which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of certification agreement terms, e.g, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must promptly file an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate, to the satisfaction of the State Conservationist, that the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure the services of a decertified technical service provider during the period of decertification.

(b) *National decertification list.* NRCS will maintain a list of decertified technical service providers. NRCS will remove decertified providers from the list of certified providers. Program participants must not knowingly hire a decertified technical service provider. It is the program participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

Signed in Washington, DC, on November 7, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–5 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule limiting 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 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. 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.

EFFECTIVE DATE: December 23, 2002.

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.''

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 limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. 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.

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. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This 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 continuing in effect the weekly percentages established for the first 22 weeks of the 2002–03 season. This rule establishes weekly percentages at 45 percent for weeks 1 and 2 (September 16 through September 29), 35 percent for weeks 3 through 19 (September 30, 2002 through January 26, 2003), and 40 percent for weeks 20, 21, and 22 (January 27 through February 16). The Committee recommended this action by a vote of 14 in favor and 2 against at a meeting on May 22, 2002.

The Committee believes 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 past four seasons, the volume of small sizes available throughout the season has been considerably larger than in past seasons. The smaller sizes have represented a larger portion of the crop at the beginning of the season and this trend has continued throughout the season. The fruit has not been sizing well. This means a greater number of small sizes are available later in the season. The percentage of total available volume represented by small sizes has been higher for nearly every month of the season when compared to the same months in previous seasons. This has exacerbated the problems stemming from the oversupply of small sizes and increased the number of weeks of a season impacted.

For the last three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February has averaged around 53 percent. This compares to an average of 31 percent for the same month for the seasons 1995–96 through 1997–98. In fact, the last three seasons have 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 last seven seasons there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. This is most dramatically evidenced by the 72 percent increase in small sizes as a percentage of the overall crop from February 1996 to February 2001.

The volume of small-sized red seedless grapefruit available in December, January, and February for the 1999–2000, 2000–01, and 2001–02 seasons were comparable or exceeded the volume available in October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons. The following chart shows the volume of sizes 48 and smaller red seedless grapefruit available for these months as a percentage of the total crop.

SIZES 48 AND SMALLER AS A PERCENTAGE OF TOTAL CROP

	95–96	96–97	97–98		99–00	00–01	01–02
October	43%	62%	73%	December	58%	56%	64%
November	34%	56%	61%	January	49%	54%	60%
December	30%	51%	52%	February	50%	53%	56%

The chart shows the percentage of the crop represented by small sizes increasing fairly substantially beginning as early as the 1996–97 season. It was following the 1995–96 season that the Committee began its initial discussions regarding the need to control the volume of small-sized red seedless grapefruit entering the fresh market. Percentage of size regulation was first used to control the volume of small sizes during the first 11 weeks of the 1997–98 season.

The Committee recognized that small sizes were a problem at those volume levels for the months of October through December for the 1995–96, 1996–97, and 1997–98 seasons. Having comparable or greater volumes of small sizes available during the early and midseason also represents a problem for the industry.

For the 2002–03 season, the Committee believes there will continue to be a surplus of red seedless grapefruit. The Committee believes for the 2002–03 season fruit size will continue to follow the trend toward smaller sizes as seen in the past few years and will have an abundant number of small-sized fruit. 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 of the 22 weeks of the regulatory period for the 2002–03 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. The Committee believes the over shipment of smaller-sized red seedless grapefruit contributes to poor returns for growers and lower prices. The Committee has successfully used the provisions of § 905.153 to address these problems, 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 season. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

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 (1 3/5 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 (UF–IFAS) 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 percentage of size regulation has been effective in stabilizing prices, both f.o.b. and on-tree. 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 five seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.03 per carton in October, to an average f.o.b. price of $7.01 per carton in December, and remained at around $6.70 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 $7.00 for the last five years compared to $5.83 for the three prior years.

The University of Florida, Citrus Research and Education Center published an estimated cost of production per acre for the 2000–2001 season. The cost to produce Florida citrus fruit for the fresh market was estimated at $882.25 per acre for the SunRidge area, or the interior of the State, $907.72 per acre for the Gulf production area, and $974.46 per acre for the Indian River area, or the Atlantic coast region. Using an average of these estimates, it cost approximately $921 per acre to cultivate citrus for the fresh market in 2000–2001. This average represents a somewhat lower cost of production than what most growers of red seedless grapefruit experience because a major share of production is in the Indian River area.

