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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04-905-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the 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 finalizes a relaxation of 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 change provided an additional volume of small red seedless grapefruit to address marketing conditions without saturating all markets with these small sizes. This rule helped stabilize the market and improve grower returns.

EFFECTIVE DATE: May 12, 2004.

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."

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 finalizes an interim final rule that relaxed the limits on the volume of small red seedless grapefruit entering the fresh market. The interim final rule allowed 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. The relaxation supplied an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This action helped 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 is 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 interim final rule being finalized relaxed the limits on the volume of sizes 48 (3⁹/₁₆ inches minimum diameter) and 56 (3⁵/₁₆ 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 interim final rule increasing the percentage of small red grapefruit shipments for week 22 from 40 percent to 50 percent was published in the **Federal Register** on February 6, 2004 (69 FR 5679).

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 was 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 at this time of the season. With small sizes representing a significant amount of this year's crop, larger sizes were in shorter supply. Growers had spot picked their

groves twice looking for larger sizes and to spot pick again would have been cost prohibitive. Also, with the fruit size not improving, there continued to be a shortage of large sizes. This meant that a sizable amount of small sizes would have been available at the end of the regulated period.

With a limited number of larger sizes available, there was also 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 were also demanding fruit. There were indications that importers of small-sized fruit had begun purchasing fruit earlier than in past seasons. Export shipments for the week ending January 18, 2004, were nearly 20 percent higher than for the same week last season. These factors made supplies of available allotment of small-sized fruit tight.

The Committee offices had been receiving calls from members of the industry asking that the weekly percentages be increased. The Committee staff was also 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 had increased from 3 requests during week 15, to 19 for week 17, to 24 requests during week 18.

However, while the percentage of size regulation provides allowances for over shipments, loans, and transfers of allotment during regulation weeks 1 through 21, there are no allowances for loans or over shipments 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 was also concern in the industry that if the percentage had not been relaxed, a large volume of small-sized fruit would have been pushed into the market following the end of the regulation period. This would have negatively impacted prices and undermined the success of the regulation. 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 believed that relaxing the percentage for the last week of regulation might 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 represented an additional industry allotment of 72,174 cartons for the last week of regulation. The Committee believes this provided the industry with some additional flexibility and helped 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 addressed 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.

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 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 (121 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 finalizes the interim final rule that relaxed 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 provided an additional volume of small red seedless grapefruit to address marketing conditions without saturating all markets with these small sizes. The interim final rule helped stabilize the market and improve grower returns. Procedures used in determining the weekly allotments of small sizes are

specified in § 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.

The interim final rule increased 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 was made up of small sizes. By increasing the percentage, more small sizes were available for shipment. This helped handlers meet their market needs and provided some additional flexibility without putting too many small sizes on the market. This benefited both handler and producer returns.

The purpose of percentage of size regulation is to help stabilize the market and improve grower returns. This change provided a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The interim final rule was not expected to decrease the overall consumption of red seedless grapefruit. It was 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.

As mentioned before, the interim final rule concerning this action was published in the **Federal Register** on February 6, 2004. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. The interim final rule invited comments until February 10, 2004. 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 this interim final rule, without change, as published in the **Federal Register** (69 FR 5679, February 6, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

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

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

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 69 FR 5679 on February 6, 2004, is adopted as a final rule without change.

Dated: April 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-8214 Filed 4-9-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV04-982-1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2003-2004 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule establishing interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2003-2004 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 6.8393 percent and 93.1607 percent, respectively, and the final free and restricted percentages are 8.2303 percent and 91.7697 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was unanimously recommended by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: May 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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 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. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2003-2004 marketing year (July 1, 2003, through June 30, 2004). 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 continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act.

The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 35,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 2003, meeting, the Board adjusted the NASS crop estimate down to 33,717 tons by deducting the average crop disappearance over the preceding three years (4.64 percent or 1,624 tons) and adding the undeclared carryin (341 tons) to the 35,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers.