beginning 31 days before and ending 60 days after the loss of Medicaid or similar State-sponsored coverage. A reenrollment under this paragraph (i)(1) of this section takes effect on the date following the date of loss of Medicaid or similar State-sponsored coverage.

(2) A former spouse who suspended enrollment in the FEHB Program because he or she furnished proof of eligibility for coverage under the Medicaid program or a similar State-sponsored program of medical assistance for the needy, and who wishes to reenroll in a plan under this part for reasons other than an involuntary loss of that coverage, may do so during the next available Open Season as provided by paragraph (f) of this section.

5. In § 890.807 paragraphs (e)(2) and (e)(4) are revised to read as follows:

**§ 890.807 Termination of enrollment.**

* * * * *

(e) * * *

(2) A former spouse may suspend enrollment in FEHB for the purpose of enrolling in Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or for the purpose of using TRICARE coverage (including the Uniformed Services Family Health Plan) under title 10 U.S.C. instead of FEHB coverage. To suspend FEHB coverage, documentation must be submitted to the employing office or retirement system within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare sponsored plan, or the Medicaid or similar program, or the first day of using TRICARE (including the Uniformed Services Family Health Plan) instead of FEHB coverage. The suspension becomes effective on the day before the effective date of the enrollment in the Medicare sponsored plan, or the Medicaid or similar program, or the day before the day designated by the former spouse as the first day of using TRICARE (including the Uniformed Services Family Health Plan) instead of FEHB coverage.

* * * * *

(4) A former spouse who cancels his or her enrollment for any reason may not later reenroll in the FEHB Program.

[FR Doc. 01–24108 Filed 9–25–01; 8:45 am]

**BILLING CODE 6325–50–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

**[Docket No. FV01–905–1 IFR]**

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule limits 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 and 56 red seedless grapefruit shipped during the first 11 weeks of the 2001–2002 season. This rule establishes the weekly base percentages for each of the 11 weeks beginning in September. This limitation supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

**DATES:** Effective September 17, 2001; comments received by October 9, 2001 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, Marketing Order 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) 720–8938.

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) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 requirements are designed to provide fresh markets with citrus of acceptable quality and size, to increase returns to

Florida citrus growers. This helps create buyer confidence and contributes to stable marketing conditions and is in the interest of growers, handlers, and consumers. 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 rule invites comments on limiting 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 shipped during the first 11 weeks of the 2001–2002 season beginning September 17, 2001. This rule establishes the weekly base percentages for these small sizes at 45 percent for the first two weeks, 35 percent for week 3, 30 percent for weeks 4 through 10, and 40 percent for week 11. 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 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 a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by a handler in a prior period, established by the Committee and approved by the Secretary.

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 seedless 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 sizes 48 and 56 red seedless grapefruit entering the fresh market by setting weekly percentages of 45 percent for the first two weeks, 35 percent for week 3, 30 percent for weeks 4 through 10, and 40 percent for week 11. This is a change from the percentages originally recommended by the Committee.

On May 22, 2001, the Committee unanimously voted to establish a weekly percentage of 45 percent for the first 2 weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11. The Committee's initial recommendation was issued as a proposed rule published in the **Federal Register** on July 31, 2001 (66 FR 39459). No comments were received during the comment period, which expired August 10, 2001. The Committee subsequently met on August 29, 2001, and unanimously recommended adjusting the proposed percentages.

In the past four 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, the Committee would meet and adjust its recommendations as needed. In each of the past seasons of regulation the Committee has recommended relaxing its initial recommendation of 25 percent for each week. Actual weekly percentages established for the 11-week period during the 2000–01 season were 45 percent for the first three weeks, 40 percent for the next four weeks, and 35 percent for the last four weeks.

Drawing on this experience, this season the Committee decided to make its initial recommendation for the first three weeks at levels higher than 25 percent. Based on shipments from the past four seasons, under a 25 percent restriction available allotment would have exceeded actual shipments of sizes 48 and 56 for each of the first three weeks regulated under this rule. The Committee believed that by setting weekly percentages at 45 percent for the first two weeks and 35 percent for the third week, handlers would have extra allotment available, providing individual handlers with greater flexibility and reducing the number of loans and transfers needed to use the available allotment.

For the remainder of the 11 weeks, the Committee believed that the weekly percentages needed to be set at 25 percent. The Committee thought it was best to recommend regulation at these levels, given the limited information available so early in the growing year, and then reexamine the percentages using information available closer to the start of the season.

The Committee met on August 29, 2001, and revisited the weekly percentage issue and reviewed information it had acquired since its May meeting. 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. However, the Committee believes based on information now available that the initial recommendation was too restrictive, and recommended raising the established base percentages from 25 percent to 30 percent for weeks 4 through 10 and 40 percent for week 11 of the regulated period.

In its discussion, the Committee reviewed the initial weekly 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. 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 considered the percentages set last year as a basis for discussing this year's percentages. Committee members believed relaxing last season's percentages from the initial 25 percent level had worked well, providing some restriction while affording volume for those markets that prefer small sizes.

Early indications were that conditions this year would be similar to those of last season with the production area dealing with the effects of a prolonged drought. The insufficient rainfall early this season could have affected the sizing of the crop, producing a larger volume of small red seedless grapefruit, further exacerbating the problem with small sizes. However, current information indicates that the 2001–2002 season crop seems to be sizing well. Due to increased rainfall in most growing areas the last two months, the industry may see a higher percentage of larger sizes than in the last four seasons. Hence, the Committee thought establishing the weekly percentages at 25 percent for weeks 4 through 11 may be too restrictive.

Ongoing problems affecting the European and Asian markets also continue to be a factor. These markets have historically shown a strong demand for small red seedless grapefruit. However, in the past few years there has been a reduction from the demand levels of previous seasons. This is expected to continue during the upcoming season. This could result in a greater amount of small sizes for remaining markets to absorb, further supporting the need for some restrictions to prevent the volume of small sizes from disrupting all markets.

The Committee also considered the reduction in the overall available weekly industry base due to industry consolidation, reduced shipments, and packinghouse closings. The available weekly industry base is the sum of each individual handler's weekly base. The overall available industry base per week was 875,688 cartons last season. For the 2001–2002 season, the base calculates to 813,191 cartons.

Considering the actual percentages established during past seasons, the available sizing information, and the reduction in total industry base the Committee recommended establishing the weekly percentages at levels higher than 25 percent for the last 8 weeks of the regulated period. The Committee agreed that the percentage recommended for the first two weeks of 45 percent was still appropriate, as was 35 percent for week three. However, the Committee recommended that weeks 4 through 10 should be established at 30 percent, and that week 11 should be established at 40 percent. The Committee recommended setting the percentage for week 11 at a higher level because that week marks the start of the holiday season and a large volume of small sizes are used for gift fruit shipments and fundraisers. These percentages when compared to last season's percentages represent a 10 percent decrease for weeks three through seven, a 5 percent decrease for weeks eight through ten, and a 5 percent increase for week 11.

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. Changing the weekly percentages established by this rule would require additional rulemaking and the approval of the Secretary.

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 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 to get fruit into the market early 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, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the end of the 11-week period covered in this rule.

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 the over shipment of smaller sized red seedless grapefruit contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee successfully used the provisions of § 905.153, and recommended weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Under regulation, f.o.b. and on-tree prices have increased and movement has stabilized.

Average f.o.b. prices have been higher during regulation than for the three years prior to regulation. The average price for red seedless grapefruit in late October was $8.46 for the last four years compared to $7.22 for the same period for the three years prior to regulation. Prices also remained at a higher level, with a weighted average price of $7.29 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 four seasons averaging $7.15 compared to $5.83 for the three prior years.

