

determined in accordance with this part to be due to CCC will be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 641, 651, 1001, 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(b) All producers on the unit receiving payments under this part will be jointly and severally liable to repay any unearned payments under this part.

§ 1437.20 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for crops, areas, or producers for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with part 780 of this title.

§ 1437.21 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1437.22 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 18 of this title.

§ 1437.23 OMB control numbers.

These regulations amend the information collection requirements previously approved by the Office of Management and Budget ("OMB") under OMB control number 0563-0016.

Chapter IV [AMENDED]

Part 404 [REMOVED]

2. 7 CFR part 404 is removed.

Signed at Washington, D.C., on December 24, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

Signed at Washington, D.C., on December 27, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96-33264 Filed 12-30-96; 8:45 am]

BILLING CODE 3410-05-P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV96-905-2FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds a section to the rules and regulations currently prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule establishes procedures for limiting the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of each season. The committee believes these procedures could be used, when necessary, to help stabilize the market and improve grower returns.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Southeast Marketing Field Office, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or Caroline Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2522-S, Washington, D.C. 20090-6456; telephone: (202) 720-8139, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR Part 905), as amended,

regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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 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 100 handlers subject to regulation under the marketing order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR

121.601) as those whose annual receipts are less than \$5,000,000 and small agricultural producers, are defined as those whose annual receipts are less than \$500,000. The majority of these handlers and producers of citrus grown in Florida may be classified as small entities.

This final rule adds procedures to the rules and regulations sections of the order. It does not establish any volume regulation. Any implementation of these procedures concerning regulation will require further committee action and additional public rulemaking by the Department.

However, if the procedures in this rule were used and volume regulations established, all growers and handlers would be impacted equitably. Before any implementation would occur, the committee would meet and consider any and all economic data available. The goal of this rule is to provide an additional tool, if needed, to help stabilize the price of red grapefruit. In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from an average f.o.b. of \$7.80 per box to an average f.o.b. of \$5.50 per box. On tree prices for fresh red seedless grapefruit have declined steadily from \$9.60 per box during the 1989–90 season, to \$3.45 per box during the 1994–95 season. In many cases, prices during the past two seasons have provided returns less than production costs. This price reduction is forcing many small producers out of business. A stabilized price that returns a fair market value would be beneficial to both small and large producers and handlers.

Therefore, based on this information, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The order provides for the establishment of grade and size requirements for Florida citrus. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, handlers, and consumers, and is designed to increase returns to Florida citrus producers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3⁵/₁₆ inches in diameter).

This rule establishes procedures for limiting the volume of small red seedless grapefruit entering the fresh

market during the first 11 weeks of each season. The red seedless grapefruit season runs from mid-September to May. This rule provides an additional tool under the order to help stabilize the market and improve returns to growers. These changes were recommended by the committee at its meeting on May 24, 1996, by a 10 to 4 vote.

Section 905.52 of the Florida citrus marketing 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 that may be shipped by a handler during a particular week shall be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety. This rule adds § 905.153 to the rules and regulations, establishing a specified prior period and other procedures necessary to limit the volume of small red seedless grapefruit, sizes 48 and 56, entering the fresh market during the first 11 weeks of the season.

Currently, there are no limitations on the amount of size 48 and size 56 red seedless grapefruit that can be shipped to market. This rule in itself does not limit shipments, but outlines procedures to do so if needed. Implementation of these procedures to limit shipments would require further rulemaking.

The committee recommended this rule to address problems currently facing the industry. For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. Fifty-nine percent of red seedless grapefruit is shipped to fresh market channels. There is a processing outlet for grapefruit not sold into the fresh market. The vast majority of processing is squeezing the grapefruit for juice. Because of the properties of the juice of red seedless grapefruit, including problems with color, the processing outlet is limited, and not currently profitable.

Several areas of new plantings in the southern growing region are just beginning to bear fruit. Young trees normally produce mostly small fruit when they first come into production. Florida producers and handlers realize that these new acres will add to the abundance of small sizes of red seedless grapefruit.

