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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV97–905–1 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule limits the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule limits the volume of size 48 and/or size 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 1997–1998 season that begins in September. This limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns.

DATES: Effective September 15, 1997, through November 30, 1997. Comments received by September 22, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This interim final 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 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.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3 5⁄16 inches in diameter).

Section 905.52 of the 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 is 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.

Section 905.153 of the order 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 size 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 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 grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule limits the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 15. The rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This rule establishes the weekly percentage for the first three weeks (September 15 through October 5) at 50 percent, for the next three weeks (October 6 through October 26) at 35 percent, and at 30 percent for the remainder of the 11 weeks. This is a change in the percentage originally recommended by the committee. The committee had voted to establish a weekly percentage of 25 percent for each of the 11 weeks in a vote of 10 in favor to 7 opposed at its meeting on May 28, 1997. The committee recommended adjusting the percentages at its meeting August 26, 1997, in a vote of 14 in favor to 3 opposed.

For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box (1⅗ bushel) during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, 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. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the 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.

For the majority of the season, larger sizes return better prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the higher prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market that drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton (⅘ bushel) more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. 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. In the past three years, the market has not recovered, and the f.o.b. for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee discussed this issue at length at several meetings. The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. 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 have fallen from a high near $7.00 in 1991–92 to around $1.50 for this past season. The study projects that if the industry elects to make no changes, the on tree price will remain around $1.50. The study also indicates that increasing minimum size restrictions could help to raise returns.

The committee examined shipment data covering the 11 week regulatory period for the last four seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe 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. Without volume regulation, the industry has been unable to limit the shipments of small sizes. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The committee has had considerable discussion regarding at what level to establish the weekly percentages. They wanted to recommend weekly percentages that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. At its May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. Their reasoning was that this percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again August 26, 1997, and revisited the weekly percentage issue. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on shipments from the past four seasons, available allotment under a 25 percent restriction would have exceeded actual shipments for each of the first three weeks that are regulated under this rule.

The committee recognized that in terms of available allotment, establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. However, they said that this was based on total available allotment, not on data for each individual handler. The committee determined that if available allotment would exceed shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent rather than 100 percent would still provide some restriction should shipments for September 15 through October 5 for this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be less than 50 percent (which would have resulted in virtually no limitation on shipments of small sizes) but greater than 25 percent. The committee held that it is important to control small sizes, but it is also important to be able to service the markets that demand small sizes. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower.

Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

Several other members raised concerns about focusing too much on total allotment available, rather than on allotment available to individual handlers. The committee stated that the way a handler's base is calculated using an average week is probably the most equitable way to do so. However, they acknowledged that it did present some problems. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, the members agreed that this did not mean that every handler was shipping during all 33 weeks. They discussed how a handler's average weekly shipments are calculated by averaging their shipments from the past five seasons, and then dividing this number by the 33 weeks to establish an average week. Members stated that the calculated average week was often lower than their actual weekly shipments during the periods they were shipping because they were not shipping during all 33 weeks. They also stated that applying a weekly percentage of 25 percent to their average week would have resulted in limiting their shipments to a level closer to 15 percent of their actual shipments during this period.

Based on this discussion, the committee thought a weekly percentage of 25 percent would be overly restrictive. The committee believed that since total available allotment most probably will not be fully utilized, and how individual handlers are affected, establishing a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be more appropriate. They believe this level will provide a sufficient supply of small sizes without exceeding amounts that would negatively affect other markets.

The committee further recommended that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that a lower percentage was desirable moving into the last five weeks of regulation. The committee believed that as industry moves into the season and shipments increase, that a weekly percentage of 30 percent will provide the best balance between supply and demand for small sized red seedless grapefruit.

