Rules and Regulations

Federal Register

Vol. 64, No. 16

Tuesday, January 26, 1999

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98–905–4 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 finalizing without change the provisions of an interim final rule limiting 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 continues in effect limits on the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998–1999 season that began in September. The limits provided a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believed this action was necessary to help stabilize the market and improve grower returns.

EFFECTIVE DATE: February 25, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, 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) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing 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 is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule limited the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998–99 season beginning in September. 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$\frac{5}{16}$ 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 finalizes the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21, 1998. A proposed rule was published on August 11, 1998, in the **Federal Register** (63 FR 42764). Subsequently, an interim final rule was published September 28, 1998, in the **Federal Register** (63 FR 51511). That rule limited the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21. That rule limited the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This rule finalizes the interim final rule without change. The interim rule established the weekly percentage for the first seven weeks (September 21 through November 8) at 37 percent and for the final four weeks (November 9 through December 6) at 32 percent.

The interim final rule included a change in the percentages 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 14 in favor to 2 opposed at its meeting on May 22, 1998. The committee's initial recommendation was issued as a proposed rule published on August 11, 1998 (63 FR 42764). No comments were received during the comment period which expired August 31, 1998. The committee subsequently recommended adjusting the proposed percentages at its meeting September 3, 1998, in a vote of 13 in favor to 1 opposed.

For the seasons 1994–95, 1995–96, and 1996–97, returns on 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 (3/5 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. 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 covered in this rule, the f.o.b. for large sizes dropped to within two dollars of the f.o.b. for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. 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 the three seasons, the market did not recover, 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 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 had fallen from a high near $7.00 in 1991–92 to around $1.50 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. 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 weekly percentage of size regulation during the first 11 weeks of the 1997–98 season. The initial recommendation from the committee was 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 several times and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make their recommendations. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first three weeks, and 35 percent for the other eight weeks.

In making this recommendation, the committee reviewed its experiences from the past season, and those of prior seasons. The committee believes establishing weekly percentages last season was successful. The committee examined shipment data covering the 11 week regulatory period for the last season and the four prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. figures. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

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. for these weeks was $6.28 for the 1996–97 season and $6.55 for the 1997–98 season. Last season, sizes 48 and 56 represented only 31 percent of total shipments during the 11 week regulatory period as compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count for the 11 weeks.

Other information also indicates the regulation was successful. In past seasons, the on tree price had been dropping steadily. However, on tree prices for the month following the 11 weeks of regulation indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

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 for 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. Prices for the same sizes during the same period fell only 5, 5, 2, and 7 percent, respectively, last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period as compared to 22 percent for the previous 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, with 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 last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

A subcommittee had been formed to examine how weekly percentage of size regulation could best be used. The subcommittee recommended to the full committee that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believed that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would continue. The subcommittee thought that to provide the committee with the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The subcommittee believed it was best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The subcommittee also recommended that the committee meet on a regular basis early in the season to consider adjustments in the weekly percentage rates as was done in the previous season.

The recommendations of the subcommittee were reviewed by the committee at its meeting on May 22, 1998. In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee agreed with the findings of the subcommittee, and 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 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 best information available to help the industry and the committee make the most informed decisions as to whether the established percentage is appropriate.

Based on this information and the experiences from last season, the committee agreed to establish the weekly percentage at the most restrictive level, then meet in late August, and in September and October as needed when additional information is available and determine whether the set percentage level is appropriate. They said this is essentially what was done the prior year, and it had been very successful. The committee had met in May 1997, and recommended a weekly percentage be established at 25 percent for each of the eleven weeks. In August, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and recommended further relaxations. Changes to any established weekly percentages 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 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.

The committee met again on September 3, 1998, and revisited the weekly percentage issue and reviewed the information it had acquired since its May 22, 1998, meeting. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

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 this review, the committee agreed that setting the weekly percentage at 25 percent would be too restrictive and that allowing 37 percent for the first seven weeks and 32 percent for the final four weeks was more appropriate.

In its deliberations, the committee agreed that the weekly percentage of 35 percent that was in place for the majority of the weeks regulated last season was effective. This percentage seemed to have provided a sufficient volume of small sizes to service those markets, while being restrictive enough to prevent over supply.

During deliberations last season on weekly percentages, the committee considered how past shipments had affected the market. Based on statistical information, committee members believed there was an indication 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 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As for this season, the committee 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 of approximately 244,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

However, during the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

The committee recognized that since last season a number of packinghouses have gone out of business, lowering the total allotment available to the industry. The committee believed that adjusting the 35 percent to 37 percent would provide for the allotment lost and increase the total allotment available to the industry for loan or transfer. Therefore, the committee recommended relaxing the weekly percentage to 37 percent for the first seven weeks of the regulated period.

