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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 553

RIN 3206-AI92

Repeal of Dual Compensation Reductions for Military Retirees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations recognizing the end of reductions in uniformed service (military) retired or retainer pay previously required by law of military retirees employed by the Federal Government. We are adopting the interim regulations as final without change and provide supplementary information to answer the questions we received.

EFFECTIVE DATE: The regulations are effective on July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz on (202) 606-0960, FAX (202) 606-2329, or e-mail ltlorenz@opm.gov.

SUPPLEMENTARY INFORMATION: Section 651 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, repealed 5 U.S.C. 5532. This repeal ended two reductions in uniformed service (military) retired or retainer pay previously required of military retirees employed by the Federal Government. This repeal did not change other parts of the Dual Compensation Act of 1964 that gave military retirees a "fresh start" for Federal civilian employment. The law continues to limit crediting military service of retirees as civilian service for employment benefits. For military retirees, the law allows credit only for service in the armed forces during war, or service for which a campaign badge

is awarded, or when disability retirement is based on disability resulting from armed conflict or in the line of duty during a war; see 5 U.S.C. 3501 and 3502(a) for retention, 6303(a) for annual leave, and 8411(c) for retirement. The law requires agencies to credit uniformed service of non-retired service members as civilian service. We received many forms of the following four questions:

1. *Do any Federal pay caps count retired military or retainer pay?* No, the remaining Federal pay caps do not count uniformed service (military) retired or retainer pay.

2. *Why can't agencies count the military service of military retirees for annual leave, retention and retirement purposes?* The Dual Compensation Act of 1964 required that retired uniformed (military) service members have a "fresh start" upon appointment to the Federal civil service. As a result, generally agencies may not use the military service of a retiree to grant civilian employment benefits. The law provides exceptions for service in the armed forces during war and campaigns and for retirements based on disability resulting from armed conflict or in the line of duty during a war. In 1999, Public Law 106-65 repealed only the dual pay limitations of the 1964 Act.

3. *What exceptions allow agencies to credit the military service of non-retirees and some military retirees as civilian service?* The law requires agencies to credit uniformed (military) service of non-retirees as civilian service. For military retirees, the law only allows credit for service in the armed forces during a war, service in a campaign for which a campaign badge is awarded or when the retirement is based on disability resulting from an armed conflict or in the line of duty during a period of war. For details about these exceptions see 5 U.S.C. 3501 and 3502(a)—retention, 6303(a)—annual leave, and 8411(c)—retirement. Federal agencies use the law and The Guide to Processing Personnel Actions, especially Chapter 6, to credit uniformed (military) service of retirees. The OPM website, www.opm.gov/feddata/gppa/gppa.htm, contains a copy of the Guide.

4. *May military retirees use their veterans' preference?* Yes, retirement does not change a service member's

entitlement to veterans' preference in Federal hiring.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 550

Administrative practice and procedure, Government employees, Claims, Wages.

5 CFR Part 553

Administrative practice and procedure, Government employees, Military Personnel, Retirement, Wages.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, the interim regulations amending 5 CFR parts 550 and 553 which were published at 65 FR 19643, on April 12, 2000, are adopted as final regulations without change.

[FR Doc. 02-15012 Filed 6-13-02; 8:45 am]

BILLING CODE 6325-38-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket Nos. FV01-905-1 FIR; FV01-905-2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying Procedures and Establishing Regulations To Limit the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as final rules, without change, two interim final rules that regulated small red seedless grapefruit entering the fresh market