The on-tree prices per box for red seedless grapefruit for the fresh market have also improved during the past three years of regulation, providing better returns to growers. The on-tree price increased from $3.26 in 1996–97 to $3.42 in 1997–98, to $5.04 in 1998–99, to $5.62 for the 1999–2000 season.

Another benefit of regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. During the three years before regulation, the average differential between the f.o.b. carton price for a size 27 and a size 56 was $3.47 at the end of October. However, by mid-December the price for the larger size had dropped to within $1.68 of the price for the smaller-size fruit.

In the four years of regulation, the average differential between the f.o.b. carton price for a size 27 and a size 56 was $5.38 at the end of October and remained at $3.42 in mid-December. In fact, the average f.o.b. prices for each size were higher during the four 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 four years were $9.41, $8.12, $7.26, and $6.68, 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 helped stabilize 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 four 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 2000–01.

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

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

Last season, the weekly shipments of sizes 48 and 56 red seedless grapefruit remained below 250,000 cartons for 10 of the 11 regulated weeks. This may have contributed to the success of the regulation.

In setting the weekly percentages at 45 percent for the first two weeks and 35 percent for week 3, the total available allotment would be slightly more than 250,000 cartons in the first three weeks. However, in the last four seasons, shipments of sizes 48 and 56 have never exceeded 250,000 cartons during the first three weeks. Also, setting the weekly percentages at 25 percent for the 2001–2002 season would have provided a total available allotment of approximated 203,300 cartons (25 percent of the total industry base of 813,191 cartons). Consequently, there is 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.

Therefore, this rule establishes the weekly percentages at 45 percent for the first two weeks, 35 percent for week 3, 30 percent for weeks 4 through 10, and 40 percent for week 11 for this season. The Committee plans to meet as needed during the 11-week period to ensure the weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the recommended percentage. By taking the weekly percentage times the average weekly volume of red seedless 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. To calculate an average week, 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 from the previous five seasons are added together, then divided by five to establish an average season. This average season is 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 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. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is 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 previous 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 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

The regulatory period begins the third Monday in September, September 17, 2001. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday as 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. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These provisions should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

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 informs each handler of the quantity of sizes 48 and 56 red seedless grapefruit they 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.

At its May 22 meeting, the Committee also recommended changing the percentage size procedures in § 905.153 to authorize percentage size regulation for an additional 11 weeks, or the first 22 weeks of the season. A proposed rule to revise § 905.153 to implement this recommendation will be published in a separate issue of the **Federal Register**. If the authority to establish percentages for the additional 11 weeks is implemented, the Committee would be able to implement, with Department approval, marketing percentages to limit the shipment of small-sized red seedless grapefruit for that additional time period, if warranted.

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.

**Initial Regulatory Flexibility Analysis**

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 initial regulatory flexibility analysis.

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

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, are 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 $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2000–01 season was approximately $7.20 per 4/5 bushel carton, and total fresh shipments for the 2000–01 season are estimated at 24.7 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 may also be classified as small entities.

The over shipment of small-sized red seedless grapefruit early in the season has contributed to poor returns for growers and lower on tree values. This rule limits the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market during the first 11 weeks of the 2001–02 season, beginning September 17, 2001, by setting weekly percentages governing the volume of small sizes that may be shipped. This rule sets the weekly percentages at 45 percent for the first two weeks, 35 percent for week 3, 30 percent for weeks 4 through 10, and 40 percent for week 11. This is a change from the Committee's original recommendation of 45 percent for the first two weeks, 35 percent for week 3, and 25 percent for the remaining 8 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 for that week. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order.

While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, 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 2000–01 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 four years with regulation, the average f.o.b. price for red seedless grapefruit was $7.99 compared to $7.22 for the three years prior to regulation. F.o.b. prices have also remained higher, with an average price of $7.29 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price has also been higher under regulation averaging $7.14 compared to $5.83 for the three years prior.