The committee believes that to stabilize the market and improve returns

to producers, demand for fresh red seedless grapefruit must be stabilized and increased. One problem contributing to the current state of the market is the excessive number of small sized grapefruit shipped early in the marketing season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period, oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

The committee believes that the overshipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for producers. Based on statistical information from past seasons, there is an indication that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices decline on those and most other sizes of red seedless grapefruit. Thus, even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected.

For the majority of the season, larger sizes return better prices than smaller sizes. If these small grapefruit were allowed to remain on the tree to increase in size and maturity, they could provide greater returns to producers. Delaying the harvest of small sizes may also extend the season, thereby increasing the total volume of fresh shipments and improving producer returns. Without volume regulation, the industry has been unable to limit the shipments of small sizes. The committee believes that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Similar procedures to this rule are already in place for Dancy tangerines under § 905.152. While the committee has not utilized these procedures for several years, they were successfully implemented for several seasons.

Under these procedures, the authority to limit the shipment of sizes 48 and 56 red seedless grapefruit will only be available for the 11-week period from the third Monday in September (week #1) through the first Sunday in December (week #11), hereinafter called the regulatory period. The committee recommended these weeks for regulation because the majority of small sizes are shipped during this period. By the end of the regulatory period, fruit has begun to size naturally, and there are fewer small sizes available.

The committee may recommend that only a certain percentage of size 48 ($3\frac{9}{16}$ minimum diameter in inches) and size 56 ($3\frac{3}{16}$ minimum diameter in inches) red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. Should the committee decide to recommend the limitation of shipments of sizes 48 and 56 red seedless grapefruit, they would meet and recommend to the Secretary a percentage on which to base the amount of sizes 48 and 56 that could be shipped during a particular week or weeks during the regulatory period. The committee realizes that markets for these sizes do exist. Therefore, the percentage set could not be less than 25 percent of the calculated shipment base. These procedures are designed not to eliminate shipments of sizes 48 and 56, but to keep them from saturating the entire market.

Section 905.52 provides that whenever any size limitation restricts the shipment of a portion of a specified size, the quantity of such size that may be shipped by a handler during a particular week shall be established as a percentage of the total shipments of such variety by such handler in such prior period as established by the committee and approved by the Secretary.

This final rule establishes the prior period as an average week within the immediately preceding five seasons. An average week would be calculated as follows. The total red seedless grapefruit shipments by a handler during the 33-week period beginning the third Monday in September and ending the first Sunday in May during the past five seasons would be added and divided by five to establish an average season. This average season is then divided by the 33 weeks in a season to derive the average week. This week is the basis for each shipper for each of the 11 weeks contained in the regulation period.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 65,000 cartons, 45,000 cartons, 80,000 cartons, and 25,000 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 53,000 cartons. The average season would then be divided by 33 weeks to yield an average week, in this case, 1,606 cartons. This would be Handler A's base.

The committee chose to use the past five seasons for the average season to provide the most accurate picture of an average season. The use of an average week helps adjust for variations in growing conditions that may affect

when fruit matures in different seasons and growing areas. The committee believes that this definition of prior period provides each handler with an equitable base from which to establish shipments.

The average week for handlers with less than five previous seasons of shipments is to be calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, if a volume regulation was established before such handlers have shipped any red seedless grapefruit, the new handlers could ship small sizes as a percentage of their total shipments equal to the percentage applied to other handlers' base. Once new handlers have established shipments, the average week would be calculated as an average of the weeks they have shipped during the current season.

To use these new procedures, the committee would meet and recommend a base percentage of sizes 48 and 56 that could enter the fresh market in any week or weeks from the first Monday in September through the first Sunday in December. If approved by the Secretary, this percentage would be applied to each handler's average week of fresh shipments to determine the amount (allocation) of sizes 48 and 56 red grapefruit each handler could ship. Each regulation period would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week.

When a size limitation is recommended to restrict the shipment during a particular week, the committee would compute each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. Such set percentage could vary from week to week, but could not be less than 25 percent. The committee would notify each handler prior to the particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week.

To provide handlers with some flexibility, these procedures provide allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity each week to supply their markets while limiting the impact of small sizes.

During any regulation week for which the Secretary has fixed the percentage of

sizes 48 and 56 red seedless grapefruit, any person who has received an allotment could handle, in addition to their weekly allotment, an amount of size 48 and 56 red seedless grapefruit not to exceed 10 percent of that week's allotment. The quantity of overshipments would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan of allotment, each party would, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party would promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee would confirm in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan.

