Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys—[Amended]

■ 2. Appendix B to subpart B is amended by removing, under the State of California, ''San Francisco.''

Appendix D to Subpart B of Part 532—[Amended]

■ 3. Appendix D to subpart B is amended for the State of California by removing the wage area listing for San Francisco, California, and revising the wage area listing for Santa Clara, California, to read as follows:

* * * * *

CALIFORNIA

* * * * *

SANTA CLARA

Survey Area

California:
Santa Clara

Area of application. Survey area plus:

California:
Alameda
Contra Costa
San Franciso
San Mateo

* * * * *

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–3 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 2003–04 season by continuing in effect the weekly percentages for each of the 22 weeks, beginning September 15, 2003. 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 15, 2003.

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 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 2003–04 season by establishing a weekly percentage for each of the 22 weeks, beginning September 15, 2003. 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.

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 continues to limit the volume of sizes 48 ($3\frac{9}{16}$ inches minimum diameter) and 56 ($3\frac{5}{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2003–04 season. This rule continues established weekly percentages at 45 percent for weeks 1 and 2 (September 15 through September 28, 2003), 35 percent for weeks 3 through 19 (September 29, 2003, through January 25, 2004), and 40 percent for weeks 20, 21, and 22 (January 26 through February 15, 2004). The Committee recommended this action unanimously at a meeting on July 1, 2003. This action is similar to those taken the previous six seasons.

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 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 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 larger, more profitable sizes would increase.

Consequently, in 1996, the Committee recommended changing its 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 and 2002–03 seasons. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

The Committee believes for the 2003–04 season small-sized red seedless grapefruit will 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 per week 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 of the 22 weeks of the regulatory period for the 2003–04 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 reviewed 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 regulation.

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 six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, $7.06 per carton in December, and remained at around $6.90 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 six years compared to $5.83 for the three years prior to using percentage of size regulation. The Barber study shows that prices for the past six seasons 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 $4.42 for the seasons 1997–98 through 2001–02 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 2001–2002 season. The cost to produce grapefruit for the fresh market was estimated at $1,008.77 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production 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 $2.42 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, 1997–98 through 2001–02, the on-tree value has averaged $2.45 per box for Indian River grapefruit.

Small growers have struggled the last eight 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. 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 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 six years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.43 at the end of October, $3.78 in mid-December, and remained at around $3.10 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 six 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 90 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 effect 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 three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February averaged around 53 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These three seasons, 1999–2000 through 2001–02, 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, while the crop sized well throughout last season, it is unclear how the 2003–04 crop will size. It is possible that the 2003–04 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.

Problems with the European and Asian markets could also impact the volume of small sizes available. 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 upcoming season due to their weak economies. 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 48 percent of red seedless grapefruit is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and is currently not profitable. Of the last six years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 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 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.

Statistics from the Florida Department of Citrus estimated that at the start of the current season over 35 weeks worth of grapefruit juice remained in inventory. Due to available inventories, on-tree prices for processed red seedless grapefruit for the 2003–04 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. Final data for the 2002–03 season will not be published until February 2004. However, it is likely some economic abandonment did occur last season.

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 six 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 2003–04 season. The Committee recommended establishing weekly percentages 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 percentages for the 2003–04 season. They believe the percentages set last year worked well, and decided to make their initial recommendation for each of the 22 weeks at the same levels. 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 two weeks were set at 45 percent because it was likely there would 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 two weeks of the season.

Setting weekly percentages at 35 percent for the majority of weeks provides a total allotment of 252,610 cartons (35 percent of the total industry base of 721,743 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 offers a little more allotment providing 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 at sizes 48 and 56 close to the 250,000-carton mark.

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 continues the 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. 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 began the third Monday in September, September 15, 2003. 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.

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 2002–03 season was approximately $7.24 per 4/5-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 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 75 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 overshipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values. This rule continues to limit the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. 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 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 July 1, 2003.

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 will 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 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 227 loans and transfers were utilized last season. Statistics for 2002–03 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the 2003–04 season set at 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 2003–04 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 six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, to an average f.o.b. price of $7.06 per carton in December, and remained at around $6.90 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 six 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 $4.42 for the seasons 1997–98 through 2001–02 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 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 stated 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. One alternative discussed was changing the way loans and transfers are handled. Another alternative discussed was changing the way allotment base is calculated. The Committee agreed both alternatives should first be thoroughly reviewed by the Regulation Subcommittee to consider options to bring before the full Committee. Therefore, these alternatives were 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.

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

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 July 1, 2003, 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 9, 2003. 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 9, 2003. 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** (68 FR 53015) on September 9, 2003 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 68 FR 53015, September 9, 2003, is adopted as a final rule without change.

Dated: November 7, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–28520 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–4 FIR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

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 increased the assessment rate established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2003–04 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (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 Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders 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. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning on March 1, 2003, and continue until amended, suspended, or terminated. 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. Such 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 to increase the assessment rates established for the committees for the 2003–04 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of nectarines and peaches.