

had time to determine and express their positions; (4) this action is similar to those recommended in previous seasons; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. A comment period of 30 days is appropriate because it will allow for any needed intra-seasonal changes to be made in a timely manner.

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

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

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

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

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

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.350 is revised to read as follows:

**§ 905.350 Red seedless grapefruit regulation.**

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

Week	Weekly percentage
(a) 9/20/04 through 9/26/04 .....	45
(b) 9/27/04 through 10/3/04 .....	45
(c) 10/4/04 through 10/10/04 .....	45
(d) 10/11/04 through 10/17/04 .....	36
(e) 10/18/04 through 10/24/04 .....	36
(f) 10/25/04 through 10/31/04 .....	36
(g) 11/1/04 through 11/7/04 .....	36
(h) 11/8/04 through 11/14/04 .....	36
(i) 11/15/04 through 11/21/04 .....	36
(j) 11/22/04 through 11/28/04 .....	36
(k) 11/29/04 through 12/5/04 .....	36
(l) 12/6/04 through 12/12/04 .....	36
(m) 12/13/04 through 12/19/04 .....	36
(n) 12/20/04 through 12/26/04 .....	36
(o) 12/27/04 through 1/2/05 .....	36
(p) 1/3/05 through 1/9/05 .....	36
(q) 1/10/05 through 1/16/05 .....	36
(r) 1/17/05 through 1/23/05 .....	36
(s) 1/24/05 through 1/30/05 .....	40
(t) 1/31/05 through 2/6/05 .....	40
(u) 2/7/05 through 2/13/05 .....	45
(v) 2/14/05 through 2/20/05 .....	45

Dated: August 10, 2004.

**A. J. Yates,**  
*Administrator, Agricultural Marketing Service.*  
 [FR Doc. 04–18607 Filed 8–13–04; 8:45 am]  
**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

[Docket No. FV04–905–5 IFR]

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

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

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

**SUMMARY:** This rule changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (committee). This rule changes the way a handler's average week is calculated when quantities of small red seedless grapefruit are regulated by adjusting the prior period used from five preceding seasons to three preceding seasons, and the provisions governing overshipments. This action makes the regulation more responsive to industry needs and better allocates base quantities.

**DATES:** Effective August 17, 2004; comments received by September 15, 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, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.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:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; 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](mailto: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 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 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 changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market. This rule changes the way a handler's average week is calculated for when quantities of small red seedless grapefruit are regulated by adjusting the

prior period used from five preceding seasons to three preceding seasons. This action also changes provisions governing overshipments. This rule makes the regulation more responsive to industry needs and better allocates base quantities. The committee unanimously recommended these changes at a meeting held on June 15, 2004.

In a separate action, USDA is issuing an interim final rule establishing percentages for each week of the 22-week regulatory period for the 2004-05 shipping season. This rule also appears in this issue of the **Federal Register**.

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 USDA.

Section 905.153 of the regulations specifies procedures for limiting the volume of small red seedless grapefruit entering the fresh market. Currently, this section defines the prior period as required by § 905.52 as an average week within the immediately preceding five seasons. An average week is calculated for each handler. This section specifies that the Committee may recommend only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for fresh shipment for any week or weeks during the regulatory period. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that a handler may ship is calculated by taking the recommended percentage times the handler's average week. Section 905.153 also details overshipment provisions specifying that any handler may ship an amount of sizes 48 and 56 red seedless grapefruit up to 10 percent greater than their allotted volume each week. The quantity of such overshipment is deducted from the handler's allotment for the following week. Overshipments are not permitted during week 22, which now is the final regulatory week.

This rule amends § 905.153 by revising the definition of prior period and the language governing overshipments. This rule changes the number of preceding seasons used to calculate a handler's average week from five preceding seasons to three preceding seasons. This rule also changes the provisions regarding overshipments by redefining when overshipments are permitted.