In considering these procedures, the committee discussed several possible alternatives. One alternative considered was an amendment to the marketing order. The amendment would have changed the language regarding the "prior period" in section 905.52. However, this alternative was rejected because of the time required to amend the order.

The committee also discussed limiting or eliminating only shipments of size 56 grapefruit. However, the committee found that it is important to include both sizes 48 and 56 for this regulation to be effective. Also, the committee did not want to eliminate a size entirely. They realize there is a market for small sizes and wish to allow handlers to take advantage of this market without negatively affecting the market for other sizes.

Other concerns were raised during discussion of these procedures. One committee member questioned whether these procedures would allow him to continue to increase his business. It was explained that this action would only put tools in place to allow the limitation

of just a certain percentage of the smaller sized red seedless grapefruit. A handler would not in any way be limited from shipping any amount of larger sizes. Another concern raised was the impact these procedures would have on harvesting. It was explained again that this rule would just establish procedures. However, if implemented, it would require more selective picking of only the sizes desired, something that many producers are doing already.

After a lengthy discussion, the committee decided that it needs to have available a tool to regulate shipments of small sized red seedless grapefruit early in each marketing season. The committee voted to recommend the establishment of these procedures to provide them with that tool.

The committee reports that it expects that more red seedless grapefruit will be produced in Florida during the 1996-97 season than last season. The committee also expects that supplies of fresh Florida red seedless grapefruit will be adequate to meet consumer demand during the entire 1996-97 season.

This rule does not affect the order provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from grade and size requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from grade and size requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8(e) 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. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

The proposed rule concerning this action was published in the August 28, 1996, Federal Register (61 FR 44187), with a 30-day comment period ending September 27, 1996. Twenty four comments were received, thirteen in favor and seven in opposition to the proposed rule. The thirteen comments in favor were from handlers and growers. In addition, four comments were received from handlers and growers after the closing date for comments. These comments were in favor of the proposed rule and raised no

new issues for those received prior to the close of the comment period.

In his comment, the manager of the committee stated that the committee went to great lengths to ensure that the entire Florida citrus industry was included in the development of the proposed rule. At all times the interests of consumers of fresh Florida grapefruit were foremost.

Ten commenters supporting this action mentioned that past history has shown that the overshipment of small sizes early in the season has resulted in reduced prices. They believe the provisions of this rule should be sufficient to address this problem. One commenter stated that this rule, if instituted, would allow the committee to bring the early volume of small size red grapefruit more closely in line with the normal industry shipments occurring later in the season. Historically, it is in the early weeks of a season when shipments of these small size red grapefruit have substantially exceeded 25 percent of total shipments, resulting in market gluts and the collapse of prices.

Ten commenters stated that regulation to control small sizes in the early season would have a stabilizing effect on the market. Several stated that the rule would provide a mechanism to improve orderly marketing of small size red grapefruit during the early season without causing hardships for any growers or handlers.

Nine of the commenters in favor of the regulation mentioned the provision that limits the percentage set to a minimum of 25 percent. Many of these believe that this will prevent excessive limitation, while allowing handlers to service their customers. Several also said that the 25 percent lower limit assures a good flow to market of these small size red grapefruit. Implementing these procedures could hold shipments of small sizes closer to the percentage shipped during the latter part of the season.

In five of the comments supporting the regulation, the regulatory period of eleven weeks was referenced. The commenters believe that the period of regulation contemplated is when the industry has repeatedly experienced overshipment of small sizes. After the first week in December, the movement of smaller fruit becomes more stable, reducing the need for regulation.

In regards to allotment, eight of the comments cited and supported the flexibility the provisions afford handlers to acquire additional allotment when needed. In their comments, they recognized the overshipment provisions, the ability to transfer

allotment, and allotment loans, indicating that handlers should be able to find adequate allotment to meet market demand.

Seven comments in opposition to the proposed rule were received. One of the opposing comments stated that grapefruit should be marketed when ripe. Although grapefruit is a perishable commodity, mature red grapefruit can be stored on the tree and picked as needed to provide the market with a more even distribution of supplies during the season. This on-tree storage feature is particularly valuable early in the season when a large portion of the crop is often mature but small in size. By leaving the fruit on the tree, it can continue to grow to a larger size, and larger sizes usually yield a higher price, thereby increasing returns to growers.