During the past five seasons, red seedless grapefruit production has averaged around 409 boxes per acre. Based on the cost of production above, and the number for 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 $2.25 per box in order to break even. For the three seasons prior to the use of percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1997–98 through 2000–01, the on-tree value averaged $2.36 per box.

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 $4.30 for the seasons 1997–98 through 2000–01 with percentage of size regulation compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, these higher returns mean the difference between profit and loss.

Another benefit of percentage of size regulation has been in maintaining higher prices for the larger-sized fruit. At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is $4 to $10 more a carton than for the smaller sizes. The last three seasons, the f.o.b. price for a size 27 has averaged around $13.50 per carton in October. This compares to an average f.o.b. price of around $5.80 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 small 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. However, by mid-December the price for the larger-size had dropped to within $1.68 of the price for the smaller-size fruit. In the five years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.44 at the end of October, was $3.87 in mid-December, and remained at $3.49 the first week in April.

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. According to the Economic Analysis and Program Planning Branch (EAPP), USDA, 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.

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 important 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 Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, the Committee considered how shipments of small sizes had effected the market. 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 are maintained at around or below 250,000 cartons a week, prices will stabilize and demand for larger, more profitable sizes will increase.

The last five seasons during the weeks regulated by a percentage of size regulation, the weekly shipments of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for 90 percent of the regulated weeks. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the weeks regulated from the 1995–96 season to the 2000–01 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, also found that 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 registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of previous regulations, there are other surrounding circumstances that warrant the consideration of the establishment of percentage of size regulation. The production area was up until June, suffering through a period of insufficient rainfall. The area received normal to above normal rainfall during the months of June, July, August, and September. However, it is unclear how this will affect the sizing of the crop. In previous seasons, when insufficient rainfall was followed by normal rainfall, a large volume of small-sized red seedless grapefruit was produced.

Problems with the European and Asian markets could also impact the volume of small sizes available. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. However, the reduction in shipments to these areas experienced during the last few years is expected to continue during the current season. This could result in a greater amount of small sizes for remaining markets to absorb.

The condition of the market for processed grapefruit is also a consideration. Approximately 52 percent of red seedless grapefruit on average is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and currently is not profitable. Statistics from the Florida Department of Citrus (FDOC) projected that over 32 weeks worth of red grapefruit juice would remain in inventory at the start of the season. This is expected to have an additional negative impact on returns.

For the 2000–2001 season, on-tree returns were negative for processed red seedless grapefruit. During the last five years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit that exceeded one dollar 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. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

A fair percentage of red seedless grapefruit shipped for processing tend toward the smaller sizes. When returns for processed red grapefruit are low, an additional volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2002–03 season will most likely mirror prices from past seasons and remain below a dollar. This could force an additional volume of small sizes toward the fresh market.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment of grapefruit. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit. Complete data for the 2001–02 season is not yet available. However, it is likely that some economic abandonment did occur last season. Economic abandonment and prices falling below the cost production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has an impact and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. These considerations further support the need to control the volume of small sizes during the season to prevent the volume of small sizes from overwhelming all markets.

The Committee believes the problems associated with an uncontrolled volume of small sizes entering the market will recur without regulation and that establishing weekly percentages during the last five seasons has proven successful. Consequently, the Committee recommended weekly percentages be established for all 22 weeks of the regulatory period, beginning at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and 40 percent for weeks 20, 21, and 22.

The Committee considered the percentages set last year as a basis for discussing this year's percentages. Committee members believed relaxing last season's percentages from the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes. Also, while the Committee has in past seasons initially voted to set weekly percentages at 25 percent, the Committee has never maintained the percentages at the 25 percent level, but has always relaxed the percentages closer to the start of the season.

Drawing on this experience, the Committee decided to make its initial recommendations for each of the 22 weeks at levels higher than 25 percent. The recommended percentages closely approximate the final percentages recommended last season. The percentages are the same as last season for weeks 1, 2, 3, 19, 21, and 22, represent a 5 percent increase for weeks 4 through 10 and weeks 15 through 18 and for week 20, and represent a 5 percent decrease for weeks 11 through 14. All are within 5 percent of those recommended last season.

More information helpful in determining the appropriate weekly percentages was available after August. At the time of the May 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 issued in October. Further, the first reports on how the crop was sizing were not available until after September. Consequently, the Committee believed it was best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee met again on September 10, 2002, and agreed to maintain the percentages as established.

The Committee recognized that 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.

During deliberations in past seasons, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The Committee considered the 250,000-carton level when recommending the weekly percentages. The first two weeks were set high at 45 percent because it was anticipated that only a limited volume would be shipped. In the last four seasons, shipments of sizes 48 and 56 have never exceeded 250,000 cartons during the first two weeks. Setting weekly percentages at 35 percent for the majority of weeks provides a total available allotment of around 269,150 cartons (35 percent of the total industry base of approximately 769,000 cartons) per week. While this is slightly more than 250,000 cartons, it is unlikely all available allotment will be used each week, and this allows individual handlers some additional flexibility. The increase to 40 percent for the last three weeks is to provide a little more allotment at the end of the regulated period to provide some transition to the period of no regulation and to help 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.

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 the problems successfully addressed by percentage of size regulation the last five seasons 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. Therefore, this rule establishes weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and at 40 percent for weeks 20 through 22. The Committee plans to meet as needed during the 22-week period to ensure that the weekly percentages are at the appropriate levels.

While the recommendation to establish percentage of size regulation was accepted by a majority of Committee members, some raised concerns about export markets and the loan and transfer system. These concerns provided the basis for the two Committee members who opposed the Committee's recommendation.

One area of concern was the impact this regulation may have on exports. One member stated that market share was being lost in Europe to Turkey and Israel. The purpose of this regulation is not to eliminate the marketing of sizes 48 and 56, but rather to prevent the over shipment of such sizes from saturating all markets.

In making its recommendations, the Committee recognized that markets exist for small sizes. That is why they recommended limiting the volume of small sizes instead of eliminating them. The Committee considered the markets available for small sizes and set a weekly percentage sufficient to address these markets. The weekly percentages are set to allow handlers enough volume of small sizes to meet the markets that prefer them, such as the export market, while preventing an oversupply that effects other markets. Also, there are provisions to handle potential allotment shortfalls an individual handler might have. These include loans and transfers, or using the allowances for over shipment.

In terms of exports of red seedless grapefruit, volume the last two seasons has averaged around 13,832,750 cartons according to the Florida Department of Agriculture (FDOA). Based on information available on sizes exported, the last two seasons sizes 48 and 56 have averaged 42 percent of the exports of red seedless grapefruit (FDOA). On average, 53 percent of exports occur after the end of the 22 week regulated period. Industry members have stated that the largest markets for small sizes do not usually start until late January or in February. This would skew the volume of small sizes exported toward the latter part of the season where there are no limitations on small sizes. Consequently, that would mean a greater percent of small sizes are shipped after regulation. Therefore, using the 42 percent figure to calculate the volume of small sizes shipped during the first 22 weeks is probably close or exceeds the actual percentage represented by small sizes for those weeks.

For the 22 weeks of regulation, when total weekly exports were multiplied by 42 percent to estimate the volume of small sizes exported each week, total allotment available during the 22 weeks as established by the percentages in this rule exceeds the calculated weekly volume of small sizes exported during each regulation week. In addition, the higher percentages recommended by the Committee for the last three weeks of the regulatory period will also help provide additional allotment as the major export period begins. Thus, the allotment of small sizes provided under this rule should be sufficient to service export demand for small sizes, allowing Florida to maintain those markets.

In regard to foreign competitors taking markets from Florida, available information indicates that this should not be a significant problem. The UF–IFAS study determined that foreign competition is minimal. It also inferred that even in cases of tightened standards, foreign competitors are not likely to take market share from Florida. Information from the Foreign Agricultural Service, USDA, and the Florida Department of Citrus indicates production and fresh shipments are of limited quantities in both Israel and Turkey. Current statistics show their available volume would significantly limit their ability to consistently impact Florida's market share. Total production of grapefruit in Israel is less than 18 percent of the Florida grapefruit crop while Turkey's is less than 8 percent. Turkey and Israel may have lower transportation costs due to their closer proximity to Europe.

Another concern was the loans and transfers system. One member expressed concern about the fairness of the program and the availability of allotment for loans and transfers. The purpose of loans and transfers is to promote the movement of allotment between those who have allotment but no fruit to those with fruit but no allotment. It is an individual handler's responsibility to try to locate available allotment when they need it. Last season, there were 451 loans and transfers representing 645,386 cartons. Nearly all grapefruit handlers participated in the loan and transfer process last season.

In some weeks, there was more allotment available than in others. However, the purpose of this regulation is to limit the volume of small sizes that are entering the fresh market. The allotment available is calculated using the prior period so that when the Committee considers establishing percentage of size regulation they have a good idea of the total allotment made available each week by establishing different percentages. By allowing loans and transfers, a greater share of the total allotment available each week can be utilized. This allows the actual shipments of small sizes to closely approximate the shipments the Committee believes the market can handle when it recommends weekly percentages. Without loans and transfers there would be less volume available and the regulation would be more restrictive.

After considering the concerns expressed, and the available information, the Committee determined that this rule was needed to regulate shipments of small-sized red seedless grapefruit.

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. A handler's allotment of small sizes is calculated by taking the weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week. This average week is the base for each handler for each of the 22 weeks of the regulatory period. 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 began the third Monday in September, September 16, 2002. Each regulation week begins Monday at 12:00 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.

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 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 2001–02 season was approximately $7.12 per 4/5 bushel carton, and total fresh shipments for the 2001–02 season are estimated at 25.6 million cartons of red grapefruit. Approximately 33 percent of all handlers handled 72 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 66 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. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. This rule sets the weekly percentages at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 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 helps 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 recommended this action on a vote of 14 in favor and 2 opposed at a meeting on May 22, 2002.

The Committee believes there will continue to be an oversupply of red seedless grapefruit and that the volume of small sizes available will continue to be a problem in the 2002–03 season. The Committee also believes that fruit size for the 2002–03 season will continue to follow the trend toward smaller sizes as seen in the past few years and will have an abundant number of small-sized fruit. Consequently, the Committee voted to utilize the provisions of § 905.153 and establish percentage size regulation for each of the 22 weeks of the regulatory period.

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. 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 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 451 loans and transfers were utilized last season. Statistics for 2001–02 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the majority of weeks set slightly higher than for last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2002–03 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size 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 five seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.03 per carton in October, to an average f.o.b. price of $7.01 per carton in December, and remained at around $6.70 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 $7.00 for the last five years compared to $5.83 for the three prior years.

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 $4.30 for the seasons 1997–98 through 2000–01 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher returns mean 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.

Even if this action was 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 to taking this action. One alternative was to establish the weekly percentages at 25 percent for all weeks and adjust the percentages later in the season as was done in previous seasons. This alternative was rejected as the Committee drew on past experiences and sought to provide handlers with specific shipping percentages earlier in the season to allow them greater flexibility in formulating marketing plans in a timely manner.

Another alternative discussed was to provide each handler with the equivalent of one extra week of allotment to use any time during the season and to eliminate loans and transfers. This would have allowed a handler to over-ship any quantity of small sizes up to his extra allotment in one week or divided up through the season. The Committee believed that if prices were at a premium, most handlers would take advantage of these higher prices and ship well over what the market channels could absorb. This alternative was also rejected.

Other alternatives considered centered around setting the weekly percentages at levels different than those recommended. After discussion, the Committee agreed on the percentages established in the rule. Members thought it was best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee recognized that they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. Therefore, these alternative percentages were 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 May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 30-day comment period, which ended October 10, 2002. No comments were received.

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, without change, as published in the **Federal Register** (67 FR 57319, September 10, 2002) 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.

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 57319, September 10, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29533 Filed 11–20–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–3 FIR]

Kiwifruit Grown in California; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which revised pack and container requirements prescribed under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule also continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; 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 Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, 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."

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.

This rule continues in effect container and pack requirements currently prescribed for California kiwifruit under the order. This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule continues in effect revisions to lot stamping