during the 2001–02 season under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. The order is administered locally by the Citrus Administrative Committee (Committee). This rule finalizes weekly percentages that were established for the first 11 weeks of the season. It also continues in effect the increase in the number of weeks available for percentage of size regulation from 11 to 22 weeks and finalizes the percentages established for the last 6 of those weeks. The interim final rules were intended to supply enough small red seedless grapefruit without saturating all markets, thus helping to stabilize supply and improve grower returns.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida, 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 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 order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The USDA 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule adopts, without change, the provisions of two interim final rules that regulated the volume of sizes 48 (3⁹/₁₆ inches minimum diameter) and 56 (3⁵/₁₆ inches minimum diameter) red seedless grapefruit entering the fresh market under the order. This rule finalizes the weekly percentages established for the first 11 weeks of the 2001–02 season. It also continues in effect the increase in the number of weeks available for percentage of size regulation from 11 weeks to 22 weeks and the percentages established for the last 6 of those weeks. The interim final rules were intended to supply enough small red seedless grapefruit without saturating all markets, thus helping to stabilize supply and improve grower returns. These actions were recommended unanimously at two industry meetings on May 22, 2001, and August 29, 2001.

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 a handler may ship during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and approved by the USDA.

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. Currently, the regulation period covers 22 weeks starting 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.

Background

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 (4¹/₅ 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.

The Committee believes that 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 were higher during the 11-week percentage of size regulation than for the three years prior to regulation. The average price for red seedless grapefruit in late October was \$8.46 per carton for the regulated seasons compared to \$7.22 for the same period for the three years before regulation. Prices have also remained at a higher level, with an average f.o.b. price of \$7.29 per carton in mid-December during the years with regulation compared to \$6.02 for the three prior years. The average season f.o.b. price has also been higher, averaging \$7.15 per carton during years with 11-week regulation compared to \$5.83 for the three prior seasons without regulation.

The on-tree returns per box for fresh red seedless grapefruit also improved during 11-week regulation, providing better returns to growers. On-tree returns increased from \$2.85 in 1997–98, to \$4.52 in 1998–99, to \$5.52 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.

Eleven-week percentage of size regulation also helped stabilize the volume of small sizes entering the fresh market early in the season. During the three years prior to the 11-week regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered. This compares to 31 percent for the same period during the last four years with 11-week

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, helping 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.

Based on available statistical information, the Committee 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 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.

First Eleven Week 2001–02 Discussion

Based on this and prior season experience, 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 percentages. The Committee determined that the initial recommendation was too restrictive, and recommended raising the percentages from 25 percent to 30 percent for weeks 4 through 10 and 40 percent for week 11 of the regulated period. The Committee's revised

recommendation was issued as an interim final rule published in the **Federal Register** on September 26, 2001 (66 FR 49088). No comments were received during the comment period, which expired October 9, 2001.

Based on current 2001–02 crop and marketing information available to the Committee in August, 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.

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 when percentage size regulations have been effective, shipments of sizes 48 and 56 have never exceeded 250,000 cartons in the first three weeks. Setting the weekly percentages at 25 percent for the 2001–2002 season would have provided a total allotment of approximated 203,300 cartons (25 percent of the total industry base of 813,191 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.

Discussion of Twenty-Two Week Percentage of Size Regulation

This final rule also continues in effect the expansion of the weeks available for limiting the volume of small red seedless grapefruit entering the fresh market from the first 11 weeks of each season to the first 22 weeks, finalizes the weekly base percentages established for the last 6 of the 22-week regulatory period for the 2001–02 season. On August 29, 2001, The Committee recommended the percentages be set at 40 percent for the first 3 weeks (December 3 through December 23) and 30 percent for the remaining eight weeks (December 24 through February 17) of the second 11 weeks. However, because of available timeframes, weekly percentages were established for just the last 6 weeks of the second 11-week regulatory period (January 7 through February 17, 2002). These actions were

issued as an interim final rule published in the **Federal Register** on January 8, 2002 (67 FR 801). No comments were received during the comment period, which expired January 23, 2002.

The continued ability to use percentage size regulations for the first 22 weeks of the season is expected to help the industry stabilize supplies and prices for red seedless grapefruit. This in itself does not limit shipments, but expands the weeks available for percentage of size regulation to 22 weeks so small sizes can be regulated for an additional 11 weeks, if needed.