Another of the opposing comments stated that early picking and shipping help avoid losses from weather related problems (frost). A freeze is a possibility in any season. Industry practices and grove location have combined to work to minimize freeze damage and to extend the grapefruit marketing season. The provisions of this rule would not prevent handlers from marketing fruit early. Implementing these procedures would only restrict the movement of small red grapefruit. It is the glut of small red grapefruit that damages the market for all sizes. Based on its analysis, the Economic Analysis Branch, of the Fruit and Vegetable Division, of the AMS, (EAB) has determined that during each of the last three seasons, the on-tree equivalent price for sizes 48 and 56 red Florida grapefruit has dropped below \$1.00 per carton. These low prices also pulled the prices for larger sizes down. With on-tree prices dropping below cost of production, the impact on the industry may be similar to the effects of the freeze.

One opposing comment stated that under this regulation, returns to the packinghouse and grower would be lower, the season would be shortened, and that farm laborers would be dismissed earlier. The committee believes using these procedures could increase returns to growers while providing consumers an adequate supply of the commodity in the marketplace. Implementing these procedures could actually lengthen the season. If the grapefruit remain on the tree longer, they will increase in size and be of greater value later in the season. An extended season would also benefit laborers who would be needed for a longer period of time. The aim of this rule is to establish procedures that may be used to provide steady supplies at reasonable and stable prices, thereby

protecting the interests of growers, packers, workers in the industry, and consumers of red grapefruit.

Several opposing comments were received concerning the rule and the possible loss of market share, particularly in export markets that demand sizes 48 and 56, to other grapefruit growing areas. If the provisions of this rule are implemented, handlers will still be able to ship a percentage of small size grapefruit to those markets that require them and use larger sizes to fill their other markets. The provisions established by this rule would prevent market restrictions below 25 percent. Based on past seasons, even if percentages were established at 25 percent, ample quantities should be available to furnish those markets which demand small sizes.

The purpose of implementing this rule would not be to eliminate small size red grapefruit. It is merely to prevent a surplus of small size red grapefruit from damaging the overall grapefruit market.

Another commenter opposing the rule expressed concern that market share could be lost to Texas. According to the EAB, limiting shipments of small Florida grapefruit would probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and would have higher freight costs to some markets supplied by Florida.

One opposing comment stated that the rule had not been fully explained. The committee has had this rule under advisement since it received industry requests in December 1995. The committee started holding subcommittee meetings in February 1996 and held many informal meetings with industry groups to discuss the proposal. On May 16, 1996, another subcommittee meeting was held, and people who had demonstrated opposition were specifically invited to make comments and get their opinions on record. Throughout the process, the proposal was modified based on questions and concerns of the industry. These changes were shared at industry meetings and through committee mailings.

On May 23, 1996, the committee met and recommended this regulation after much discussion. Several different motions were offered at this meeting. Prior to any vote, the motions were carefully restated, so that members understood the issue they were voting on. All motions advanced were discussed and there was opportunity for questions.

One commenter opposed the method of calculating allotments. He believes

that because he has not shipped much fruit early in past seasons that his allotment will not reflect his true shipments. The committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years from the period from the third Monday in September to the first Sunday the following May should be used for calculation purposes. This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped much grapefruit in the early season. This method of calculation provides a fair allocation of allotment.

This commenter also expressed concern regarding whether his allotment would be enough to cover his customer base. The provisions of this rule provide flexibility through several different options. Handlers have the privilege to transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of overshipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments.

One opposing comment stated that restricting movement of grapefruit could do more harm than good and interfere with the orderly marketing of this product. These procedures are designed to promote orderly marketing. The purpose is to furnish sufficient supplies of red grapefruit to fresh markets early in the season, while avoiding the possible price-depressing effect of saturating the market with small sizes. This is particularly important during the first few months of the season when supplies of small sizes are heaviest. The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices.

