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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Limits on the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes weekly limits on small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this action. This rule relaxes the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This action provides an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

DATES: Effective February 9, 2004; comments received by February 10, 2004, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; 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 made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order 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 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 (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. A 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 relaxes limits on the volume of small red seedless grapefruit entering the fresh market. This rule allows for an additional volume of sizes 48 and 56 fresh red seedless grapefruit to be shipped during the last week of the 22-week percentage of size regulation period for the 2003–04 season. This rule supplies an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This action should 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 a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by 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. The regulation period is 22 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 relaxes limits on the volume of sizes 48 (3 9/16 inches minimum diameter) and 56 (3 5/16 inches minimum diameter) red seedless grapefruit entering the fresh market by increasing the weekly percentage established for week 22 (February 9 through February 15, 2004), from 40 percent to 50 percent. The Committee unanimously recommended this change during a January 22, 2004, telephone meeting.

On July 1, 2003, the Committee recommended regulating all 22 weeks (September 15, 2003–February 15, 2004). The Committee recommended that the weekly percentages be set at 45 percent for the first 2 weeks, 35 percent for weeks 3 through 19, and 40 percent for the remaining 3 weeks. These percentages were established following informal rulemaking procedures, with an interim final rule published in the **Federal Register** on September 9, 2003 (68 FR 53015), and a final rule published in the **Federal Register** on November 14, 2003 (68 FR 64494).

The Committee believes that the over shipment of small-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

In its discussion of the relaxation of the percentage for the last week when percentage size limitations apply, the Committee reviewed the percentages previously recommended and the current state of the crop. The Committee also considered some additional information that was not available during its earlier meeting. On January 12, 2004, USDA released information regarding fruit size distribution developed from a December size survey. The size survey showed that more small sizes were available than anticipated. The release stated that the mean size indicated that only two other seasons during the past ten years have had smaller sizes. According to the survey, more than 50 percent of the remaining crop is size 48 and smaller. This compares to only 34 percent at this time last season.

The Committee had not expected small sizes to represent such a large portion of the available crop by this time in the season. With small sizes representing a significant amount of this year's crop, larger sizes are in shorter supply. Growers have spot picked their groves twice looking for larger sizes and to spot pick again would be cost prohibitive. Also, with the expectation that the fruit size will not improve, there will continue to be a shortage of large sizes. This means that there will be a sizable amount of small sizes available at the end of the regulated period.

With a limited number of larger sizes available, there has also been market pressure to use small sizes to serve markets that traditionally take larger sizes. However, at the same time, markets that traditionally demand small sizes are also demanding fruit. There are indications that importers of small-sized fruit began purchasing fruit earlier than in past seasons. Export shipments for the week ending January 18 were nearly 20 percent higher than for the same week last season. These factors have made supplies of available allotment of small-sized fruit tight.

The Committee offices have been receiving calls from members of the industry asking that the weekly percentages be increased. The Committee staff has also been actively working with handlers on allotment loans and transfers to accommodate the needs of handlers desiring to ship more small-sized red seedless grapefruit. Requests for loans and transfers have been increasing from 3 requests during week 15, to 19 for week 17, to 24 requests during week 18.

However, while the percentage of size regulation does provide allowances for over shipments, loans, and transfers of allotment during regulation weeks 1 through 21, there are no allowances for loans or over shipment for week 22 because it is the end of the regulation period. The Committee agreed that some increase in the percentage was necessary for the last week of regulation to recognize that some handlers would be having to reduce their allotment to cover any over shipments from the previous week and that no additional over shipments would be permitted.

There is also concern in the industry that if there is not some relaxation in the percentage, a large volume of small-sized fruit may be pushed into the market following the end of the regulation period. This would negatively impact prices and undermine the success of the regulation to this point. During the 2001–02 season, small sizes also represented a significant percentage of the crop at the end of the regulation period. The Committee had recommended a relaxation in the percentages for the last few weeks of the season, but, due to rulemaking time frames, the percentage changes were not implemented. Following the end of the regulation period, sizable quantities of small sizes were dumped onto the market. This contributed to a 35 cent per carton reduction in the f.o.b. price. The Committee believes that relaxing the percentage for the last week of regulation may help relieve some of the volume of small sizes and provide for a smoother transition to the end of the regulation period.

The Committee discussed several alternatives ranging from maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent. Such a change represents an additional industry allotment of 72,174 cartons for the last week of regulation. The Committee believes this will provide the industry with some additional flexibility and help with the transition from the end of the 22-week regulation period to the unrestricted shipment of small sizes.

Members agreed that one of the most important goals of percentage of size regulation was to create some discipline in the way fruit was packed and marketed. However, considering the size survey results, and the other information discussed, the Committee decided that increasing the weekly percentage for week February 9 through February 15 will address the goals of this regulation, while providing handlers with some additional marketing flexibility.

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 seedless 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including 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 2002–03 season was approximately $7.24 per 4/5-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the 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.