The rule creating § 905.153 (December 31, 1996, 61 FR 69011) established procedures for percentage of size regulation of small red seedless grapefruit. It provided a tool, if needed, to help stabilize price and supply. The procedures were established to cover an 11-week period to address problems associated with the oversupply of small-sized red seedless grapefruit early in the season. As previously mentioned, the Committee believed that the overshipment of early, small-sized fruit was depressing the market for all red seedless grapefruit, and concluded that having a tool to limit the amount of small red grapefruit entering the fresh market would be very helpful in

addressing this problem. The Committee recommended 11 weeks because at that time the majority of small sizes were being shipped during this period. By the end of the 11 weeks, fruit had usually begun to size, and there were fewer small sizes available.

However, this is no longer the case. The fruit is not sizing as in past seasons for reasons yet to be determined, leaving a larger supply of smaller sizes available later in the season. For the past three seasons, the volume of small sizes available from December through February has been much larger than in past seasons. Returns on red seedless grapefruit have also been declining during this period. The Committee has concluded that the problems associated with small red seedless grapefruit have begun to extend beyond the 11-week regulation period. The Committee believes the increased volumes of small red seedless grapefruit shipped or available to be shipped during the middle of the season is having a detrimental effect on the market. The Committee recommended increasing the weeks available for percentage of size regulation to address this problem.

The last three seasons, 1998–99, 1999–2000, and 2000–01, have shown a marked increase in the volume of small-

sized red seedless grapefruit available later in the season. For these three seasons, the percentage of the crop represented by small sizes in the month of February has averaged 51 percent. This compares to an average of 26 percent for the same month for the three prior seasons (1995–96, 1996–97, and 1997–98). In fact, the last three seasons have averaged a greater percentage of smaller sizes across each month, October through February, than over the three previous seasons. The trend across the last six seasons has been a continuing increase in the volume of small sizes as a percentage of the overall crop. This is most dramatically evidenced by the 72 percent increase in small sizes as a percentage of the overall crop from February 1996 to February 2001.

The volume of small-sized red seedless grapefruit available in December, January, and February for the 1998–99, 1999–2000, and 2000–01 seasons were comparable or exceeded volumes available for October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons. The following chart shows the volume of sizes 48 and smaller red seedless grapefruit available for these months as a percentage of the total crop.

SIZES 48 AND SMALLER AS A PERCENTAGE OF TOTAL CROP

	95–96	96–97	97–98		98–99	99–00	00–01
October	43	62	73	December	56	64	64
November	34	56	61	January	54	58	57
December	32	51	52	February	50	49	54

It was following the 1995–96 season that the Committee began its initial discussions regarding the need to control the volume of small-sized red seedless grapefruit entering the fresh market early in the season. Percentage of size regulation was first used to control the volume of small sizes during the first 11 weeks of the 1997–98 season. Small sizes were a problem at those volume levels for the months of October through December for the 1995–96, 1996–97, and 1997–98 seasons. Having comparable or greater volumes of small sizes available during midseason also represents a problem for the industry.

The University of Florida, Citrus Research and Education Center estimated fresh Florida citrus cost of production per acre for the 2000–2001 season at \$882.25 per acre for the SunRidge area, or the interior of the state, \$907.72 per acre for the Gulf production area, and \$974.46 per acre for the Indian River area, or the Atlantic coast region. Using an average of these

estimates, it cost approximately \$921 per acre to cultivate citrus for the fresh market in 2000–2001. This average represents a somewhat lower cost of production than what most growers of red seedless grapefruit experience because a major share of production is in the Indian River area.

The past five seasons red seedless grapefruit production has averaged around 409 boxes (1⅓ bushels) per acre. For the 2000–2001 season, the estimated average on-tree value for red seedless grapefruit was \$2.10 per box. Using these numbers, total on-tree revenue for the 2000–2001 season calculates as approximately \$859 per acre. When combined with the cost of production, the average red seedless grapefruit producer in Florida had a negative return of more than \$62 per acre or \$0.15 per box.

On-tree returns have been below production costs for seven of the last eight seasons. Growers have benefited from several years of increased on-tree

returns due to the 11-week percentage of size regulation. While 11-week regulation has improved the situation, it has not solved all the problems. For the first time since the 1997–98 season, grower returns have decreased. Total on-tree returns declined from \$3.36 during the 1999–2000 season to \$2.10 for the 2000–01 season. On-tree returns for fresh red grapefruit also declined by 22 percent.

Comparing on-tree returns for fresh sales by month shows that for the seasons 1997–98, 1998–99, and 1999–2000, there was an average decline in returns of \$.60 per box from November to February. By combining this \$.60 reduction with the average volume of 4.7 million boxes of red seedless grapefruit moved during this period, the drop in revenue to growers is nearly \$2.8 million. During a period when growers are struggling to realize returns at least equal the cost of production; this \$.60 can mean the difference between profit and loss.

F.o.b. prices have also stabilized under 11-week regulation. However, while it has helped eliminate dramatic drops in price during the first 11 weeks, prices have continued to decrease throughout the season. For the seasons 1998–99, 1999–2000, and 2000–01, red seedless grapefruit prices fell from an average f.o.b. price of \$7.72 per carton (¼ bushel) in November to an average f.o.b. price of \$7.02 in February. As with grower returns, after two years of increased average season f.o.b. prices, this past season, 2000–01, represented a \$.50 per carton decrease from the prior season.

The Committee believes the overshipment of smaller sized red seedless grapefruit during the middle of the season is contributing to poor returns and lower prices. Committee members agreed that extending the weeks available for percentage of size regulation an additional 11 weeks provides a tool to address the problems associated with small sizes during the middle of the season. The Committee supports the additional weeks because they have successfully used § 905.153 to address very similar problems for the first 11 weeks of the season. As previously stated, under 11-week regulation, f.o.b. prices and on-tree returns increased and movement stabilized as compared to years with no 11-week percentage of size regulation.

Much of what the Committee is seeing in the second 11 weeks of the season reminds them of the adverse conditions they were facing during the first 11 weeks for the 1994–95, 1995–96, and 1996–97 seasons. The Committee believes the problems successfully addressed by using the 11-week percentage of size regulation during the first part of the season are the same problems they are now seeing during the middle of the season. Therefore, the Committee believes expanding the period available for percentage of size regulation under § 905.153 from 11 weeks to 22 weeks provides them with the best tool to address these problems.

On average, 51 percent of red seedless grapefruit is shipped to fresh market channels. There is a processing outlet for grapefruit, with the majority, 49 percent on average, squeezed for juice. This outlet offers limited returns and currently is not profitable.

For the 2000–2001 season, on-tree returns were negative for processed red seedless grapefruit. During the last five years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the

overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. Because a fair percentage of red seedless grapefruit shipped for processing tend toward the smaller sizes, shifting volume from processing to fresh can mean an additional volume of small sizes on the fresh market, further exacerbating problems with excessive volumes of small sizes.

Recent statistics from the Florida Department of Citrus show a 40-week inventory of processed grapefruit from the 2000–01 season. This had an additional negative impact on expected returns. Projected on-tree prices for processed red seedless grapefruit for the 2001–02 season are low due to the large quantities of stored juice. This fact, combined with the past history for juice prices, further supports the need to have the additional 11 weeks available to control excessive volumes of small sizes during the middle of the season.

Shipments during the 11 weeks added by this regulation account for nearly 50 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the limited returns for processing, it is important that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The 11-week percentage of size regulation in place for the first part of the season has been having the desired effect on early markets the past four seasons. However, when the regulation period ends, there is an increased supply of small red seedless grapefruit shipped to the fresh market. This has had a depressing effect on price and grower returns. The Committee decided it needed to be able to regulate shipments of small-sized red seedless grapefruit during the middle part of the marketing season. Therefore, the Committee voted to increase the weeks available for regulation from 11 to 22 weeks.