Section 905.52 specifies that whenever any size limitation restricts the shipment of a portion of a specified size, the quantity each handler may ship during a particular week shall be based on a prior period recommended by the committee and approved by USDA. When the committee recommended the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the fresh market during the regulated period (61 FR 69011, December 31, 1996), they determined an average week within the preceding five seasons would be the prior period used to calculate a handler's base quantity for each week of regulation.

Currently, an average week is calculated by adding the total red seedless grapefruit shipments by a handler during the 33-week period beginning the third Monday in September for the preceding five seasons. This total is divided by five to establish an average season. This average season is then divided by the 33 weeks in a season to derive the average week. When the committee utilizes these provisions and establishes percentages for the regulatory period, a handler's average week is multiplied by the applicable percentage to establish that handler's base quantity for shipping small red seedless grapefruit during that particular week.

The committee initially chose to use the past five seasons to calculate an average season, because it thought that the five-year period helped adjust for variations in growing conditions between the seasons. At the time, the committee believed using five seasons provided the most accurate picture of an average season and by using the average season to calculate an average week, provided each handler with an equitable base from which to establish shipments.

However, since these procedures were established, there have been many changes in the industry. Some handlers have increased their volume of red seedless grapefruit shipments, while others have decreased their shipments or stopped shipping grapefruit altogether.

Because of the continuing changes in the industry, the committee believes that using the past five seasons no longer provides the most accurate picture of an average season. At its June 15, 2004, meeting, the committee discussed the prior period, and unanimously recommended changing from a five-season average to a three-season average when calculating a handler's average week. The committee believes that this adjustment in the prior period will better reflect changes in the industry, and better allocate the base

quantities for all handlers of red seedless grapefruit.

The committee further believes that the use of a three-season average will be more responsive in reallocating base than the current five-season average. Under a five-season average, it can be several seasons before changes in shipping volume are reflected in the allotment a handler receives. With a five-season average, handlers that have decided to limit their grapefruit business receive more allotment than they need for several seasons even though this allotment could be better utilized by handlers that are increasing their market for red seedless grapefruit. The committee believes that this change better allocates allotment by increasing the base for handlers that have increased their red grapefruit shipments and by reducing the base for handlers that have reduced their red grapefruit shipments.

Consequently, the committee also believes that this change will reduce the need for loans and transfers by shifting additional base to those with increasing shipments. Currently, handlers who are increasing their volume of red seedless grapefruit shipments often need additional allotment to meet their market demands and rely on the provisions in § 905.153 that provide for allotment loans and transfers. Under these provisions, a handler may borrow allotment from another handler or allotments can be transferred from one handler to another. These procedures provide a means for handlers who have increased their volume of red seedless grapefruit shipments to meet the demands of the market and their buyers.

However, handlers do not know how much allotment other handlers have or if the allotment will be used. The committee believes that this change from a five to a three-year average in computing base quantities better reflects the needs of the industry and lessens the need for loans and transfers. This will benefit handlers and the committee staff who process loans and transfers. Therefore, the committee recommended changing the prior period used to calculate an average week from five seasons to three seasons.

The committee also discussed revising the provisions in § 905.153(d) relating to overshipments and the loan or transfer of allotment during week 22. As stated previously, any handler may ship an amount of sizes 48 and 56 red seedless grapefruit up to 10 percent greater than their allotment during any regulated week. The quantity of such overshipment is deducted from the handler's allotment for the following week. Currently, overshipments are not

allowed during week 22, because week 22 is the last week of the regulation period and does not provide an opportunity for repayment of any overshipments.

The committee is continuously meeting during the regulated period to discuss the market for red seedless grapefruit and possible changes to the weekly percentages. It believes that market conditions could cause it to recommend the removal of regulation prior to the end of week 22. To recognize this possibility, the committee recommended changing these provisions to specify that overshipments are not permitted during the last week of regulation rather than week 22.

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. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 75 handlers of Florida grapefruit who are subject to regulation under the marketing 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 2003–04 season was approximately \$7.58 per  $\frac{1}{5}$ -bushel

carton, and total fresh shipments for the 2003–04 season are estimated at 24.7 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 80 percent of the grapefruit handlers could be considered small businesses under the SBA 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 revises the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order. This rule changes the way a handler's average week is calculated for purposes of this limitation by adjusting the prior period used from the five preceding seasons to the three preceding seasons. This action also amends the language governing overshipments for the last week of regulation. This rule revises the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The committee unanimously recommended this action at a meeting on June 15, 2004.

This rule revises procedures in § 905.153 used in implementing percentage size regulations for small red seedless grapefruit under the order. These procedures will be applied uniformly for all handlers regardless of size. This action is not expected to decrease the overall consumption of red seedless grapefruit.

While during the period of regulation this change may result in some handlers receiving a smaller allotment of small-sized red grapefruit, it provides additional allotment to those handlers that have increased shipments. This rule changes how each handler's share of the weekly allotment is calculated, but has a limited affect on the total allotment made available by the weekly percentages. This change in itself does not reduce the total weekly industry base available. It only reallocates the distribution of the base. Statistics for 2003–04 show that the total available industry allotment was used in only 3 weeks of the 22 week regulated period. This change should result in a better utilization of the overall industry base allotments. Because the base allotments will be readily available to those handlers needing it, handlers will be better able to meet buyer needs and additional shipments might result.

In addition, if handlers require additional allotment, they can still transfer, borrow, or loan allotment based on their needs in a given week. Approximately 315 loans and transfers

were utilized last season. This rule will help reduce the need for loans and transfers by better allocating the available base. This will help reduce the amount of time and effort needed to reallocate allotment through loans and transfers. This may result in a cost savings by reducing administrative costs for the committee.

This rule provides handlers with allotment more reflective of their current operations. In addition, this rule changes the provisions on overshipments to provide for the possibility that the committee might choose to end regulation prior to week 22. This rule makes the regulation more responsive to industry needs and better allocates base quantities.

The committee discussed maintaining the number of seasons used to calculate the prior period at five. However, the committee believes that a three-season period will result in a better utilization of the overall industry base allotment. Therefore, this alternative was rejected.

This action will not impose any additional reporting or recordkeeping requirements on either small or large grapefruit handlers. 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.

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, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the June 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, 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/maob.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 revises the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order. This rule also amends provisions governing overshipments. 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: (1) This rule needs to be in place when the regulatory period begins September 20, 2004, and handlers need to consider their allotment and how best to service their customers; (2) the industry has been discussing this issue for some time, and the Committee has kept the industry well informed; (3) this action has been widely discussed at various industry and association meetings, and interested persons have had time to determine and express their positions; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

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

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

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

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

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

**Authority:** 7 U.S.C. 601–674.

#### **§ 905.153 [Amended]**

■ 2. Section 905.153 is amended by:

■ A. In paragraph (a), revising “five” to read “three” in the first, second and third sentences.

■ B. In paragraph (a), revising “165” to read “99” in the second sentence.

■ C. In paragraph (d), removing the sentence “Overshipments will not be allowed during week 22.” and adding the sentence “Overshipments will not be

allowed during the last week of regulation.” in its place.

Dated: August 10, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–18608 Filed 8–13–04; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 916 and 917**

[Docket No. FV04–916/917–4 IFR]

#### **Nectarines and Peaches Grown in California; Decreased Assessment Rates**

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

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

**SUMMARY:** This rule decreases the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2004–05 and subsequent fiscal periods. The Nectarine Administrative Committee (NAC) decreased its assessment rate from \$0.20 to \$0.195 per 25-pound container or container equivalent of nectarines handled. The Peach Commodity Committee (PCC) decreased its assessment rate from \$0.20 to \$0.19 per 25-pound container or container equivalent of peaches handled. The committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective: August 17, 2004. Comments received by October 15, 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: [maob.docketclerk@usda.gov](mailto:maob.docketclerk@usda.gov), or Internet: