

# Proposed Rules

Federal Register

Vol. 65, No. 133

Tuesday, July 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV00-905-4 PR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on 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 would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000-2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

**DATES:** Comments must be received by August 10, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. 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, or can be viewed at <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, Marketing Order Administrative Branch, Fruit and Vegetable Programs, 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, 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.

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 proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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<sup>5</sup>/<sub>16</sub> inches in diameter).

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market. This rule would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000-2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for each week of the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and

approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11-week period beginning September 18. This rule would limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by establishing a weekly percentage of 25 percent for each of the 11 weeks. This would allow the Committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of sizes 48 and 56 small red grapefruit as more information becomes available. The Committee recommended this action by a unanimous vote at a meeting on May 26, 2000. This action is similar to those taken the previous three seasons (1997–98, 1998–99 and 1999–2000.)

For the seasons 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 (⅔ bushel) during the 1989–90 season, to \$3.45 per carton during the 1994–95 season, to \$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 contrasted 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, shipping 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 to get fruit into the market to take advantage of 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.

At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is \$4 to \$10 more a carton than for the smaller sizes. In October, the f.o.b. price for a size 27 averages around \$14.00 per carton. This compares to an average f.o.b. price of \$6.00 per carton for size 56. In the three years before the issuance of a percentage size regulation, by the end of the 11-week period covered in this rule, the f.o.b. price for large sizes dropped to within \$1 or \$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. Later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market had already been negatively affected. The market never recovered, 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.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near \$7.00 per carton in 1991–92 to around \$1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around \$1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee voted to utilize the provisions of § 905.153, and established a weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, and 1999–2000

seasons. The initial recommendation from the Committee was to set the weekly percentages at 25 percent for each of the 11 weeks. Then, as more information on the crop became available, and as the season progressed, the Committee met again and adjusted its recommendations for the weekly percentages as needed. Actual weekly percentages established during the 11-week period during the 1999–2000 season were 45 percent for the first two weeks, 40 percent for the third week, 37 percent for the fourth through the seventh week, and 32 percent for the last four weeks. The Committee considered information from past seasons, crop estimates, fruit size, and other available information in making its recommendations.

The Committee has used the percentage size regulation to the betterment of the industry. Prices have increased, and movement has been stable. In each of the three seasons following the 1996–97 season, the Committee has recommended utilizing the percentage size rule. During the 11-week period of regulation, the average price has been higher than for the three years prior to regulation. In late October, the average price for red seedless grapefruit was \$9.31 for the last three years regulation compared to \$7.22 for the same period for the three years prior to regulation. Prices also remained at a higher level, with an average price of \$7.31 in mid-December during regulation compared to \$6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons averaging \$7.13 compared to \$5.83 for the three prior years.

The on-tree earnings per box have also been increasing for the past three years, providing better returns to growers. The on-tree price increased from \$3.42 for 1997–98, to \$5.04 for 1998–99, to an estimated \$6.46 for the 1999–2000 season.

Another benefit of percentage size regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. The f.o.b. price for a larger size can be \$4 to \$10 more per carton than for smaller sizes. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. In the three years prior to the implementation of the percentage size rule, by the end of the 11-week period covered, the f.o.b. price for the large sizes would drop to within \$2 of the f.o.b. price for the smaller sizes. This was not acceptable to the industry.

During the past three years of regulation under the percentage size rule, the average differential between the carton price for a size 27 and the price for a size 56 was \$5.65 at the end of October and remained at \$3.43 in mid-December. During the three years prior to regulation, the average differential between these two sizes was \$3.47 at the end of October, but by mid-December the price for the larger size had dropped to within \$1.68 of the price for the smaller-size fruit. In fact, the average prices for each size were higher during the three years with regulation than for the three years prior to regulation. The average prices for size 27, size 32, size 36, and size 40 during the 11-week period for the last three years were \$9.07, \$7.91, \$7.16, and \$6.62, respectively. This compares to the average prices for the same sizes during the same period for the three years prior to regulation of \$6.48, \$5.63, \$5.59, and \$5.34, respectively.

The percentage size regulation has also been helpful in stabilizing the volume of small sizes entering the fresh market early in the season. During the three years prior to regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered in the rule. This compares to 31 percent for the same period for the last three years of regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 1999–2000.

In making its recommendation for the upcoming season, the Committee reviewed its experiences from the past seasons. The Committee examined shipment data covering the 11-week regulatory period for the last three regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. The Committee believes establishing weekly percentages during the last three seasons was successful. The past regulations helped maintain prices at a higher level than the previous years without regulation, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

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 considered the past problems and the success of the percentage rule and decided to recommend using the percentage of size provisions for the coming season beginning in September. Members believe the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without this action. The Committee recommended that the weekly percentage be set at 25 percent for each week of the 11-week period. This is as restrictive as § 905.153 will allow.

The Committee believes it is best to set regulation at the most restrictive level, and then relax the percentages if warranted by conditions later in the season. The Committee intends to meet on a regular basis early in the season, as was done in the previous three seasons. In making this recommendation, the Committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the most current information available to consider adjustments in the weekly percentage rates. This would help the industry and the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

The Committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the May meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. In addition, the production area is suffering through a period of insufficient rainfall. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger

volume of small-sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing problems affecting the European and Asian markets. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last few 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.

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

Last season, the weekly shipments of sizes 48 and 56 during the 11 weeks regulated remained close to the 250,000 carton mark. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent for this season, the total available allotment would be slightly less than the 250,000 carton level. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 220,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This would allow total shipments of small red seedless grapefruit to approach the 250,000-carton mark during regulated weeks without exceeding it.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The Committee plans to meet in August and as needed during the remainder of the 11-week period to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. 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 total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee would calculate an average week 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 25 percent, is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week.