This rule also finalizes the weekly percentages established for the last 6 of the additional 11 regulation weeks for the 2001–02 season. The Committee met August 29, 2001, and recommended that percentages be set at 40 percent for the first 3 weeks (December 3 through December 23) and 30 percent for the remaining eight weeks (December 24 through February 17). However, because of available timeframes, weekly percentages were established for only the last 6 weeks of the second 11-week period at 30 percent (January 7 through February 17, 2002). The percentages

were intended to supply enough small-sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes.

As stated earlier, for the 1998–99, 1999–2000, and 2000–01 seasons there has been a substantial increase in the volume of small sizes available later in the season. Small sizes available for shipment in December, January, and February for the 1998–99, 1999–2000, and 2000–01 seasons equal or exceed volumes available during October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons. Estimates by the Florida Agricultural Statistics Service show that small sizes represent a large percentage of the 2001–02 crop, accounting for over 83 percent of the fruit per September measurements.

On-tree returns dropped from \$3.36 during the 1999–2000 season to \$2.10 for the 2000–01 season. On-tree returns for fresh red grapefruit also declined by 22 percent. In addition, on-tree returns declined an average of \$.60 from November to February for the seasons 1997–98, 1998–99, and 1999–2000. By combining this \$.60 reduction with an average volume of 4.7 million boxes shipped during this period the loss in grower returns tops nearly \$2.8 million.

In the past three seasons, 1998–99, 1999–2000, and 2000–01, prices of red seedless grapefruit fell from an average f.o.b. price of \$7.72 per carton in November to an average f.o.b. price of \$7.02 in February. Also, after two years of increased average season f.o.b. prices, the 2000–01 season marked a \$.50 per carton decrease from the prior season.

The Committee believes excessive shipments of small red seedless grapefruit during the second 11 weeks of the season are contributing to the market's poor condition. Shipments of small sizes in December through February exceed those shipped during September through November by nearly 91,000 cartons a week on average. There is a market for small red seedless grapefruit. However, shipping large quantities in a short period oversupplies the market for these small sizes and negatively impacts the market for all sizes.

To address similar problems with an oversupply of small sizes and decreasing returns, the Committee successfully used the provisions of § 905.153, and recommended weekly regulation of small sizes during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, 2000–01, and 2001–02 seasons. Under the 11-week regulations, prices increased and movement stabilized as compared to seasons without 11-week regulation.

In making the recommendation to establish weekly percentages for the second 11 weeks, Committee members considered the success of the 11-week regulations during the early season and their experiences from past seasons. Members reviewed shipment data covering the second 11-week period for the last three seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week.

Committee members agreed limiting the volume of small sizes available for the fresh market has been successful. The Committee believes that the volume of small sizes will be a problem during the middle of the season, and that limiting the volume available for shipment will be beneficial.

Based on available statistical information, Committee members concluded 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. During the second 11-week period of the last three seasons, shipments of sizes 48 and 56 red seedless grapefruit exceeded 250,000 cartons an average of 5 of the 11 weeks. For the 1998–99, 1999–2000, and 2000–01 seasons, shipments of sizes 48 and 56 red seedless grapefruit from the second 11 weeks exceeded shipments of small sizes from the first 11 weeks by an average of nearly one million cartons. This may have contributed to the problems facing the industry.

Setting the weekly percentages at 30 percent for the remaining 6 weeks of the second 11-week period during the 2001–02 season provided a total available weekly allotment of approximately 244,000 cartons (30 percent of the total industry base of 813,191 cartons). Setting the weekly percentages at this level allowed total shipments of small red seedless grapefruit to approach the 250,000-carton mark during the regulated period without exceeding it.

The Committee believes that the problems associated with an uncontrolled volume of small sizes entering the market in the middle of the season will continue without regulation. Therefore, this rule continues in effect the authority for the Committee to use percentage of size regulations during the first 22 weeks of any season, when needed.

The provisions governing the operation of percentage of size regulation remain the same. The Committee still cannot set restrictions tighter than 25 percent. The method for calculating base and allotment also remains the same. The only changes to

§ 905.153 are the number of available regulation weeks and the cut off period for overshipments.

The rules 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. This rule makes one slight change to the provisions governing overshipments. During a week of percentage of size regulation, any person who has received an allotment can handle an amount of sizes 48 and 56 red seedless grapefruit equal to their weekly allotment, plus an additional overshipment amount not to exceed 10 percent of that week's allotment. The quantity of overshipments is deducted from the handler's allotment for the following week. Previously, § 905.153 stated that overshipments were not allowed during week 11 because there were no allotments the following week from which to deduct the overshipments. This rule changes this to read that no overshipments are allowed during week 22 to reflect the longer period for which percentages may be established.

Final 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 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 10,000 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 $\frac{1}{4}$ 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. 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.

This rule adopts, without change, the provisions of two interim final rules regulating the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order. The overshipment of small red seedless grapefruit has contributed to poor returns for growers and lower on-tree values. This rule finalizes weekly percentages established for the first 11 weeks of the 2001–02 season. It also continues in effect the increase in the weeks available for percentage of size regulation from 11 weeks to 22 weeks and finalizes the percentages set for the last 6 of those weeks for 2000–01. Authority for these actions is provided in § 905.52 of the order. This rule also uses the provisions of § 905.153. The rule is based on unanimous recommendations of the Committee at meetings on May 22, and August 29, 2001.

The change increasing the weeks available for regulation from 11 to 22 weeks only provides additional weeks for percentage of size regulation. It in itself does not establish any restriction on shipments. Having the ability to control the volume of small red seedless grapefruit the first 11 weeks of a season has been an important tool. The Committee believes the benefits derived under 11 weeks of volume regulation will continue if the period available for volume regulation is increased to 22 weeks. With the trend being more small sizes available later in a season, having the ability to regulate volume during the middle of the season will be a valuable asset. The purpose of this change is to provide a tool to prevent a surplus of small-sized red seedless grapefruit from damaging the overall grapefruit market during the middle part of the season. A tool that will help stabilize price and returns benefits both small and large producers and handlers.

This rule also finalizes the percentages that limited 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. The weekly percentages were 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 also finalizes weekly percentages established for 6 of the 11 weeks added to the regulatory period for the 2001–02 season. The Committee recommended weekly percentages of 40 percent for the first three weeks (December 3 through December 23) and 30 percent for the eight remaining weeks (December 24 through February 17) of the second 11-week period. However, because of available timeframes, weekly percentages were established for just the last 6 weeks of the second 11-week regulatory period at 30 percent (January 7, 2002, through February 17, 2002).

While the establishment of volume regulation may necessitate spot picking, which could entail slightly higher harvesting costs, many producers are already using the practice. However, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersize fruit is not harvested. This practice may also result in reduced processing and packing costs. 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 at the start of the season for the three seasons prior to 1997–98, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. Similarly, if a 25 percent restriction on small sizes had been applied during the second 11-week period for the three prior seasons, an average of 4.9 percent of the overall shipments during that period would have been subject to regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under percentage of size 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 can overship their allotment by 10 percent in a week, provided any overshipments are deducted from the following week's shipments. Transfers and loans have been used very effectively during past seasons with percentage of size regulation. Therefore, the overall impact of this regulation on

total shipments should not be substantial.

Handlers and producers have received higher returns under the 11-week percentage of size regulations issued for the first 11 weeks of the last four seasons. In late October, during the four years with 11-week regulation, the average f.o.b. price for red seedless grapefruit was \$7.99 per carton compared to \$7.22 for the three years prior to regulation. F.o.b. prices also have remained higher, with an average price of \$7.29 in mid-December during 11-week regulation compared to \$6.02 for the three years prior to regulation. Season average prices were also higher under 11-week regulation averaging \$7.14 per carton compared to \$5.83 for the prior three years. On-tree earnings per box for fresh red seedless grapefruit also improved under regulation, providing better returns to growers. The on-tree price increased from \$3.26 per box 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 offset any additional costs associated with the 11-week regulation.

