forth, will tend to effectuate the declared policy of the Act.

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 good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place before September 20, 2004, to cover as many shipments during the 2004–05 season as possible. Also, growers can begin making plans on how to utilize the exemption. In addition, growers and handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided for in this rule and any comments received will be considered prior to finalization.

List of Subjects in 7 CFR Part 905

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

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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.

§ 905.149 [Amended]

■ 2. Section 905.149 is amended by:

■ A. Removing in paragraph (d) ''July 31, 2004'' and adding the words ''the end of the fiscal period'' in its place.

■ B. Removing paragraph (f)(3) and redesignating paragraphs (f)(4), (f)(5), and (f)(6), as paragraphs (f)(3), (f)(4), and (f)(5), respectively.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–18614 Filed 8–13–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule limits the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2004–05 season by establishing weekly percentages beginning September 20, 2004. This action supplies enough small red seedless grapefruit without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

DATES: Effective August 17, 2004; comments received by September 15, 2004 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, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; 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*.

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 marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (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 the 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 limits the volume of small red seedless grapefruit entering the fresh market. This rule restricts the volume of sizes 48 and 56 fresh red seedless grapefruit shipped during the first 22 weeks of the 2004–05 season by establishing a weekly percentage for each week, beginning September 20, 2004. This rule supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This action should help stabilize the market and improve grower returns.

A typical season runs from September through June. It can run longer if there is a strong demand for fresh grapefruit. During the first 22 weeks of a typical season there is an oversupply of small red seedless grapefruit and a reduced demand for such fruit. Later in the season, there is a greater demand for smaller sizes. As discussed later in more detail, this action is intended to stabilize the early season (22-week) supply of small red seedless grapefruit and to help improve the prices received by producers. In the absence of this action, producer prices may be lower than their cost of production.

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 provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels 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 quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. In past seasons, handlers could calculate the total volume of sizes 48 and 56 they could ship in a regulated week by taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons. However, under a separate interim final rule, USDA is changing the number of seasons used to determine a handler's average week from the five previous seasons to the three previous seasons. This interim final rule also appears in this issue of the **Federal Register**.

This interim final rule limits the volume of sizes 48 (3–9/16 inches minimum diameter) and 56 (3–5/16 inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2004–05 season. This rule establishes weekly percentages at 45 percent for the first three weeks (September 20, 2004 through October 10, 2004), 36 percent for weeks 4 through 18 (October 11, 2004 through January 23, 2005), 40 percent for weeks 19 and 20 (January 23, 2005 through February 6, 2005), and 45 percent for weeks 21 and 22 (February 7, 2005 through February 20, 2005). The Committee recommended this action unanimously at a meeting on June 15, 2004. This action is similar to those taken the previous seven seasons.

The Committee believes that the over shipment of smaller-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1⅗ bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes that the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for the larger, more profitable sizes would increase. Consequently, in 1996, the Committee recommended changing their rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks of the 2001–02, 2002–03, and the 2003–04 seasons. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation. Examples of these positive changes follow.

The Committee believes that for the 2004–05 season small-sized red seedless grapefruit would again negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000-carton level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted to utilize the provisions of § 905.153 and establish percentage of size regulation for each week of the 22 week regulatory period for the 2004–05 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. At the meeting, the Committee referenced the results of a study commissioned to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled "An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule," dated July 1, 2003, evaluated the effectiveness of past percentage of size regulations.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the last seven years compared to $5.83 for the three years prior to using percentage of size regulation. The Barber study shows that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $4.86 for the seasons 1998–99 through 2002–03 with percentage of size regulation compared to $3.08 for the three years prior to regulation.

The University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2002–2003 season. The cost to produce grapefruit for the fresh market was estimated at $1,072.54 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production ranges from 325 boxes per acre to 525 boxes per acre and has averaged around 417 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.55 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1998–99 through 2002–03, the on-tree value has averaged $2.63 per box for red grapefruit, which is just above the estimated $2.55 per box break-even level.

Small growers have struggled the last ten seasons to receive returns near the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals in establishing percentage of size regulation was to help maintain the price differential between the prices for larger sizes and those for smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. For 2003–04, the f.o.b. price for a size 27 averaged $12.38 per carton in October 2003. This compares to an average f.o.b. price of around $6.38 per carton for a size 56 during the same period. In the three years before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three years before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the seven years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.51 at the end of October, $3.83 in mid-December, and remained at around $3.36 the first week in May.

The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), these margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit size 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last seven seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 80 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited affect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of past regulations, there are other circumstances warranting the consideration of establishing percentage of size regulation. For the four seasons, 1999–2000, 2000–01, 2001–02, and 2002–03 the percentage of the remaining crop represented by small sizes in February averaged around 45 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These five seasons, 1999–2000 through 2003–04, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98. For the seven seasons prior to the 2002–03 season there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. For the 2002–03 season, grapefruit sized larger than in the previous seasons and small sizes were not as dominant a factor. However, the 2003–04 season red grapefruit produced a greater number of sizes 48 and 56 red grapefruit than anticipated. The September official measurement of red seedless grapefruit indicated that 91 pieces of grapefruit were required for a box. The November measurements indicated that it would take 100 pieces of grapefruit to make a box. Currently, it is unclear how the 2004–05 crop will size. It is possible that the 2004–05 crop may produce the volume of small sizes represented in the majority of past seasons, making an even greater supply of small-sized fruit available for market.

European and Asian markets also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. The increase in the value of currency in these markets compared to the dollar resulted in more shipments of smaller-sized red seedless grapefruit to these markets. However, a reduction in shipments to these areas could occur during the coming season if market conditions change. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 45 percent of red seedless grapefruit was used for processing in 2002–03, with the majority being squeezed for juice. However, this outlet offers limited returns and is currently not profitable. Of the last seven years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. Returns for 2002–03 processed red seedless grapefruit averaged a negative $0.68 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1998 through 2003, the differential between fresh prices and processed prices has averaged $4.43 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

Statistics from the Florida Department of Citrus show there is currently a 42-week inventory of red seedless grapefruit juice from last season. By the start of the season, it is projected that over 36 weeks worth of juice will remain in inventory. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2004–05 season will most likely mirror prices from past seasons and remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, 2000–01, and 2001–02 had an average economic abandonment of two million boxes or more of red seedless grapefruit. Data available for the 2002–03 season is preliminary, however, it is likely some economic abandonment did occur.

Economic abandonment and prices falling below the cost of production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has a positive impact on price and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the last seven seasons has been effective and that problems successfully addressed by percentage of size regulation will return without regulation. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2004–05 season. The Committee recommended establishing weekly percentages at 45 percent for the first three weeks, 36 percent for weeks 4 through 18, 40 percent for weeks 19 and 20, and 45 percent for weeks 21 and 22.

The Committee considered the percentages set last year as a basis for discussing percentages for the 2004–05 season. They believe the percentages set last year worked well, and decided to make their initial recommendation for each of the 22 weeks at similar levels. There was a need to increase percentages in the final weeks of regulation for 2003–04. Consequently, the committee recommended increased percentages for the last few weeks in 2004–05 in the event the same conditions occur. Committee members believed setting last season's percentages higher than the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages. The first three weeks are set at 45 percent because it is likely there will only be a limited volume shipped. In the last five seasons, total shipments of red seedless grapefruit have only exceeded 250,000 cartons once in the first three weeks of the season.

Setting weekly percentages at 36 percent for the majority of weeks provides a total allotment of 249,294 cartons (36 percent of the total industry base of 653,424 cartons) per week. This will help hold shipments of sizes 48 and 56 red seedless grapefruit near the 250,000-carton level for the greater part of the season. The increase to 40 percent for weeks 19 and 20 and 45 percent for weeks 21 and 22 offers a little more allotment, provides some transition to the period without regulation and helps to prevent the dumping of small sizes following the end of regulation. The Committee believes these percentages provide some flexibility while holding weekly shipments of sizes 48 and 56 close to the 250,000-carton mark.

More information helpful in determining the appropriate weekly percentages will be available after August. At the time of the June meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. Further, the first reports on how the crop is sizing will not be available until after September. Consequently, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant.