Under the proposed rule handlers could 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. The Committee staff would perform the specified calculations and provide them to each handler.

The average week for handlers with less than five previous seasons of shipments would be calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week would be calculated as an average of the weeks they have shipped during the current season.

The regulatory period begins the third Monday in September, September 18, 2000. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. When the Secretary establishes regulation for a given week, the Committee calculates the quantity of small red seedless grapefruit that may be handled by each handler. Section 905.153(d) provides allowances for

overshipments, loans, and transfers of allotment. These tolerances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

During any week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any handler could handle an amount of sizes 48 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) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

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

The Committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handler's party to the loan. The Committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could 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.

The introductory text of § 905.350 is proposed to be modified to reflect the

Committee recommendation to establish the minimum size for red seedless grapefruit at size 56 on a continuous basis. A proposed rule to implement this recommendation will be published in a separate issue of the **Federal Register**.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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 initial 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 75 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 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1999–2000 season was around \$7.52 per  $\frac{4}{5}$  bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 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 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the

majority of Florida grapefruit handlers may be classified as small entities. Florida grapefruit producers also may be classified as small entities.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 2000–01 season, beginning the third Monday in September. 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. This proposal would limit the volume of sizes 48 and 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week would be calculated using the recommended percentage. This rule would utilize the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order.

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.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments. Also, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the overshipment is deducted from the following week's shipments.

Approximately 120 loans and transfers were utilized last season. Statistics for 1999–2000 show that in none of the regulated weeks was the total available allotment used. Therefore, the overall impact of this regulation on total shipments should be minimal.

Handlers and producers have received higher returns under percentage size regulation. In late October, during the last three years with regulation, the average price for red seedless grapefruit was \$9.31 compared to \$7.22 for the same time during the three years prior

to regulation. Prices have also remained higher, with an average price of \$7.31 in mid-December during regulation compared to \$6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons with regulation averaging \$7.13 compared to \$5.83 for the three years prior.

The on-tree earnings per box have also increased for the past three years, providing better returns to growers. The on-tree price increased from \$3.42 for 1997–98, to \$5.04 for 1998–99, to an estimated \$6.46 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit would offset any additional costs associated with this regulation.

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. This proposal would provide a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. 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.

The Committee considered alternatives to taking this action. One alternative was to not recommend using the percentage size rule. However, the Committee believes that the problems created by excessive volumes of small sizes entering the market early in the season would return absent the establishment of a percentage size regulation. Therefore, this option was rejected. Another alternative considered was to establish the weekly percentages at levels different than 25 percent. The Committee believes that the pattern of setting the weekly percentages at their most restrictive level, 25 percent, and then revisiting them prior to the beginning of the season has been very successful. Therefore, the Committee rejected this option, choosing instead to reconsider the recommended percentages closer to the beginning of the season.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the Committee. The rule would increase the reporting burden on approximately 75 handlers of red seedless grapefruit who would 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 (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 proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous three seasons, and it was unanimously recommended by the Committee. All written comments timely received will be considered before a final determination is made on this matter.

**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 proposed to be 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. Section 905.350 is revised to read as follows:

**§ 905.350 Red seedless grapefruit regulation.**

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. 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. The weekly percentages for size 48 (3<sup>9</sup>/<sub>16</sub> inches minimum diameter) and size 56 (3<sup>5</sup>/<sub>16</sub> inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/18/00 through 9/24/00 ....	25
(b) 9/25/00 through 10/1/00 ....	25
(c) 10/2/00 through 10/8/00 ....	25
(d) 10/9/00 through 10/15/00 ..	25
(e) 10/16/00 through 10/22/00 ..	25
(f) 10/23/00 through 10/29/00 ..	25
(g) 10/30/00 through 11/5/00 ..	25
(h) 11/6/00 through 11/12/00 ..	25
(i) 11/13/00 through 11/19/00 ..	25
(j) 11/20/00 through 11/26/00 ..	25
(k) 11/27/00 through 12/3/00 ..	25

Dated: July 5, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–17424 Filed 7–10–00; 8:45 am]

**BILLING CODE 3410–02–P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 72**

**RIN 3150–AG54**

**List of Approved Spent Fuel Storage Casks: FuelSolutions™ Addition**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the FuelSolutions™ cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the FuelSolutions™ cask system under a general license.

**DATES:** The comment period expires September 25, 2000. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the interactive rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Richard Milstein, telephone (301) 415–8149, e-mail, [rim@nrc.gov](mailto:rim@nrc.gov) of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPA states, in part, “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990 (55 FR 29181), a final rule in 10 CFR Part 72 entitled, “General License for Storage of Spent Fuel at Power Reactor Sites.” This rule also established a new Subpart L within 10 CFR Part 72 entitled, “Approval of Spent Fuel Storage Casks” containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

**Discussion**

This proposed rule would add the FuelSolutions™ cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Westinghouse (subsequently acquired by BNFL Fuel Solutions (BFS)) submitted an application for NRC approval with the Safety Analysis Report (SAR): “Final Safety Analysis Report for the WESFLEX Spent Fuel Management System.” BFS subsequently changed the name of the cask system from WESFLEX to FuelSolutions™. The NRC evaluated the BFS submittal and issued a preliminary Safety Evaluation Report (SER) on the BFS SAR and a proposed Certificate of Compliance (CoC) for the FuelSolutions™ cask system.

The NRC is proposing to approve the FuelSolutions™ cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health