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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–4 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 adopting, as a final rule, without change, the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (Committee). This rule limits the volume of sizes 48 (at least 3$\frac{9}{16}$ inches in diameter) and 56 (at least 3$\frac{5}{16}$ inches in diameter) red seedless grapefruit handlers can ship during the first 11 weeks of the 2000–2001 season beginning September 18, 2000. This limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule should help stabilize the grapefruit market and improve grower returns.

EFFECTIVE DATE: November 22, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration 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 complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

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

The Department 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 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 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$\frac{5}{16}$ inches in diameter).

This final rule limits the volume of small red seedless grapefruit entering the fresh market. This rule establishes limits on the volume of sizes 48 and 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 2000–2001 season. The limitations began September 18, 2000. This rule supplies enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule will help stabilize the grapefruit 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 is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. 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 rule limits the volume of small red seedless grapefruit that can enter the fresh market for the remaining weeks of the 11-week period, which began the week of September 18, 2000. This rule continues in effect the interim final rule which established the weekly percentage for the first three weeks (September 18 through October 8) at 45 percent; for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent.

These percentages are different from those originally recommended by the Committee on May 26, 2000. At that time, the Committee unanimously voted to establish a weekly percentage of 25 percent for each of the 11 weeks. The Committee's initial recommendation was issued as a proposed rule published in the **Federal Register** on July 11, 2000 (65 FR 42642). No comments were received during the comment period, which expired August 10, 2000. The Committee subsequently met on August 31, 2000, and unanimously recommended adjusting the proposed percentages. The Committee's recommendation was issued as an interim final rule published on September 15, 2000 (65 FR 55885). Comments on that action were invited until September 25, 2000. No comments were received.

The Committee recognizes the need for and the benefits of the weekly percentage regulation. Members believe that the problems associated with an uncontrolled volume of small sizes entering the market early in the season will recur without such action.

As in the previous three seasons, the Committee initially recommended that the weekly percentage of size regulation be set at 25 percent for each week during the regulatory period. The Committee thought it was best to set regulation at the most restrictive level, 25 percent for each of the 11 weeks in the regulated period, and then relax the percentages as warranted by information available closer to the start of the season.

On August 31, 2000, the Committee revisited the weekly percentage issue and reviewed information it had acquired since its May meeting. It determined that the initial recommendation was too restrictive, and recommended raising the established base percentages from 25 percent for each of the regulation weeks.

In its discussion, the Committee reviewed the initial percentages recommended and the state of the crop. The Committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. The Committee noted that more information helpful in determining the appropriate weekly percentages is available closer to the start of the harvesting season. 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 2000–2001 season crop is continuing to size well. Current indications are that early-season conditions for this year are similar to those of last season. Due to the anticipated similarities, the Committee considered the percentages established last year as a basis for discussing this year's percentages. Committee members thought that last season's percentages had worked well, providing some restriction while affording volume for those markets that prefer the smaller sizes. In making its recommendation, the Committee considered that there had been a reduction in the overall available weekly industry base due to industry consolidation, a reduction in shipments, and packinghouse closings.

The available weekly industry base is the sum of each individual handler's weekly base. A handler's base is calculated by taking that handler's total red seedless grapefruit shipments during the 33 week season for each of the past five seasons, adding them together and dividing by five to calculate an average season. This number is then divided by 33 to derive the average week. This average week is the base for each handler for each of the 11 weeks of the regulatory period. The overall available industry base per week was 937,257 cartons last season. For the 2000–2001 season, the base calculates to 875,688 cartons.

To recognize this reduction in available base, the Committee recommended establishing the weekly percentages at levels slightly higher than those established for last season. The Committee agreed that the percentage established for the first two weeks of last season of 45 percent was still appropriate, and recommended that the percentages for the first two weeks of the 2000–2001 season be established at 45 percent. The Committee recommended that the third week should also be established at 45 percent, a five percent increase from last season's third week percentage. For the next four weeks the Committee recommended that the weekly percentage be established at 40 percent, an increase from 37 percent for last season. For the last four weeks of regulation, the Committee recommended that the percentage be established at 35 percent, an increase from last season's 32 percent for the final four weeks.

The ongoing problems affecting the European and Asian markets are also a factor. 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.

Therefore, based on available information and the experiences from past seasons, the Committee recommended changing the initial weekly percentages from their most restrictive level. The Committee could meet again during the regulation period, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. Any changes to the weekly percentages established by this rule would require additional rulemaking and the approval of the Secretary.

During the three seasons prior to implementation of weekly percentage regulations (1994–95, 1995–96, and 1996–97), returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (⅘ 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 market price has been higher than for the three years prior to regulation. In late October, the average market 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. Market 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.

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 size 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.

During deliberations in past seasons as to weekly percentages, the Committee considered how past shipments had affected the market. Based on available statistical information, the Committee members believed that once shipments of sizes 48 and 56 reach levels above

250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

While the Committee did eventually vote last season to increase the weekly percentages, 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 the 2000–2001 season, the total available allotment would have approximated 218,922 (25 percent of the total industry base of 875,688 cartons). Consequently, there was room to increase the percentages while holding weekly shipments of sizes 48 and 56 close to the 250,000-carton mark, as was done last season.

In making its recommendation, the Committee reviewed 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. 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 2000–2001 season. The limitations began September 18, 2000.

Therefore, this rule continues in effect the interim final rule which established the weekly percentages at 45 percent for the first three weeks (September 18 through October 8); for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week will be calculated using the recommended percentages 45, 40, or 35 percent, depending on the week. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee calculates 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 is the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case either 45, 40, or 35 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 this rule handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. The Committee staff performs the specified calculations and provides them to each handler.

The average week for handlers with less than five previous seasons of shipments is 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 have no prior period on which to base their average week. Therefore, a new handler can ship small sizes equal to 45, 40, or 35 percent, depending on the week, of their total volume of shipments during their first shipping week (depending on when they begin shipping). Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

As mentioned before, the 2000–2001 regulatory period begins the third Monday in September, September 18, 2000. Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the workweek.

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 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) 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 are not carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party, prior to the completion of the loan agreement, notifies the Committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the Committee so that proper adjustments of the records can be made. In each case, the Committee confirms in writing all such transactions prior to the following week.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

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

The introductory text of § 905.350 is being modified to reflect a change to § 905.306 establishing the minimum size for red seedless grapefruit at size 56 on a continuous basis. A final rule implementing this change has been published in the **Federal Register** at 65 FR 66601, November 7, 2000.

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 final regulatory flexibility analysis.

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

There are approximately 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 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. The majority of Florida grapefruit producers also may be classified as small entities.

This rule continues to limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 2000–2001 season, beginning September 18, 2000. 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 rule limits the volume of sizes 48 and 56 red seedless grapefruit by setting the weekly percentage for the 11 weeks at 45 percent for the first three weeks (September 18 through October 8); for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent. This is a change from the Committee's original recommendation of a 25 percent weekly percentage for the 11 weeks. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. This rule utilizes 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. Over the past three seasons, producers have adjusted their harvesting operations to more efficiently conform with the percentage size regulation and to keep their harvesting costs as low as possible.

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 market 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 prior seasons.

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 more than 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 rule provides 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 one alternative to taking this action. The alternative was leaving the weekly percentages at 25 percent. However, the Committee believed that the 25 percent level was too restrictive. Therefore, this option was rejected.

Handlers utilizing the flexibility of the loan and transfer aspects of this action are required to submit a form to the Committee. The rule increases the reporting burden on approximately 75 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 (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 interim final 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 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 26, 2000 and the August 31, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Also, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on September 15, 2000 (65 FR 55885). Copies of the rule were mailed or sent via facsimile to all Committee members and grapefruit growers and handlers. The Office of the Federal Register, the Department, and the Committee also made this rule available through the Internet.

A 10-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended September 25, 2000. No comments were received.

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.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 55885, September 15, 2000) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2000–2001 season is in full swing and this action should be effective as soon as possible during the 11-week regulatory period. Further, handlers are aware of this rule which was recommended at two public meetings. Also a 30-day comment period was provided in the proposed rule and a 10-day comment period was provided in the interim final rule. No comments were received.

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 65 FR 55885 on September 15, 2000, is adopted as a final rule without change.

Dated: November 14, 2000

James R. Frazier

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–29705 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2812

RIN 0599–AA06

Office of Procurement and Property Management; Department of Agriculture Priorities and Administrative Guidelines for Donation of Excess Research Equipment

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) amends its procedures for the donation of excess research equipment for technical and scientific education and research activities to educational institutions and nonprofit organizations under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 Act (15 U.S.C. 3710(i)). This amendment expands the list of entities eligible to receive such equipment, establishes a priority list for eligible entities seeking transfer of such equipment, and clarifies administrative rules regarding equipment transfer.

DATES: This final rule is effective December 21, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Fay on 202–720–9779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Number 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Electronic Access Addresses

I. Background

USDA regulations for the donation of excess research equipment for technical and scientific educational research activities under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 Act (15 U.S.C. 3710(i)) were promulgated at 60 FR 34456 on July 3, 1995. USDA determined that the eligibility of organizations to receive excess research equipment under this part is not clear.

The President signed Executive Order (EO) 12999 on April 17, 1996, requiring Federal agencies, when donating educationally useful Federal research equipment under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 and other laws, to give the highest preference to schools (including pre-kindergarten through twelfth grade) and nonprofit organizations (including community-based educational organizations) with particular preference to such schools and nonprofit organizations located in Federal enterprise communities and empowerment zones designated pursuant to the Omnibus Reconciliation Act of 1993, Public Law 103–66. USDA is taking action in this rule making to implement EO 12999.

Further, consistent with the EO 12999 and other authorities available to USDA for transfer of excess personal property (such as that implemented in 7 CFR part 3200), USDA desires to establish a preference list for those eligible entities seeking to receive property donated under this part.

The substance of this rule was published on July 29, 1999, as a proposed rule. No comments were received. The only change from the proposed rule is the omission of a current requirement (7 CFR 2812.4(e)) that recipients provide a written justification for why the property is needed. Since this change is de minus, and actually reduces administrative burdens on the public, the agency has determined to proceed with a final rule without further comment.

II. Procedural Requirements

A. Executive Order Number 12866

This rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or