$  inches minimum diameter) and 56 ( $3\frac{5}{16}$  inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2005–06 season. The rule established weekly percentages at 35 percent for the first six weeks (September 19, 2005 through October 30, 2005), and 25 percent for weeks seven through 22 (October 31, 2005 through February 19, 2006). The Committee unanimously recommended this action at its May 10, 2005, meeting. This action is similar to those taken in previous seasons.

In making its recommendation, the Committee had taken into account an anticipated reduction in shipments due to the lingering effects from the hurricanes the industry experienced during the 2004–05 season. However, in October 2005, the industry experienced additional crop loss due to the effects of Hurricane Wilma. Shipments of red seedless grapefruit for 2005–06 are now estimated to be 10.5 million cartons, down from the 17 million originally estimated for the season. Further, the new estimate is close to 12 million cartons under shipments for the 2003–04 season, the most recent season not impacted by hurricanes.

At its November 3, 2005, meeting, the Committee discussed the percentage of size rule which went into effect on September 19, 2005. The percentage of size regulation helps reduce the detrimental market effects of small-sized red seedless grapefruit over-supplies. With the substantial reduction of the red seedless grapefruit crop due to the impact of the hurricanes, the Committee believes that a percentage size regulation for 2005–06 is not needed. In fact, the Committee believes there may be an insufficient amount of fruit to supply demand. Because of the impact of the storms, there are less large-sized red seedless grapefruit available for the 2005–06 season, so more of the smaller sizes will be needed to supply consumer demand. Consequently, the reasons for regulating the amount of small red seedless grapefruit entering the fresh market during the 2005–06 season are no longer applicable.

As a result, the Committee recommended removing the weekly percentages set for the 22 weeks beginning September 19, 2005 and ending February 19, 2006. Section 905.350 has been modified accordingly.

However, during the discussion of the weekly percentages, interest was expressed in support of maintaining the reporting requirement portion of the regulation during the 2005–06 season. Committee members agreed that continuing to collect shipping data on small sizes will provide useful information. This information can be used by handlers in making marketing decisions. Even though there is a reduced volume of red seedless grapefruit to supply the market, flooding the market with smaller sizes could still reduce the over all pricing of red grapefruit. Knowing the volume of small sizes shipped may assist handlers in making decisions that prevent an oversupply of small sizes of red grapefruit. Such decisions may help stabilize the pricing for all red grapefruit during the current season.

Having access to this shipping information will also assist the Committee in maintaining yearly statistical information on small sizes. The Committee believes this information will be useful when considering establishing future percentage of size regulation. Knowing the volume of small sizes shipped during the 2005–06 season and its market impact may also help the Committee when considering implementing percentage size regulation during other crop reduced years. Therefore, the Committee recommended maintaining the reporting requirement for small sizes for the 2005–06 season

even though percentage size regulation has been discontinued. No changes to any provisions are needed to continue these reports for the remainder of the 2005–06 shipping season.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

#### 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, 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 75 handlers of Florida grapefruit who are subject to regulation under the marketing order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2003–04 season was approximately \$7.58 per ⅓-bushel carton, and total fresh shipments for the 2003–04 season are estimated at 24.7 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 80 percent of the grapefruit handlers could be considered small businesses under the SBA definition. Therefore, the majority of Florida grapefruit handlers may be

classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

This rule finalizes, with changes, an interim final rule published in the **Federal Register** on September 14, 2005 (70 FR 54235). This rule continues in effect the action changing the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by modifying the way a handler's average week is determined. The change provides that if crop conditions limit shipments from any of the immediately preceding three seasons, a prior season or seasons can be used for the three-season average. In addition, this final rule amends the interim final rule by removing the weekly percentages established under the provisions of § 905.153 for the first 22 weeks of the 2005–2006 season which began September 19, 2005, but maintains the reporting requirement for small sized red seedless grapefruit. This rule revises the provisions of §§ 905.153 and 905.350. Authority for these actions is provided in § 905.52. In a vote of 11 in favor and 7 opposed, and in a unanimous vote, the Committee voted to remove the weekly percentages and to maintain the reporting requirement, respectively, at a meeting on November 3, 2005. Those opposed to discontinuing the percentage size regulation believed that the regulation should be continued even though the crop was significantly reduced by adverse weather. Those in favor believed that the crop was going to be so small that every acceptable piece of fruit was needed to meet market needs.

The first action in this rule revises the procedures in § 905.153 used in implementing percentage size regulations for small red seedless grapefruit under the order. These procedures will be applied uniformly for all handlers regardless of size. This action is not expected to decrease the overall consumption of red seedless grapefruit or result in any additional costs for the industry.

Prior to this change, a handler's average week, which is used as a base during percentage of size regulation, was calculated using the immediately preceding three seasons. This change provides that should shipments from any or all of the three prior seasons be limited because of adverse crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. This change provides the Committee with some additional flexibility to account for adverse crop conditions and assists in providing an

average reflective of a handler's normal shipments.

Using shipment figures from a season where adverse crop conditions reduced the amount of fruit shipped would distort the accuracy of a handler's average shipments. In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes, reducing the official USDA crop estimate by 69 percent from the previous season. Most handlers' shipments reflected a significant decline in volume, with some handlers shipping no volume at all due to the damage sustained by their packinghouses from the adverse weather.

With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week, decreasing a handler's allotment of small size. Including the 2004–05 season in base calculations for the 2005–06 season would reduce the total industry base available by more than 20 percent, with the possible reduction for individual handlers being as much as a third.

Consequently, this change allows the Committee to provide additional allotment in seasons following years where the crop was reduced by adverse weather conditions. It allows the Committee to exclude those seasons, thus, providing an average week that more closely reflects a handler's shipments and makes additional allotment available.

In October 2005, the grapefruit industry suffered severe crop damage from the impact of Hurricane Wilma. The Committee had taken into account an anticipated reduction in shipments due to the lingering effects from the hurricanes the industry experienced during the 2004–05 season. However, following Hurricane Wilma, shipments of red seedless grapefruit for 2005–06 are now estimated to be 10.5 million cartons, down from the 17 million originally estimated for the season. Further, the new estimate is close to 12 million cartons under shipments for the 2003–04 season, the most recent season not impacted by hurricanes. With the substantial reduction in the red seedless grapefruit crop due to the impact of the hurricanes, the Committee believes a percentage size regulation for 2005–06 is not needed. Consequently, the Committee voted to remove the weekly percentages. This action will not create any additional costs for growers or handlers.

While voting to remove the weekly percentages, Committee members agreed that continuing to collect shipping data

on small sizes will provide useful information. The information can be used by handlers in making marketing decisions, and may help stabilize the pricing for all red seedless grapefruit. Also, having access to this shipping information will assist the Committee in maintaining yearly statistical information on small sizes. The Committee believes this information will be useful when considering establishing future percentage of size regulation. Knowing the volume of small sizes shipped during the 2005–06 season and its market impact may also help the Committee when considering the implementation of percentage size regulation during other crop reduced years. Consequently, the Committee recommended maintaining the reporting requirement for small sizes for the remainder of the 2005–06 season. As individual handlers are already accustomed to reporting this information, continuing to report it will not create any additional costs on handlers.

The Committee considered several alternatives when discussing these actions. At the May 10, 2005, meeting, one alternative discussed was maintaining the way a handler's average week was calculated using the immediately preceding three seasons. The Committee believes including numbers from the 2004–05 season would result in averages unreflective of a handler's shipments. Therefore, this alternative was rejected. The Committee also considered not recommending percentage of size regulation for the 2005–06 season. However, the Committee agreed percentage of size regulation should be established at the levels recommended and then be revisited throughout the season as more information became available. Therefore, this alternative was also rejected. At the November 3, 2005, meeting, the Committee considered maintaining the percentages at their current level, or relaxing the percentages to allow for the shipment of more small sizes. However, considering the size of the remaining crop following the damage sustained from Hurricane Wilma, the Committee rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sectors.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meetings were 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 May 10, 2005, and November 3, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 14, 2005. Copies of the rule were mailed by the Committee's staff to all Committee members and Florida citrus handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 30-day comment period which ended October 14, 2005. One comment was received.

The commenter raised concerns about fair trade for consumers and restraints of trade in general. However, the Agricultural Marketing Agreement Act of 1937 and the order provisions themselves provide authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. The comment has been noted. The Committee has recommended removing the weekly percentages established for the first 22 weeks of the 2005–06 season, and this action implements that recommendation. Therefore, no changes will be made as a result of this comment.

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/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, with a change, as published in the **Federal Register** (70 FR 54235, September 14, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 905

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

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 70 FR 54235 on September 14, 2005, is adopted as a final rule with the following change:

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

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

Authority: 7 U.S.C. 601–674.

#### § 905.350 [Removed and reserved]

■ 2. Section 905.350 is removed and reserved.

Dated: March 30, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3237 Filed 4–4–06; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV06–922–1 IFR]

#### Apricots Grown in Designated Counties in Washington; Temporary Suspension of Container Regulations

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

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

**SUMMARY:** This rule suspends the container regulations prescribed under the Washington apricot marketing order for the 2006 shipping season only. The marketing order regulates the handling of fresh apricots grown in designated counties in the State of Washington, and is administered locally by the Washington Apricot Marketing Committee (Committee). This relaxation of the regulations provides the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or