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes in any one, or all of the 11 weeks. While the official crop estimate will not be available until October, information in the UF–IFAS study and committee discussions indicate that the 1997–98 season production will be near or greater than the 1996–97 estimate of 30.8 million boxes of red seedless grapefruit. Committee members also stated that the crop is sizing well and should produce a greater number of larger sizes than the past season. Using this information on the 1997–98 crop, the committee members believe that establishing the weekly percentages as recommended will provide enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under the procedures in section 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage for that week. By taking the established weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. 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 previous five seasons are 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 average week is the base for each handler for each of the 11 weeks contained in the regulation period. The applicable weekly percentage is then multiplied by a handler's average week. The total is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this interim final rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler can ship. If the minimum size established under section 905.52 remains at size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers can fill their allotment with size 48 fruit such that the total of these shipments are within the established limits. The committee staff will perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is handler A's base. Assuming the weekly percentage is 50 percent, this percentage is then applied to the handler's base. This provides this handler with a weekly allotment of 800 cartons ($1,600 \times .50$) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee 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 have no prior period on which to base their average week. Therefore, a new handler can ship small sizes up to the established weekly percentage as a percentage of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

This interim final rule establishes a weekly percentage of 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks to be regulated. The regulatory period runs from the first Monday in September (September 15, 1997) through the last Sunday in November (November 30, 1997). Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee can meet and recommend changes in the percentages to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) will be deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are 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 will not be carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party will, 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 will promptly notify the committee so that proper adjustments of the records can be made. In each case, the committee will confirm in writing all such transactions prior to the following week. 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 computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling 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.

During committee deliberations at the May 28, 1997, meeting, several concerns were raised regarding this regulation. One area of concern was the possible impact this regulation may have on exports. Several members stated that there is a strong demand in some export markets for small sizes. Other members responded that the percentages set allow handlers enough volume of small sizes to meet the demand in these markets. It was also stated that any shortfall an individual handler might have can be filled by loan or transfer. There was also some discussion that markets that normally demand small sizes have shown a willingness to purchase larger sizes. In addition, committee data indicate that the majority of export shipments occur after the 11 week period when there are no restrictions on small sizes.

Another concern raised was the effect this rule will have on packouts. It was stated that this rule can reduce the volume packed, resulting in higher packinghouse costs. The purpose of this rule is to limit the volume of small sizes marketed early in the season. Larger sizes can be substituted for smaller sizes with a minimum effect on overall shipments. This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study presented indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. This also would allow growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that will be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton. Therefore, this action should have a positive impact on grower returns.

Several members were concerned about what would happen if market conditions were to change. Other committee members responded that if industry conditions were to change (for example, if there was a freeze, or if the grapefruit was not sizing), the committee can meet and recommend that the percentage be raised to allow for more small sizes, or that the limits be removed all together.

Another concern raised was that market share could be lost to Texas. According to the Economic Analysis Branch (EAB), of the Fruit and Vegetable Division, of the Agricultural Marketing Service (AMS), limiting shipments of small Florida grapefruit will probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF-IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

One handler expressed that they ship early in the season and this action could be very restrictive. Members responded that the availability of loans and transfers address these concerns. There was also discussion of how restrictive this rule actually is. Based on shipments from the past four seasons, available allotment would have exceeded actual shipments for each of the first three weeks that are regulated under this rule even if the weekly percentage was set at 25 percent. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall.

At the August 26, 1997, meeting, the concern was raised that the weekly percentages recommended were not restrictive enough. Committee members responded that not all available allotment would be utilized, and that the recommended percentages would still restrict shipments of small sizes, while providing handlers with flexibility to supply those markets that demand small sizes.

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.

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, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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 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 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 80 handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) 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 $500,000.

Based on the Florida Agricultural Statistics Service and committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per 4/5 bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were 23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

Under the authority of section 905.52 of the order, this rule limits the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 15. The rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by establishing the weekly percentages at 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small 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 rule is necessary to help stabilize the market and improve grower returns.

At the May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. They reasoned that this percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again August 26, 1997, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In the discussion of this change, the committee reviewed the initial percentages recommended, the current state of the crop, and shipping information from past seasons. The committee recognized that in terms of available allotment, even establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. Shipment data from the past four seasons indicate that available allotment under a 25 percent restriction would exceeded actual shipments for each of the first three weeks that are regulated under this rule.

The committee determined that if available allotment would exceed shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent would still provide some restriction should shipments for this period this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be tighter than 50 percent which would impose nearly no restriction but greater than 25 percent. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower. Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

Several other members raised concerns about focusing too much on total allotment available, rather than on allotment per handler. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, this did not mean that every handler was shipping during all 33 weeks. Using 33 weeks to divide an average season to calculate an average week often resulted in amounts lower than their actual weekly shipments because they were not shipping during all 33 weeks. They stated that applying a 25 percent restriction regulated them at a level closer to 15 percent of their actual shipments during the regulation period.

Based on this discussion, the committee thought a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be a more appropriate level. They believe that because total allotment will not be fully utilized and the way individual handlers are affected, this level would provide a sufficient supply of small sizes without overly exceeding amounts that would negatively affect other markets.

The committee further recommended that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that moving into the last five weeks of regulation that a tighter percentage was desirable. The committee believed that as industry moves into the season and shipments increase, that a weekly percentage of 30 percent provides the best balance between supply and demand for small sized red seedless grapefruit.

At the May 28, 1997, meeting, there was discussion regarding the expected impact of this change on handlers and growers in terms of cost. Discussion focused on the possibility that market share could be lost to Texas and that this rule could increase packinghouse costs. According to EAB, limiting shipments of small Florida grapefruit probably will not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

The concern about packinghouse costs was that this action means lower packouts which may increase cost. However, the availability of loans and transfers provides some flexibility. Also, this rule only affects small sizes and only during the 11 week period. By substituting larger sizes and using loans and transfers, packouts should approach the weekly volume of seasons prior to this rule.

A weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit. Based on shipments from the past four seasons, a total available allotment of 244,195 cartons would exceed actual shipments for each of the first three weeks regulated under this rule.

In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to last season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under this rule a sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The committee also discussed the state of the market and the cost of doing nothing. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. For the remainder of the season, sizes 48 and 56 represent only 26 percent of total shipments. 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 early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. 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. This leaves the f.o.b. for all sizes around $5.00 to $6.00 per carton for the rest of the season.

As previously stated, the on tree price of red seedless grapefruit has also been falling. On tree prices for fresh red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. In many cases, prices during the past two seasons have provided returns less than production costs. This price reduction could force many small growers out of business. If no action is taken, the UF–IFAS study indicates that on tree returns will remain at levels around $1.50.

This rule provides a supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believes that if the supply of small sizes were limited early in the season, prices can be stabilized at a higher level. This provides increased returns for growers. In addition, if more small grapefruit were allowed to remain on the tree to increase in size and maturity, it could provide greater returns to growers.

The committee surveyed shipment data covering the 11 week regulatory period for the last four seasons and examined tables outlining weekly f.o.b. figures for each size. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase. The established weekly percentages, when combined with the average weekly shipments for the total industry, should help maintain industry shipments of sizes 48 and/or 56 red seedless grapefruit at quantities close to the 250,000 carton level per regulated week. A stabilized price that returns a fair market value benefits both small and large growers and handlers.

This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study indicated that returns could increase if growers harvest selectively and return to repick groves as the grapefruit sized. This also allows growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that are sent to the less profitable processing market. The study indicated that selective harvesting can reduce the f.o.b. cost per carton. The study also indicates that increasing minimum size restrictions could help to raise returns.

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. However, 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. Therefore, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action are only for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season. Even if this action was successful only in raising returns a few pennies a carton, when applied to 34 million cartons of red seedless grapefruit shipped to the fresh market, the benefits should more than outweigh the costs.