Utilizing these procedures will contribute to the Act's objectives of orderly marketing and improving producers' returns. According to EAB, since sizes 48 and 56 red grapefruit are a small part of the total supply of Florida red grapefruit, limiting shipments of these sizes would have only a moderate effect on the total quantity shipped. It may, however, help to prevent the average price for all Florida red grapefruit from being reduced to below the cost of production.

Many opposition comments addressed the proposed rule as if it were in place and implemented. As previously stated, this rule merely establishes procedures. To implement these procedures, the committee would hold public meetings to discuss and recommend a percentage of size regulation to the Secretary. Additional rulemaking would be required, and there would be additional opportunity to comment.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate, and that no changes to the rule are being made in response to the comments.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0094.

After consideration of all relevant material presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, 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.

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

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

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

Authority: 7 U.S.C. 601-674.

2. A new § 905.153 is added to read as follows: § 905.153 Procedure for determining handlers' permitted quantities of red seedless grapefruit when a portion of sizes 48 and 56 of such variety is restricted.

(a) For the purposes of this section, the prior period specified in § 905.52 is hereby established as an average week within the immediately preceding five seasons. Each handler's average week shall be computed by adding the total volume of red seedless grapefruit handled in the immediately preceding five seasons and dividing the total by 165. The average week for handlers with less than five previous seasons of

shipments shall be calculated by adding the total volume of shipments for the seasons they did ship red seedless grapefruit, divide by the number of seasons, divide further by 33. New handlers with no record of shipments could ship size 48 and 56 red seedless grapefruit as a percentage of total shipments equal to the percentage applied to other handlers' average week; once such handlers have recorded shipments, their average week shall be calculated as an average of total shipments for the weeks they have shipped red seedless grapefruit during the current season. When used in the regulation of red seedless grapefruit, the term season means the weeks beginning the third Monday in September and ending the first Sunday in the following May. The term regulation period means the 11 weeks beginning the third Monday in September and ending the first Sunday in December of the current season.

(b) When a size limitation restricts the shipment of a portion of sizes 48 and 56 red seedless grapefruit during a particular week as provided in § 905.52, the committee shall compute the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by each handler by multiplying the handler's calculated average week shipments of such grapefruit by the percentage established by regulation for red seedless grapefruit for that week.

(c) The committee shall notify each handler of the quantity of size 48 and 56 red seedless grapefruit such handler may handle during a particular week.

(d) During any regulation week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any person who has received an allotment may handle, in addition to their total allotment available, an amount of size 48 and 56 red seedless grapefruit up to 10 percent greater than their allotment. The quantity of the overshipment shall be deducted from the handler's allotment for the following week. Overshipments will not be allowed during week 11. If the handler fails to use his or her entire allotment, the under shipment is not carried forward to the following week.

(e) Any handler may transfer or loan any or all of their shipping allotment (excluding the overshipment allowance) of size 48 and 56 red seedless grapefruit to any other handler. Each handler party to such transfer or loan shall promptly notify the committee so the proper adjustment of records may be made. In each case, the committee shall confirm in writing all such transactions, prior to the following week, to the handlers involved. The committee may act on

behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotments.

Dated: December 24, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-33268 Filed 12-30-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 1004, 1005, 1007, 1011, and 1046

[DA-96-15]

Milk in the Middle Atlantic, Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville Marketing Areas; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document terminates the base-excess payment plan provisions of the Middle Atlantic, Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk marketing orders due to the expiration of legislative authority to incorporate base-excess plans in Federal milk marketing orders on December 31, 1996.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 request modification or exemption from such order by filing with the Secretary 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 the law. A

handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, the Agricultural Marketing Service has considered the economic impact of this action on small entities and believes that this rule could have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

This rule terminates the base-excess plan provisions of five Federal milk orders. Producers with earned base will no longer receive base prices as in the past, but will be paid at least the uniform price throughout the year for their hundredweight of milk.

Under a base-excess payment plan, a producer is paid a "base price" for "base milk" and an "excess price" for production in excess of base milk. During the base-paying period of a base-excess plan, base prices are higher than the uniform prices computed for those months, while the excess prices are below the uniform prices. Using a representative period of May 1996, the difference between the base and uniform prices in the five orders was not greater than \$0.26/cwt., while the difference between the uniform and excess prices ranged from \$0.45 to \$2.81/cwt.