The Committee recognized they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. This will help the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

Therefore, this rule establishes weekly percentages at 45 percent for the first three weeks, 36 percent for weeks 4 through 18, 40 percent for weeks 19 and 20, and 45 percent for weeks 21 and 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period begins the third Monday in September, September 20, 2004. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides the allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

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.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the 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 $5,000,000, 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 4/5-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 SBA's 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.

The over shipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values due to the production of red seedless grapefruit in excess of demand. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2004–05 season by establishing weekly percentages for each of the 22 weeks, beginning September 20, 2004. This rule sets the weekly percentages at 45 percent for weeks 1, 2, and 3, 36 percent for week 4 through week 18, and at 40 percent for weeks 19 and 20, and 45 percent for weeks 21 and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This action supplies enough small red seedless grapefruit, without saturating all markets with small sizes. This action will help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action at a meeting on June 15, 2004.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates spot picking would only fractionally increase harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an estimated average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments. Approximately 314 loans and transfers were utilized last season. Statistics for 2003–04 show that, in only 3 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the 2004–05 season set at approximately the same levels as last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2004–05 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation than without regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, to an average f.o.b. price of $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the last seven years compared to $5.83 for the three prior years to using the percentage of size regulation. The Barber study estimates that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $4.86 for the seasons 1998–99 through 2002–03 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last nine seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The Barber study estimates that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per 4⁄5-bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. With supply in excess of demand, this rule is not expected to impact consumer prices or demand. The benefits of this rule are expected to be available to all red seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing this action. The Committee discussed recommending percentages for only the first few weeks and meeting in the fall to recommend the percentages for the remaining weeks. This option was rejected as most members wished to know their volumes for the entire season. The Committee also believes its recommendations on percentages for all 22 weeks have been effective. The Committee also discussed setting higher percentages for the last few weeks of regulation. The Committee agreed that the percentages would be reexamined when more complete data was available and changed if necessary. The Red Grapefruit subcommittee would meet during the 2004–05 season to examine the rule and the percentages, and could recommend adjustments at that time. Therefore, this alternative was also rejected.

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.

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).

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 on all issues. Like all Committee meetings, the June 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on 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/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.

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market during the first 22 weeks of the 2004–05 season. 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in place when the regulatory period begins September 20, 2004, and handlers need to consider their allotment and how best to service their customers; (2) the industry has been discussing this issue for some time, and the Committee has kept the industry well informed; (3) this action has been widely discussed at various industry and association meetings, and interested persons have had time to determine and express their positions; (4) this action is similar to those recommended in previous seasons; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. A comment period of 30 days is appropriate because it will allow for any needed intra-seasonal changes to be made in a timely manner.

List of Subjects in 7 CFR Part 905

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

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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.

■ 2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks, are as follows:

Week	Weekly percentage
(a) 9/20/04 through 9/26/04	45
(b) 9/27/04 through 10/3/04	45
(c) 10/4/04 through 10/10/04	45
(d) 10/11/04 through 10/17/04	36
(e) 10/18/04 through 10/24/04	36
(f) 10/25/04 through 10/31/04	36
(g) 11/1/04 through 11/7/04	36
(h) 11/8/04 through 11/14/04	36
(i) 11/15/04 through 11/21/04	36
(j) 11/22/04 through 11/28/04	36
(k) 11/29/04 through 12/5/04	36
(l) 12/6/04 through 12/12/04	36
(m) 12/13/04 through 12/19/04	36
(n) 12/20/04 through 12/26/04	36
(o) 12/27/04 through 1/2/05	36
(p) 1/3/05 through 1/9/05	36
(q) 1/10/05 through 1/16/05	36
(r) 1/17/05 through 1/23/05	36
(s) 1/24/05 through 1/30/05	40
(t) 1/31/05 through 2/6/05	40
(u) 2/7/05 through 2/13/05	45
(v) 2/14/05 through 2/20/05	45

Dated: August 10, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–18607 Filed 8–13–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–5 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying the Procedures Used To Limit the Volume of Small Red Seedless Grapefruit Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market 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 changes the way a handler's average week is calculated when quantities of small red seedless grapefruit are regulated by adjusting the prior period used from five preceding seasons to three preceding seasons, and the provisions governing overshipments. This action makes the regulation more responsive to industry needs and better allocates base quantities.

DATES: Effective August 17, 2004; comments received by September 15, 2004 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, E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing