DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV99–905–3 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule continues to limit the volume of sizes 48 and/or size 56 red seedless grapefruit handlers can ship during the remainder of the first 11 weeks of the 1999-2000 season. Through week 7, which ended November 7, the percentage was 37 percent. For the last four weeks (November 8 through December 5), the percentage is 32 percent. This limitation is designed to provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule should help stabilize the grapefruit market and improve grower returns.

EFFECTIVE DATE: Effective November 19, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, 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 Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule continues to limit the volume of sizes 48 and/or size 56 red seedless grapefruit handlers can ship during the remainder of the first 11 weeks of the 1999–2000 season which began September 20. 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 the 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 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 regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market (64 FR 51888; September 27, 1999). The procedures specify that the committee may recommend that only a certain percentage of sizes 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 regulation period is 11 weeks long and 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 that can enter the fresh market for the remaining weeks of the 11 week period which began the week of September 20, 1999. This rule continues in effect the interim final rule which established the weekly percentage for the first two weeks (September 20 through October 3) at 45 percent; for the third week (October 4 through October 10) at 40 percent; for the fourth through seventh weeks (October 11 through November 7) at 37 percent; and for the last four weeks (November 8 through December 5) at 32 percent. These percentages are different from those originally recommended by the committee on April 1, 1999. At that time, the committee unanimously voted to establish a weekly percentage of 25 percent for each of the 11 weeks. The committee's initial recommendation was issued as a proposed rule published on August 26, 1999 (64 FR 46603). No comments were received during the comment period which expired on September 10, 1999. The committee subsequently met on August 31, 1999, and unanimously recommended adjusting the proposed percentages. The committee's recommendation was issued as an interim final rule published on September 17, 1999 (64 FR 50419). Comments on that action were invited until September 27, 1999. No comments were received.

This action is similar to actions taken in the previous two seasons (1997–98 and 1998–99). Prior to those two years, no weekly percentages were established. During the three seasons prior to implementation of weekly percentage regulations (1994–95, 1995–96, and 1996–97), returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (1⅗ bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 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 higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high 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, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes drops to within $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During those three seasons, the market did not recover, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes 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 had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish a weekly percentage of size regulation during the first 11 weeks of the 1997–98 and 1998–99 seasons. The initial recommendations from the committee were to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make its recommendations. The committee has since used this regulation to the betterment of the industry. Prices have increased, and movement has been more stable. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first 3 weeks, and 35 percent for the other 8 weeks. Actual weekly percentages established during the 11 week period during the 1998–99 season were 37 percent for the first 3 weeks, and 32 percent for the other 8 weeks.

In making its recommendation for the 1999–2000 season, the committee reviewed its experiences in past seasons. The committee believes establishing weekly percentages during the last two seasons was successful. The committee examined shipment data covering the 11 week regulatory period for the last two regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. price figures. During the 11 week period, the regulations were successful at helping maintain prices at a higher level than previously, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. During the first 11 weeks of the 1996–97 season, shipments of sizes 48 and 56 were 3,076,474 cartons, or 40 percent of total shipments. In the first 11 weeks of the last two seasons, under regulation, shipments of sizes 48 and 56 averaged 2,517,080 cartons and accounted for 33 percent of total shipments.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. prices for these weeks were $6.28 for the 1996–97 season, $6.55 for the 1997–98 season, and $7.63 for the 1998–99 season. Total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season, the last season prior to establishing percentage size regulations. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. In fact, prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small sized grapefruit.

The committee initially recommended that the weekly percentage of size regulation be set at 25 percent for each week during the regulatory period. Members believed that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without such action. The committee thought that to provide the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The committee believes it is best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The committee intends to meet on a regular basis early in the season to consider adjustments in the weekly percentage rates, as was done in the previous two seasons.

In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making its initial recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and subsequent months and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentages are appropriate.

Based on this information and the experiences from past seasons, the committee agreed to establish the initial weekly percentages at the most restrictive level. They could then meet in late August, or in September and October, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. They said this is essentially what was done in the prior two years, and it had been very successful. For example, the committee met in May 1998, and recommended a weekly percentage of 25 percent for each of the first 11 weeks of the 1998–99 season. In September 1998, the committee met again, and recommended that the weekly percentage be relaxed. Any changes to the weekly percentages established by this rule for 1999–2000 would require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages will be available after August 1999. At the time of the April 1999 meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October 1999.

The committee met again on August 31, 1999, and revisited the weekly percentage issue and reviewed information it had acquired since its April 6, 1999, meeting. At the meeting, the committee unanimously recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5).

In its discussion of these changes, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also re-examined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on this review, the committee agreed that setting the weekly percentage at 25 percent would be too restrictive.

During deliberations in past seasons as to weekly percentages, the committee considered how past shipments had affected the market. Based on available statistical information, the committee members believed that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed 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.

As is the case for the 1999–2000 season, they wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment that would approach the 250,000 carton mark during the regulated weeks without exceeding it.

While the committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated during the 1998–99 season were lower by count and by percentage than in the unregulated seasons of 1994–95 through 1996–97. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent for the 1999–2000 season, the total available allotment would have approximated 234,000 (25 percent of the total industry base of 937,257 cartons). The committee thus believed that the percentages should be increased, as was done last season. While satisfied with the level of regulation last season (37 percent for the first 7 weeks and 32 percent for the last 4 weeks), the committee believed that the unique circumstances for 1999–2000 warranted more liberal percentages during the first 3 weeks of the 1999–2000 season.

The committee still projects fresh shipments of red seedless grapefruit during 1999–2000 to be equal to or lower than in previous seasons. The quality of the crop is anticipated to be normal or above normal, although shape of the fruit is estimated to be below normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The smaller sizes were expected to be the better shaped fruit during the first part of the season, which supports allowing ample shipments of the smaller sizes.

At the time the Committee made its recommendations, the individual fruit size for the 1999–2000 crop was projected to be a little smaller than normal, but not as small as last season. Additionally, the lack of rain during much of the growing season delayed the maturity of the crop and early shipments were expected to be lower than in previous seasons. Unusual weather patterns in the past eight months resulted in multiple blooms in most groves in Florida. The problem with multiple blooms is that it is difficult for fruit harvesters to determine which of the fruit is mature. This was expected to cause a higher percentage of smaller sizes to be harvested early in the season, because the small fruit tends to mature earlier. Therefore, the committee recommended a higher percentage in the first three weeks of the season than in later weeks.

The situation was complicated by the ongoing economic problems affecting the European and Asian markets. In past seasons, the European market has shown a strong demand for the smaller sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last two years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

Therefore, this rule continues in effect the interim final rule which established the weekly percentage at 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). The committee plans to meet as needed during the remainder of the 11 week period to work to ensure that the weekly percentages are at the appropriate levels. If crop and market conditions should change, the percentages could be changed to provide for the shipment of more small sizes during the remainder of the 11 week regulatory period.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 45, 40, 37, or 32 percent, depending on the regulated week. By taking the 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 to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 45, 40, 31, or 32 percent, is multiplied by a handler's average week. The product is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler may ship. If the minimum size established under § 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 is within the established limits. The committee staff would 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 would then be divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This would be Handler A's base. Using the first week of the regulatory period as an example, the weekly percentage of 45 percent was applied to this amount. This provided the handler with a weekly allotment of 720 cartons ($1,600 \times .45$) of sizes 48 and/or 56. Similar calculations, using the appropriate weekly percentage, will be performed for the balance of the regulatory period.

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. Such new handlers can ship small sizes equal to 45, 40, 37, or 32 percent of their total volume of shipments during their first shipping week (depending on when they begin shipping). Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

The interim final rule established a weekly percentage of 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through the seventh weeks (October 11 through November 7); and 32 percent for the last four weeks of the regulatory period (November 8 through December 5). The regulatory period begins the third Monday in September. Each regulation week begins 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. If necessary, the committee could meet and recommend a different percentage for any given week or weeks of the regulatory period. Any such recommendation would require approval of the Secretary.

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 are intended to 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) is deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there will 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 are not 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 must, 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 confirms 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 notifies 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.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, 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 and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

Thus, allotment is based 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 many grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this definition of prior period as the method that provides each handler with an equitable base from which to establish shipments.

The procedures under this rule provide flexibility through several different options. Handlers can transfer, borrow, or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments. Statistics show that in none of the regulated weeks in past seasons was the total available allotment used. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provides a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

After considering the available information, the committee determined that the interim final rule was needed to regulate shipments of small red seedless grapefruit during the 1999–2000 season.

Continuation of the percentage size regulation for the remainder of the 11 week period 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.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/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), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 grapefruit 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) 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 (13 CFR 121.601).

Based on industry and committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1998–99 season was around $7.20 per 4⁄5 bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red 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.

Under the authority of § 905.52 of the order, this rule continues to limit the volume of small red seedless grapefruit entering the fresh market during the remainder of the first 11 weeks of the 1999–2000 season, that began the third Monday in September. This rule utilizes the provisions of § 905.153, and it continues in effect the percentages established for the remainder of the 11 week regulatory period. The interim final rule established a weekly percentage of 45 percent for the first two weeks of the regulatory period (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through the seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). This was a change from the committee's original recommendation of a 25 percent weekly percentage for each of the 11 weeks. Under this 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 established percentage.

By taking the established 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 final rule continues in effect the interim final rule which established the weekly percentage at 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). This rule will continue to provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. It also will help stabilize the market and improve grower returns during the early part of the season.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would have provided a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. If a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1997–

98 season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by continuing to establish 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 will be allowed into all channels of trade, and allowances will be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry costs should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes typically drops to within $2 of the f.o.b. price for small sizes.

The overshipment 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 had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation will continue to have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimal effect on overall shipments. While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule will continue to help limit the effects of an over supply of small sizes early in the season. Similar rules were enacted successfully the last two seasons. During the 11 week period, the regulations were successful in helping maintain prices at a higher level than in prior seasons, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season, $6.55 for the 1997–98 season, and $7.63 for the 1998–99 season.

The rules were also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 25, 25, 20, and 14 percent, respectively, during the 1997–98 season. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. Prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period last season as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum, with sizes 48 and 56 having the largest gains and larger sized grapefruit registering modest improvements.

The report also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the 1997–98 season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Over 50 percent of red seedless grapefruit are shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action will only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from the last two seasons suggests that the regulation could do both. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation. Accordingly, this action would provide the most beneficial results for the industry given any other alternatives.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the committee. Moreover, handlers will be required to submit a form to the committee on their daily shipments of sizes 48 and/or 56 red seedless grapefruit, and new handlers also will have to submit a registration form to ship fruit pursuant to any allotment percentage established by the Secretary. The rule would increase the reporting burden on approximately 80 handlers of red seedless grapefruit who would be taking about 0.05 hour to complete each report regarding allotment loans or transfers, and shipments. New handlers without a record of shipments registering with the committee will take about 0.03 of an hour to complete the ''new handler'' registration form. The information collection requirements contained in § 905.153 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) 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 sectors. 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 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the April 6, 1999, and August 31, 1999, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 17, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 10-day comment period which ended September 27, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 50419, September 17, 1999) will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The volume limitations implemented by this action apply through December 5, 1999; (2) written comments were invited on this action and no comments were received; and (3) no useful purpose would be served by delayed the effective date of this rule.

List of Subjects in 7 CFR Part 905

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

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 64 FR 50419 on September 17, 1999, is adopted as a final rule without change.

Dated: November 12, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–30168 Filed 11–17–99; 8:45 am]

BILLING CODE 3410–12–P