On-tree earnings per box of red seedless grapefruit for the fresh market improved under regulation, providing better returns to growers. The on-tree price increased from $3.26 in 1996–97, to $3.42 for 1997–98, to $5.04 for 1998–99, to $5.62 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit should 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 benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

This action is expected to stabilize the supply of small sizes entering the marketplace. It also is expected to encourage growers to leave the grapefruit on the tree longer, which improves size and maturity. Improved size and maturity provides greater consumer satisfaction and promotes repeat purchases. In addition, this action is not expected to decrease the overall consumption of red seedless grapefruit.

The Committee considered alternatives to taking this action. One alternative was to leave the established weekly percentages at 25 percent for weeks 4 through 11. The Committee thought this was too restrictive and wanted to provide individual handlers more flexibility in weeks 4 through 11; therefore this option was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 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 22, 2001, and the August 29, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A proposed rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39459). Copies of the rule were mailed or sent via facsimile to all Committee members and to 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 August 10, 2001. No comments were received.

As previously stated, subsequent to the issuance of the proposed rule, the Committee met and recommended modifying its original recommendation. The Committee recommended that the weekly percentages remain at 45 percent for the first two weeks (September 17 through September 30) and 35 percent for week three (October 1 through October 7), and that the percentages be changed from 25 percent to 30 percent for weeks 4 through 10 (October 1 through November 25), and to 40 percent for week 11 (November 26 through December 2). Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the original recommendation. However, the Department has further determined that extending the comment period with no percentages in effect limiting the shipment of small red seedless grapefruit when the period of regulation begins would be detrimental to the industry. Therefore, the Department is instituting the regulations on small red seedless grapefruit through this interim final rule that allows 10 additional days to comment.

Ten days is deemed appropriate because the regulation period begins September 17, 2001, and continues for 11 weeks. Adequate time will be necessary so that any changes made to the regulations based on comments filed could be made effective during the 11 week period. All comments received will be considered before a final determination is made on this matter.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place when the regulatory period begins September 17, 2001, and handlers begin shipping grapefruit. This issue has been widely discussed at various industry and association meetings, and the Committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 10-day comment period was provided for in the proposed rule and a 10-day comment period is provided in this rule.

**List of Subjects in 7 CFR Part 905**

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

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

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

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

### § 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

| Week | Weekly Percentage |
|---|---|
| (a) 9/17/01 through 9/23/01 | 45 |
| (b) 9/24/01 through 9/30/01 | 45 |
| (c) 10/1/01 through 10/7/01 | 35 |
| (d) 10/8/01 through 10/14/01 | 30 |
| (e) 10/15/01 through 10/21/01 | 30 |
| (f) 10/22/01 through 10/28/01 | 30 |
| (g) 10/29/01 through 11/4/01 | 30 |
| (h) 11/5/01 through 11/11/01 | 30 |
| (i) 11/12/01 through 11/18/01 | 30 |
| (j) 11/19/01 through 11/25/01 | 30 |
| (k) 11/26/01 through 12/2/01 | 40 |

Dated: September 21, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–24061 Filed 9–21–01; 2:00 pm]

BILLING CODE 3410–02–P

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Parts 5 and 28

**[Docket No. 01–21]**

**RIN 1557–AB92**

## Operating Subsidiaries of Federal Branches and Agencies

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** Consistent with the principle of national treatment for foreign banks operating in the United States established by the International Banking Act of 1978, the Office of the Comptroller of the Currency (OCC) is amending its regulations to provide that a Federal branch or agency may establish, acquire, or maintain an operating subsidiary in generally the same manner that a national bank may acquire or establish an operating subsidiary.

**EFFECTIVE DATE:** October 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Martha Clarke, Counsel, or Heidi M. Thomas, Counsel, Legislative and Regulatory Activities Division, 202–874–5090; or Carlos Hernandez, International Advisor, International