The committee further recommended that the weekly percentage for the last four weeks of the 11 weeks be established at 32 percent. The committee resolved that a lower percentage was desirable moving into the last four weeks of regulation. The committee believed that 32 percent was a viable figure as the season progressed because the crop would have begun to size and there would be a greater availability of larger sizes. The committee believed that as the industry moved into the season and shipments increased, a weekly percentage of 32 percent would 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. After examining the way the crop was sizing and maturing, the committee believed the rule at 25 percent was too restrictive and that the change to 37 percent for the first seven weeks and 32 percent for the last four weeks was preferable. They decided that a loosening of the regulated percentages could be done without adversely affecting the marketable quantity and returns on these small sizes. The interim final rule allowed all packinghouses to take advantage of the increased percentages, while not oversupplying the market.

While the official crop estimate was not available until October, there were indications that the grapefruit crop was not as large as in 1997–98. Also, grapefruit had been slow in maturing this season due to scattered rains and hot summer temperatures. This caused the harvest season to start late and may mean a greater volume of smaller sizes. Using this information on the 1998–99 crop, the committee members believed that relaxing the weekly percentages as recommended provided enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that could be shipped by a handler during a regulated week was calculated using the recommended percentage of 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 could calculate the volume of sizes 48 and/or 56 they could ship in a regulated week.

An average week was 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 were added and divided by five to establish an average season. This average season was then divided by the 33 weeks to derive the average week. This average week was the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 37 or 32 percent, was multiplied by a handler's average week. The product was that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

The calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. The minimum size was established under § 905.52 at size 56, and handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments were within the established limits. The committee staff performed the specified calculations and provided 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. The weekly percentage of 37 percent is then applied to this amount. This provides this handler with a weekly allotment of 592 cartons (1,600 × .37) 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, under the established procedures, a new handler could ship small sizes equal to 37 percent of their total volume of shipments during their first shipping week. Once a new handler had established shipments, their average week would be calculated as an average of the weeks they shipped during the current season.

This rule finalizes, without change, the weekly percentages for each of the eleven weeks of the regulatory period (September 21 through December 6) that appeared in the interim final rule.

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 could 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 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 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 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 could be made. In each case, the committee confirms 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 is at the discretion of the handlers party to the loan.

The committee computed each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee notified 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.

During committee deliberations at the May 22, 1998, meeting, several concerns were raised regarding the regulation. One area of concern was the way allotment base is calculated. Two members commented that the rule was not fair to those handlers that shipped the majority of their grapefruit shipments during the 11 week period. They said that using a 33 week season as the basis for allotment was not reflective of their shipments during the regulated period, and that their allotment was not enough to cover their customer base.

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.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped much grapefruit in the early season. 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 method as the definition of prior period that provides each handler with an equitable base from which to establish shipments.

In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that this method was the best option considered thus far. Another member commented that this option also provides a larger industry base than an 11 week calculation, supplying a greater amount of available base overall.

In regards to whether their allotment is enough to cover their customer base, the procedures under which this rule was recommended provide flexibility through several different options. Handlers could transfer, borrow or loan allotment based on their needs in a given week. Handlers also had the option of overshipping their allotment by 10 percent in a week, as long as the overshipment was deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. The closest it came was 83 percent of available base used. However, this still left an available allotment for loan or transfer of over 57,000 cartons. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provided 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.

Another concern expressed was that the rule only covers red seedless grapefruit. One member wanted the committee to consider adding white grapefruit to the regulation. The member also asked that the committee continue to consider other possibilities on which to base regulation. The committee agreed that the provisions by which this regulation is recommended should be reviewed on a continuous base. It was also stated that should the committee want to change § 905.153, the section outlining the procedures for setting weekly percentage of size regulation, they could consider it as part of the current meeting. No motions for change were received.

Another concern expressed was that the committee was considering meeting too often during the regulatory period to consider changing the weekly percentages. The member said that marketing plans are made further in advance than two to three weeks. The committee responded that information that is valuable in considering the appropriate percentage levels is not available until the regulatory period begins. Members agreed that it was important to meet and adjust percentages as necessary as seasonal information becomes available.

At the September 3, 1998, meeting, the concern was raised that the weekly percentages recommended were not high enough. One member expressed that they had routinely shipped all their allotment and that the weekly percentages should be higher. The committee responded that the provisions for loans, transfers, and overshipment were available to offset such problems. With the weekly percentages established, total industry allotment should exceed shipments for the majority of the 11 weeks, so that some allotment should be available for loan or transfer.

After considering the concerns expressed, and the available information, the committee determined that this rule is needed to regulate shipments of small sized red seedless grapefruit.

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.

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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 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 the industry and committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1997–98 season was around $6.30 per 4⁄5 bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 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 limits the volume of small red seedless grapefruit entering the fresh market during the 11 weeks beginning the third Monday in September for the 1998–99 season. This rule utilizes the provisions of § 905.153. This rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6). This is a change from the committee's original recommendation of a 25 percent weekly percentage for each 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 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. The rule sets the weekly percentage at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6) of the 11 week period. 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 during the early part of the season.

At the May 22, 1998, 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 239,243 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 September 3, 1998, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

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 250,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. Based on shipments from seasons 1993–97, a total available weekly allotment of 250,000 cartons would exceed actual shipments for each of the first three weeks that will be 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 the 1996–97 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 will still 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 cost 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. 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 covered in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

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 had fallen from a high near $7.00 in 1991–92 to around $1.50 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. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation will 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 minimum effect on overall shipments. While this rule may necessitate spot picking, which may entail slightly higher harvesting costs, many in the industry are already using the practice, and 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 helps limit the effects of an over supply of small sizes early in the season. A similar rule was enacted successfully last season. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, 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 and $6.55 for the 1997–98 season. It also reduced sizes 48 and 56 as a percentage of the crop. Last season sizes 48 and 56 represented 31 percent of shipments during the 11 week regulatory period, compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count. Numbers from the month following the 11 weeks of regulation also indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

The rule was 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 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period last season only fell by 5, 5, 2, and 7 percent, respectively, under regulation. Prices for all sizes were firmer during this period last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period last season as compared to 22 percent for the previous 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, with larger sized grapefruit registering modest improvements. It 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 same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Even with restrictions in place, total shipments during the 11 week period last season were higher than the previous season. There was also no noticeable drop in exports. Therefore, shipments remained strong and prices were stabilized during the regulated period.

The interim final rule increased the weekly percentages over the percentages originally recommended at the May 22, 1998, meeting. The changes recommended by the committee at its September 3, 1998, meeting set the percentages at a higher level, and at levels comparable to last season. These percentages were still restrictive, but allowed the utilization of more small sized fruit. During the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

Over 50 percent of red seedless grapefruit is 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 last season suggests the regulation could do both. A stabilized price that returns a fair market value benefits 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.

One alternative to the actions approved was considered by the committee prior to making the recommendations at the May 22, 1998, meeting. The alternative discussed was whether to amend § 905.153 in conjunction with setting a weekly percentage. Two members suggested that the calculation used to determine a handler's allotment base should be changed from 33 weeks to a calculation that used the 11 weeks regulated by the rule. In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that though this method had its concerns, it was the best option considered thus far. Therefore, the committee rejected this alternative, concluding the recommendations previously discussed were appropriate for the industry.

Another alternative action was considered at the September 3, 1998, meeting. Rather than changing all the weekly percentages, it was suggested that the committee only consider three weeks at a time in making its recommendations for change. The committee would then meet before each three week period began to consider the appropriate weekly percentages for those three weeks. The committee agreed that it was important to meet on a regular basis during the regulation period to help ensure that the weekly percentages are at the appropriate level. However, the committee also recognized that marketing plans are made more than three weeks in advance, and that it was important to try to provide handlers with as much advance notice of their allotment of small sizes as possible. Therefore, the committee rejected this alternative.

Handlers utilizing the flexibility of the loan and transfer aspects of this action will be 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).

In addition, 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 May 22, 1998, meeting, and the September 3, 1998, 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, August 11, 1998 (63 FR 42764). A 20-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended August 31, 1998. No comments were received. An interim final rule concerning this action was published in the **Federal Register** on Monday, September 28, 1998 (63 FR 51511). A 10-day comment period was provided to allow interested persons to respond to the rule. The comment period ended October 8, 1998. No comments were received. Copies of both rules were mailed or sent via facsimile to all committee members and to grapefruit growers and handlers. The rules were also made available through the Internet by the Office of the Federal Register.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 51511, September 28, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

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

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

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 63 FR 51511 on September 28, 1998, is adopted as a final rule without change.

Dated: January 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1786 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–98–002]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1996. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 111 to 110, effective with the Secretary's appointments for terms beginning early in the year 2000.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), Stop 0251, 1400 Independence Avenue, SW., Washington, D.C. 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 30, 1998, issue of ''Cattle,'' the Department's National Agricultural Statistics Service (NASS) estimates that in 1997 the number of cattle operations in the United States totaled about 1.17 million. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration.

The final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and would result in a decrease in Board membership from 111 to 110.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder (7 CFR 1260.101 *et seq.*). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members with appointments for terms effective in early in 1997.

The current Board representation by States or units has been based on an average of the January 1, 1993, 1994, and 1995 inventory of cattle in the