On July 1, 2003, the Committee recommended limiting the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by setting weekly percentages for each of the 22 weeks, beginning September 15, 2003. Weekly percentages were established at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. 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 percentages set. This rule relaxes the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This action provides an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action during a telephone meeting on January 22, 2004.

This rule will increase the weekly percentage set for the last week of regulation. The Committee made this recommendation to address the issue that the majority of the remaining crop is made up of small sizes. By increasing the percentage, more small sizes are available for shipment. This should help handlers meet their market needs and provide for some additional flexibility without putting too many small sizes on the market. This should benefit both handler and producer returns.

The purpose of percentage of size regulation is to help stabilize the market and improve grower returns. This change 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.

The Committee considered several alternatives when discussing this action, including maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent to provide the industry with some additional flexibility and provide a smooth transition to the period without percentage size limitations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements 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.

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).

In addition, while the meeting on January 22, 2004, was a telephone meeting, interested persons outside the Committee had an opportunity to provide input in the decision. The Committee manager provided a notice to the industry and anyone had the opportunity to participate in the call. Like all Committee meetings, the January 22, 2004, meeting provided both large and small entities the opportunity to express views on this issue. Also, the weekly percentage size regulation has been an ongoing issue that has been discussed at numerous public meetings so that interested parties have had the opportunity to express their 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.

This rule invites comments on relaxing limits on the volume of small red seedless grapefruit entering the fresh market during the last week of the 22-week percentage of size regulation for the 2003–04 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule needs to be in place when the regulatory week begins February 9, 2004, so handlers can meet

the market needs of their customers. The industry has been discussing this issue for the last two weeks, and the Committee has kept the industry well informed.

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.

§ 905.350 [Amended]

2. In § 905.350, the weekly percentage for "(v) 2/9/04 through 2/15/04" is changed from "40" to "50".

Dated: February 3, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–2653 Filed 2–4–04; 11:02 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2003–14972; Special Federal Aviation Regulation No. 98]

RIN 2120–AH83

Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on interim final rule.

SUMMARY: On April 22, 2003, the FAA adopted requirements concerning proposed construction or alteration of structures in the vicinity of the private residence of the President of the United States in Crawford, Texas. The rule requires that notice be filed with the FAA for the proposed construction or alteration of any object that exceeds 50 feet above ground level (AGL) and is within the existing lateral confines of the prohibited airspace over the private residence of the President of the United States (P–49). The rule was adopted for purposes of national defense and will assist in protecting the President of the United States. The rule does not apply to prior construction or alteration of objects and the rule will terminate at the end of the President's term in office. This action is a summary and disposition of comments received on the interim final rule.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

On March 26, 2001, the FAA published a final rule in the **Federal Register** establishing prohibited airspace (P–49) over the private residence of the President in Crawford, Texas (66 FR 16391). [The FAA subsequently modified P–49 by relocating the center of the prohibited area approximately one-half mile east, southeast (68 FR 7917; February 19, 2003.)] The airspace designation is necessary to enhance security in the immediate vicinity of the presidential residence and assist the SSPPD in accomplishing its mission of providing security for the President of the United States. While that rule prohibits unauthorized aircraft from flying within the designated airspace, it does not address certain flight safety and national security issues concerning the transport of the President.

The President's private residence in Crawford, Texas has several landing areas for Presidential aircraft. Each landing area must be accessible by flying several different approaches, depending on the weather, threat conditions, aircraft being used, and departure location. Also, the special operating procedures used by the United States Marine Corps (USMC) and the Secret Service Presidential Protective Division (SSPPD), including the use of multiple aircraft, non-standard flight techniques and other special security provisions, require the airspace surrounding the landing areas to be clear of obstructions that could affect these operating procedures and the safety of the President. Obstructions above 50 feet AGL in certain locations within the designated area could inhibit the flexibility of these special operating procedures and could compromise the safe transportation and the security of the President, particularly in emergency situations.

Discussion of Comments

The FAA received three comments on the Construction or Alteration in the Vicinity of the Private Residence of the President of the United States interim final rule (Special Federal Aviation Regulation (SFAR) No. 98).

All of the commenters opposed the regulation. The commenters were concerned that the regulation would only be in effect for the term of the current President and that the regulation might have a detrimental effect on the local business community. In addition, one commenter questioned whether the FAA would pass a rule like this one for every future President. If not, the commenter questioned why the FAA was enacting this rule for one man.

The FAA appreciates the commenters concerns. It is significant that the rule does not explicitly prohibit all proposed construction within the affected area. Certain new construction or alteration to existing structures that would exceed 50 feet AGL may in fact be compatible with the safe and secure transport of the President. Under the adopted process, the proponent of the construction/alteration must submit detailed information regarding the proposed construction/alteration. If the FAA, in consultation with the USMC and the SSPPD, determines that it would not adversely affect safety and not result in a hazard to air navigation, the FAA