The limits established under this action are based on percentages applied to a handler's average week. This process was established by the committee because it was the most equitable. All handlers have access to loans and transfers. Handlers and growers both will benefit from increased returns. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The committee discussed alternatives to this action. The committee discussed eliminating shipments of size 56 grapefruit all together. Several members expressed that there is a market for size 56 grapefruit. Members favored the percentage rule recommended because it supplies a sufficient quantity of small sizes should there be a demand for size 56. Therefore, the motion to eliminate size 56 was rejected. Another alternative discussed was to do nothing. However, the committee rejected this option, taking in account that returns would remain stagnant without action. Thus, the majority of committee members agreed that weekly percentages should be established as recommended for the shipment of small sized red seedless grapefruit for the 11 week period beginning September 15, 1997.

This rule changes the requirements under the Florida citrus marketing order. Handlers utilizing the flexibility of the loan and transfer aspects of this action are required to submit a form to the committee. The rule increases the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, the committee meetings were 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 28, 1997, meeting and the August 26, 1997, meeting were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, July 29, 1997 (62 FR 40482). Copies of the rule were mailed or sent via facsimile to all committee members and to grapefruit growers and handlers. The rule was also made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because this rule needs to be in place as soon as possible since handlers begin shipping grapefruit in September and handlers need time to consider their allotment and how best to service their customers. The comment period ended August 13, 1997. Thirty five comments were received.

As previously stated, subsequent to the end of the comment period, the committee met and recommended modifying its original recommendation. The committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks. Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the original recommendation. However, the Department has further determined that extending the comment period with no percentages in effect limiting the shipments of small red seedless grapefruit when the period of regulation begins would be detrimental to the industry. Therefore, the Department is instituting the regulations on small red seedless grapefruit through this interim final rule which will allow 10 additional days to comment. The discussion on the comments to the proposed rule follow.

Thirty-five comments were received, twenty-four in favor and eleven in opposition to the proposed rule. Three additional comments in favor of the proposed rule were received after the closing date for comments. The vast majority of the points made by the commenters were thoroughly discussed prior to the committee vote.

The manager of the committee submitted a comment to the proposed rule. It stated that the committee went to great lengths to ensure that the entire Florida citrus industry had an opportunity to discuss or comment on this rule. The committee met three times in a sixty day period to review and consider this rule. This included a meeting where an economic study on the grapefruit industry prepared by UF–IFAS was presented. The comment stated that after these meetings and discussion the committee voted to implement a weekly percentage for each week in the regulatory period. The comment further stated that this action was considered and recommended by the Florida Citrus Commission and its appointed subcommittee the Grapefruit Advisory Council. The comment also affirmed that prior to the May 28, 1997, committee meeting, all Florida fresh citrus fruit shippers were notified of their average weekly base.

In their comments, most of the producers and handlers supporting the rule confirmed their support for the need to regulate the volume of small sizes this season. Many referenced the procedures established to regulate the small sizes in their comments, indicating that they contributed to the support of this regulation.

Fifteen commenters stated specifically that the over shipment of small sizes early in the season has resulted in reduced prices. Eleven comments expressed that this regulation brings the early volume of small size red grapefruit to levels similar to weekly shipments during most of the season. Nine commenters wrote that total industry shipments average around one million cartons per week, and that during the regular part of the season, small sizes account for around 25 percent of shipments or 250,000 cartons. This regulation limits early shipments of small sized red seedless grapefruit to levels close to this amount. Six commenters further stated that the regulatory period was the appropriate length, ending as shipments begin to adjust naturally due to the fruit sizing.

Many commenters discussed the market stabilizing benefits they expect from of this regulation. Five comments stated that this action will dampen spikes in the levels of shipments that lead to predatory pricing. Five also stated that this action will provide steadier, more balanced marketing that is less disruptive to markets. Four commenters expressed that with the regulation in place, there will be a good flow of all sizes to market.

The comments also discussed the fairness of the rule. Seven commenters contended that this action is fair to all growing areas and shippers. Several of the commenters favoring this action stated they had groves in more than one growing region. They said they did not believe this action benefited one area at the expense of another. Another commenter stated that the regulation affects part and only part of everyone's shipments. Ten referenced the use of an average week as promoting fairness. They stated that this provided allotment to all shippers, not just those who had shipped early in the past, thus giving everyone allotment to service the early markets. Seven expressed that the availability of transfers will also help spread allotment to those who need it. Seven comments also asserted that this action will not be unfair to consumers.

Several comments inferred that this regulation actually promotes fairness. Five commenters believe this regulation will prevent the oversupply of small sizes early that negatively affects prices before the majority of growers are in the market. Two comments said the rule will help address to beat the crowd mentality of pushing fruit on to the market. This regulation may help stabilize prices, providing better returns throughout the season, and benefiting all growers, not just those in the market early.

Several comments indicated that this regulation will make growers plan ahead on what is harvested. Three comments stated they have already been holding back on picking sizes 48 and 56, allowing them to size. They said this has enabled them to provide larger, higher quality fruit to their customers. Two of the three stated specifically that selective picking has resulted in better returns. Two additional commenters also stated that they have been using spot picking effectively.

The remaining eleven commenters raised several issues opposing the limitation of small sizes. Many commenters who raised objections to this action posed concerns regarding the possible loss of markets and the impact the rule will have on different regions of the production area. Each issue raised is addressed herein.

Eight of the comments received opposing this action stated that there are strong markets for small sizes, particularly in the export markets. Many of these commenters believe that this rule will keep Florida from being able to service these markets and that they will be lost to Texas and foreign competitors. These concerns were raised and discussed at the committee meeting.

As stated above, the purpose of this regulation is not to eliminate the marketing of sizes 48 and 56, but rather to prevent the overshipment 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. In making its recommendation for a weekly percentage of size, the committee considered the markets available for small sizes and set a weekly percentage sufficient to address these markets. They also considered what percentage of the volume did small sizes represent during most of the season. They used this information to recommend a weekly percentage for each of the regulated weeks.

Sales of smaller sizes continue throughout the season, with certain markets preferring the small sizes. Examining the demand for small sizes across the season gives a picture of the level of that demand. During most of the season, sizes 48 and 56 represent only 26 percent of total shipments. Comments received stated that total industry shipments average around one million cartons per week, and that during most of the season, small sizes account for around 25 percent of shipments or 250,000 cartons. However, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period the past three seasons, with the average weekly percentage exceeding 40 percent of shipments.

The weekly percentages, when combined with the average weekly shipments for the total industry, provide for a total weekly industry allotment of sizes 48 and/or 56 red seedless grapefruit per regulated week. A weekly percentage of 26 percent, the percentage of small sizes to total shipments during most of the season, would provide a weekly allotment of about 254,000 cartons. The established percentages provide additional cartons above this amount, allowing the industry to service the markets for small sizes while providing restrictions to prevent total saturation of all markets with these sizes. The established percentages will help bring the early volume of small size red grapefruit to levels similar to weekly shipments during most of the season.

In terms of exports of red seedless grapefruit, volume has averaged around 3,779,650 cartons from September through November. Based on information available on sizes exported, on average 43 percent of the exports from the Interior region are larger than size 48, and 61 percent of the exports from the Indian River region are larger than size 48. Total allotment available during the 11 weeks as established by the percentages in this rule exceed the average volume of exports during the regulation period. Considering the export data from these two regions, and the fact that the Indian River region accounted for 74 percent of exports during the 11 week period this past season, the allotment of small sizes provided under this rule should be sufficient to service export demand for small sizes.

In addition, in the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule establishes less restrictive weekly percentages and will affect even fewer shipments. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Thus, the available allotment should be sufficient to address the demand for small sizes, allowing Florida to maintain those markets.

The provisions of this rule also provide for overshipments, loans and transfers. These allowances are provided to move allotment to those who have markets for smaller grapefruit. Any shortage an individual handler might have in allotment may be filled by loan or transfer. The committee discussion also indicated that markets that normally demand small sizes have shown a willingness to purchase larger sizes. Therefore, a sufficient volume of small sized red grapefruit should be available for all channels of trade, and allowances are in place to help handlers address their specific market needs.