The Committee believes that if the 11-week regulation at the start of a season has been successful in controlling the volume of small sizes and increasing returns, applying similar volume regulation during the second 11 weeks of the season should also be effective. Even if this action was only successful in raising returns by \$.10 per carton, this increase in combination with the substantial number of shipments generally made during this second 11-week period, would represent an increased return of nearly \$1 million. Consequently, any increased returns generated by this action should 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. 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 action is not expected to decrease the overall consumption of red seedless grapefruit. It is expected to benefit all red seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered alternatives to the actions taken in this rule. 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. Two other alternatives considered were not increasing the number of weeks available, and increasing the regulation period to include all 33 weeks of a season. Committee members agreed producers and handlers would benefit from smaller-sized fruit being controlled for a greater portion of the season. They also noted that the majority of export shipments occur during the last 11 weeks of the season helping to alleviate problems with small sizes during that part of the season. Consequently, these alternatives were also rejected.

Other alternatives considered focused on the length of the holiday season and percentages set for that period. The holiday season is the weeks before Christmas when a large volume of small sizes is used for gift fruit shipments and fundraisers. One alternative was to add an additional week to those weeks considered as the holiday season, and set higher percentages for the first four weeks rather than the first three. Another alternative discussed was setting percentages higher than 40 percent for the weeks covered that were considered part of the holiday season. The Committee reviewed and discussed the suggestions and agreed that the weeks included and the percentages recommended the second 11 weeks of the 2001–02 season were the best solutions based on the information available. Therefore, these alternatives also were rejected.

This action required two new handler reports, forms 301A and 302A. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS obtained emergency approval for a new information collection request under OMB No. 0581–0200 for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. Subsequent to the emergency approval by OMB, this information collection has since been merged under OMB No. 0581–0189, Generic OMB Fruit Crops. 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 analyses, USDA 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 Florida 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, and August 29, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

The two interim final rules concerning these actions were published in the **Federal Register**, one on September 26, 2001 (66 FR 39459) and one on January 8, 2002 (67 FR 801). Copies of the rules were mailed or sent via facsimile to all Committee members and citrus handlers. Finally, both rules were made available through the Internet by the Office of the Federal Register and USDA. The rule published on September 26, 2001, provided a 20-day comment period that ended October 9, 2001. The rule published on January 8, 2002, provided a 15-day comment period that ended January 23, 2002. 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 rules, without change, as published in the **Federal Register** (66 FR 39459, September 26, 2001) and (67 FR 801, January 8, 2002) 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 rules amending 7 CFR part 905 which were published at 66 FR 49088 on September 26, 2001 and at 67 FR 801 on January 8, 2002, are adopted as final rules without change.

Dated: June 10, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-15063 Filed 6-13-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV02-948-1 FR]

Irish Potatoes Grown in Colorado; Increase in the Minimum Size Requirement for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the minimum size requirement for all varieties of potatoes produced in Area No. 2 of Colorado, except for the round varieties and the Russet Burbank, Russet Norkotah, and Silverton Russet varieties. This rule raises the minimum size requirement from 1 $\frac{7}{8}$ inches to 2 inches in diameter or 4 ounces in weight. This size change is based on a recommendation of the Colorado Potato Administrative Committee (Committee), the agency responsible for local administration of the marketing order for potatoes grown in Colorado. This change is intended to improve the marketing of Colorado potatoes and increase returns to producers.

EFFECTIVE DATE: This final rule becomes effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is 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 (USDA) 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the minimum size requirement for all varieties of potatoes produced in Area No. 2 of Colorado, except for the round varieties and the Russet Burbank, Russet Norkotah, and Silverton Russet varieties. This rule raises the minimum size requirement from 1 $\frac{7}{8}$ inches in diameter to 2 inches in diameter or 4 ounces in weight. This action is based on a recommendation the Committee made on August 16, 2001.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. Section 948.22 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or