In regards to Texas or foreign competitors taking markets from Florida, available information indicates that this should not be a significant problem. As mentioned earlier, according to 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. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market. In terms of foreign competition, the UF–IFAS study determined that current foreign competition is minimal. It also infers that even in cases of tightened standards, foreign competitors are not likely to take market share from Florida.

Four comments asserted that the market forces of supply and demand should be relied upon to regulate the market. The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interests 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. As previously stated, during the 11 week period of regulation, prices have dropped considerably. This is thought to stem from an oversupply of small sizes early in the season.

Limiting the quantity of small red seedless grapefruit that handlers may handle early in the season is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns. This regulation provides a practical system to control the volume of small red seedless grapefruit early in the season, reducing gluts of small sizes, enhancing producer returns and stabilizing the markets for all sizes. Thus, the rule promotes orderly marketing by avoiding price-depressing oversupplies of small sizes during the first few months of the season when supplies are heaviest.

Four comments stated that the benefits of this rule are regional. Two comments alleged that this rule benefits one growing area at the expense of another. They state that fruit grown in the Gulf region reaches maturity before other areas in the State. One comment attested that past seasonal data indicates that in some years, the Gulf area represents 90 percent of shipments during the first week of the regulation period, and 50 percent of shipments during the first three weeks. The commenter stated further that cutting three-quarters of their shipping volume will significantly reduce their returns.

As previously stated, this rule limits the volume of small sizes that can be shipped during the first 11 weeks of a season. The rule only affects sizes 48 and/or 56, there are no restrictions on large sizes. Because of the way allotment is calculated, shipments from past seasons indicate that there will be more allotment available during the first three weeks of the regulation period than there are shipments of small sizes. Therefore, regardless of a handler's location, with the availability of loans and transfers, their shipments should not be restricted during these first three weeks, even if their entire supply consists of small sizes.

One of the comments alleges that growers in other regions, particularly the Indian River area, realize that there is a market for small sizes, and the 11 week period was established to prevent Gulf growers from selling their small sizes early in the season. The commenter contends the other areas support this rule because they want the opportunity to sell these sizes when their fruit matures.

Again, this regulation only limits the volume of small sizes, it does not eliminate them. There are no restrictions on large sizes. With their allotment, and the availability of loans and transfers, handlers should be able to address the markets demanding small sizes.

In terms of maturity, the Gulf area is normally the first region to begin shipping. During the weeks in September, they do represent the majority of domestic shipments. However, when total shipments, domestic and export are considered, the Indian River area has averaged similar or higher shipments than the Gulf in September the past three seasons. In October and November, both of which are included in this regulation, the shipping totals from the Indian River area substantially exceed the totals from other regions. The shipment figures do not support the claims of regional inequity.

Several comments expressed how profitable the early markets are due to the high prices available during the early season. This regulation is not an attempt to keep individuals from taking advantage of these markets. The goal of this rule is to control the volume of small sizes to keep them from saturating all markets and dragging down prices. By doing so, this action may buoy prices providing better returns throughout the season, not just during the first three weeks.

Granted, there is a profitable market for small sizes early in the season. However, there is an opportunity for those that do not market responsibly to dump small sizes on the market, early in the season. This appears to be occurring presently. The red seedless grapefruit season is longer than a few weeks. Taking profits early in the season at the expense of far lower returns for the remainder of the season does not provide for orderly marketing or reasonable returns to growers. The Department must consider the situation of all growers covered under the order. It is in the interest of all areas that adequate funds are returned to the grower throughout the season. This is best accomplished by providing stable, reasonable returns throughout the season.

Another comment argued that the vote of the committee signals a lack of consensus on this issue and the industry is not united in its support. In the marketing order, the voting requirements necessary to recommend regulation are clearly stated. The order states that for any decision or recommendation of the committee to be valid, ten concurring votes, five of which must be grower votes, shall be necessary. The committee vote supporting this regulation met these requirements. In terms of industry support, all industry members had ample opportunity to express their opinions on this issue. The Department considered all views expressed prior to instituting this interim final rule.

One commenter stated that there are seasons when there are no large sizes available during the early season. The committee meets each season to consider implementing the procedures to control the volume of small sizes early in the season. One of the things the committee considers, is the status of the crop in terms of size. In seasons where fruit is running small, the committee could establish a higher percentage to allow for more small sizes or choose not to establish regulation. In the case of this season, the committee indicated that fruit was sizing well. However, if there is a change in the status of the fruit or the market, the committee could meet and vote to increase the percentage to allow for more small sizes, or eliminate the regulation altogether.

This same commenter also asserts that enforcing this rule will create an administrative problem and will create a market for allotment. The committee staff has already calculated and distributed the allotment for each handler. Information supplied by the Federal State Inspection Service will be used to determine compliance with this rule. Violators will be subject to the penalties provided for under the Act. The committee staff will also collect information regarding loans and transfers. It is expected that allotment itself should not have a monetary value, although it certainly may be transferred and loaned between handlers.

In another comment, a handler stated that they have a responsibility to their stockholders, and that running its facility at maximum volume provides them a higher return on their dollar. A handler that charges growers per field box does increase its revenue by handling the greatest number of boxes it can. The Department takes into account all those affected by a particular action. However, the order benefits growers through orderly marketing and improved returns. This rule is an attempt to do both. The purpose of this rule is to limit the volume of small sizes marketed early in the season. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule establishes less restrictive weekly percentages and will affect even fewer shipments. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall.

Several comments said that increasing standards will raise the amount of fruit that does not meet the requirements to be packed fresh, thereby increasing eliminations going to the processor and lowering grower returns. This rule controls the volume of small sizes. It is only in effect during the first 11 weeks of the season. As some comments to this rule stated, it may cause growers to plan their harvest. If a grove has a significant amount of small sizes, it may benefit the grower to delay harvesting until the fruit sizes. Several comments stated that they had used this selective picking successfully in the past.

Another option considered by the commenter would be to spot pick, but he stated that was expensive. However, two comments received on this rule were from growers who are using spot picking effectively. Also, information provided by the UF–IFAS study indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. Growers could maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that will be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton, and increase packout rates over clean harvesting.

Another comment stated that this rule will make the current problems with grapefruit worse. It said the rule will decrease the market window, further depressing prices. It also said that this action will increase the total volume by people picking large sizes and allowing small fruit to size, thereby increasing the total number of boxes available later in the season when prices barely cover costs. This regulation does not shorten the marketing window. The rule provides for a sufficient amount of small sizes and places no restrictions on larger sizes. This action should improve returns on all sizes. In addition, allowing the fruit to size, could increase returns as larger sizes can yield higher returns.

One comment expressed that a restriction of shipments of sizes 48 and 56 will put an upward pressure on price. The comment said this would be bad for the consumer. The EAB reviewed this comment and determined that it is true that retail prices tend to track f.o.b. prices. However, variations do appear where there are other factors that influence retail prices including transportation and marketing costs, the price situation with competitive fruits, changes in consumer preferences, and marketing strategies of individual retail operations. No undue price enhancement is expected as a result of this rule. Consumers will benefit from the rule because fewer small fruits will be shipped, resulting in larger, more mature fruit available to the consumer. Additionally, the profitability of grower operations will be improved, helping to maintain a competitive environment for marketing, to the benefit of consumers.

Also, the f.o.b. price would need to rise considerably to have a significant impact on the consumer. Even if this regulation was successful in maintaining the f.o.b. price at one dollar above the average f.o.b. price from this past season, such an increase would translate into an increase of a few cents per fruit. However, this same increase would provide an additional return of a dollar per carton to the grower. This increase could be the difference between profit and loss.

The comment also states that restrictions should not be applied when prices are above parity. Parity, as calculated by the National Agricultural Statistics Service, was $12.03 for the 1996–97 season. The preliminary calculation of parity for the 1997–98 season is $10.43. At the beginning of the season, high prices are available. However, the prices quickly drop as the volume of shipments increase. The purpose of this rule is to stabilize prices, so that the price, even though it declines, will be maintained at a higher level. This rule should not elevate prices to levels above parity. If it were to maintain prices at a level greater than parity, the Department would review the situation and revise or modify the regulation.

One comment questioned the accuracy of references made in the rule in terms of on tree prices. The commenter stated that on tree returns should have been used. The comment also stated that it was not clear whether the figures were stated in boxes (1⅗ bushels) or cartons (⅘ bushels). It also stated that the 1989–90 numbers were unusually high due to a freeze, and that numbers were missing for the 1995–96 season.

The on tree prices referenced in the rule are from the Florida Agricultural Statistics Service. The prices were attributed to cartons in the proposed rule. The prices should have been attributed to boxes. This has been corrected, and the figures updated. These figures were chosen to demonstrate the current status of the industry. A similar portrait could have been painted using on tree returns as suggested by the comment. On tree returns were $6.87 per box in 1991–92, $3.38 per box in 1993–94, and were $1.21 per box for the 1995–96 season. The on tree price information for the 1995–96 season is $1.71 per box.

This same comment stated that the cause of the decrease in price throughout the season is a result of total volume, not the amount of small sizes shipped early in the season. The Department recognizes that there are several factors contributing to the current problems facing the grapefruit industry. However, this rule is not an attempt to fix every potential problem. Rather, this rule seeks to slow the drastic price decline that occurs during the 11 weeks regulated hereunder. The early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes.

Larger sized fruit commands a premium price early in the season. The f.o.b. for these sizes can be $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton, compared to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes. In addition, during the 11 week period, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton, the f.o.b. for size 56, for the past three seasons.

Later in the season the crop tends to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market has already been negatively affected, and the f.o.b. price for all sizes remains around $5.00 to $6.00 per carton for the rest of the season.

In addition, the committee examined shipment information detailing the amounts and percentages of sizes 48 and 56 shipped during the 11 week regulatory period for the last four seasons. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe 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. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Utilizing these procedures contributes 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 will have 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. This rule limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This should help stabilize prices for all sizes.

After thoroughly analyzing the comments received and other available information, including the additional recommendation by the committee, the Department has concluded that this interim final rule is appropriate.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because the regulation period begins on September 15, 1997, and continues for 11 weeks. Adequate time will be necessary so that any changes made to the regulations based on comments filed could be made effective during the 11-week period. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant matter 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.

It is further found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public intent to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place when handlers begin shipping grapefruit in September. This rule is necessary to help stabilize the market and to improve grower returns. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 15-day comment period was provided for in the proposed rule and a 10-day comment period is provided in this rule.

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. In § 905.306, paragraphs (a) and (b), the word ''During'' is removed and the words ''Except as otherwise provided in § 905.601, during'' are added in its place.

3. A new § 905.601 is added to read as follows:

Note: The following section will not appear in the Code of Federal Regulations.

§ 905.601 Red seedless grapefruit regulation 101.

The schedule below establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under section 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under section 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments are within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/15/97 through 9/21/97	50
(b) 9/22/97 through 9/28/97	50
(c) 9/29/97 through 10/5/97	50
(d) 10/6/97 through 10/12/97	35
(e) 10/13/97 through 10/19/97	35
(f) 10/20/97 through 10/26/97	35
(g) 10/27/97 through 11/2/97	30
(h) 11/3/97 through 11/9/97	30
(i) 11/10/97 through 11/16/97	30
(j) 11/17/97 through 11/23/97	30
(k) 11/24/97 through 11/30/97	30

Dated: September 9, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–97–09]

Milk in the Tennessee Valley Marketing Area; Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.