

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831 and 842

RIN 3206-AJ82

#### Voluntary Early Retirement Under the Homeland Security Act of 2002; Correction

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule; correction.

**SUMMARY:** The Office of Personnel Management (OPM) published in the *Federal Register* of June 15, 2004, a document providing guidance in the requirements for submission of requests for voluntary early retirement authority, the qualifications for voluntary early retirement, etc. Inadvertently, identical typographical errors occurred in two places within the document. This document corrects the errors.

**DATES:** Effective on August 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Gray at 202-606-0960, FAX at 202-606-2329, TTY at 202-418-3134, or e-mail at [cwgray@opm.gov](mailto:cwgray@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM published a document in the *Federal Register* of June 15, 2004, (69 FR 33277) providing guidance in the submission of requests for voluntary early retirement authority. Inadvertently, identical typographical errors occurred in two places within the document. This document is being issued to correct the errors.

#### List of Subjects

##### 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Firefighters, Government employees, Income taxes, Intergovernmental regulations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

##### 5 CFR Part 842

Air Traffic Controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

■ Accordingly, 5 CFR part 831 is amended as follows:

#### PART 831—RETIREMENT

■ 1. The authority citation for part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and section 1313(b)(5) of Pub. L. 107-296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104-8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106-265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106-265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106-235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964-1965 Comp. p. 317; Sec. 831.663 also issued under sections 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103-66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99-251, 100 Stat. 23; Sec. 831.912 also issued under Appendix C to Pub. L. 106-554, 114 Stat. 2763A-125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100-203, 101 Stat. 1330-275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101-508, 104 Stat. 1388-328.

#### § 831.114 [Amended]

■ 2. Amend § 831.114(k)(2)(iv)(B) by removing the word “servicing” and adding the word “serving” in its place.

#### PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 continues to read as follows:

**Authority:** 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C.

8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104-8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107-296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101-508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100-203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101-239, 103 Stat. 2106 and section 7001 of Pub. L. 101-508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Appendix C to Pub. L. 106-554, 114 Stat. 2763A-125.

#### § 842.213 [Amended]

■ 4. Amend § 842.213(k)(2)(iv)(B) by removing the word “servicing” and adding the word “serving” in its place.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-18700 Filed 8-13-04; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV04-905-2 IFR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

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

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

**SUMMARY:** This rule exempts shipments of small quantities of tree run citrus from the rules and regulations under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and

tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). Under this rule, shipments of tree run citrus are exempt from grade, size, and assessment requirements under the order. Producers can ship 150 1<sup>3</sup>/<sub>8</sub> bushel boxes, per variety, per shipment of their own citrus free from order regulations, not to exceed 3,000 boxes per variety, per season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

**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: [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:** Cathy Harding, 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](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 exempts shipments of small quantities of tree run citrus free from the grade, size, and assessment requirements under the order. Tree run fruit is quality citrus picked and boxed in the field and taken directly to market without being graded or sized. By providing this exemption, producers can ship 150 1<sup>3</sup>/<sub>8</sub> bushel boxes per variety, per shipment, of their own citrus free from order regulations. Total shipments cannot exceed 3,000 boxes per variety, per season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the Committee at its meeting on June 15, 2004.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the Committee, with the approval of USDA,

may specify. No assessment is levied on fruit so shipped. The Committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the Committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions were originally established just for the 2002-03 season, then extended for the 2003-04 season. During the 2003-04 season, growers were allowed to ship a maximum of 150 1<sup>3</sup>/<sub>8</sub> bushel boxes per variety, per shipment, up to a seasonal total of 3,000 boxes per variety of their tree run fruit free from order requirements.

For the past two seasons, the Committee has utilized the provisions of § 905.149 on an annual basis. Rather than making this recommendation each year, the Committee recommended that the provisions of § 905.149 be established on a continuous basis. However, growers must receive approval from the Committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20-35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20-62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the season prior to the utilization of § 905.149, small producers of Florida citrus expressed concerns about problems incurred when trying to sell their citrus. These concerns

included increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of small citrus growers out of the citrus industry.

According to Florida Agricultural Statistics Service, from 1998–99 to 2002–03, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 11 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last seven seasons, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1998–99 through 2002–03, the differential between fresh prices and processed prices has averaged \$4.43 per box for grapefruit and \$2.20 per box for oranges. Hence, many growers would prefer to ship to the fresh market.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for the processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

As a result, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to continue servicing them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the Committee recommended for the past two seasons that producers be allowed to ship small quantities of their own production directly to the market exempt from order requirements. The exemption was established on an annual basis for the 2002–03 season [68 FR 4361, January 29, 2003] and for the 2003–04 season [68 FR 68717, December 10, 2003]. The exemption for the 2003–04 season expired July 31, 2004.

The Committee recommended this exemption on a yearly basis for the past two seasons to determine its effect and how fruit shipped under the exemption was received on the market. The Committee was interested in whether markets existed that packed fruit was not supplying. They also wanted an indication of the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, the Committee wanted information regarding any compliance issues or any impact on competitive outlets.

During the 2003–04 season, 101 growers were approved to ship under the exemption. Approximately 40 growers actually used the exemption, shipping a total of nearly 16,000 1–3/5-bushel boxes of oranges, grapefruit, tangerines, and tangelos. This is an increase from 23 growers shipping approximately 4,500 boxes during the 2002–03 season. Those producers who took advantage of the exemption believe that the program was successful. They were able to sell their fruit and supply markets not already supplied by traditional packers. Growers also believe more markets exist. They think with time, they can identify additional markets. Thus, growers want to continue have the opportunity to supply these markets.

The Committee had agreed that following the 2003–04 season they would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued. In the June 15, 2004, meeting, the Committee discussed this issue, and considered the impact and benefits of the exemption. The Committee also reviewed a letter in support of the exemption from Florida Citrus Mutual, a large grower organization.

The Committee believes that markets have been developed and that tree run fruit will continue to be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. Continuing this exemption allows growers to sell directly to similar markets outside of the state, supplying markets that might not otherwise be supplied. The Committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets. Consequently, the Committee voted unanimously to extend the tree run exemption on a continuous basis.

Growers will continue to be required to apply to the Committee, on the "Grower Tree Run Certificate Application" form provided by the Committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that the fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the Committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the Committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit,

along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the Committee. This report will enable the Committee to maintain compliance. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

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 citrus, 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 citrus 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 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2003–04 season was approximately \$8.69 per 4/5 bushel carton, and total fresh shipments for the 2003–04 season were around 52 million cartons of oranges, grapefruit, tangerines, and tangelos. Twenty handlers handled approximately 66 percent of Florida's citrus shipments in 2003–04. Considering the average f.o.b. price, at least 55 percent of the orange, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule establishes the provisions of § 905.149 of the rules and regulations on a continuous basis. This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements under the order. Growers must receive approval from the Committee before they can use this exemption. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from \$1.71 per box for processed oranges to \$2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately \$6.50 per box, for grapefruit the charge is approximately \$5.75 per box, and for tangerines the charge can be as high as \$9 per box. Sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether. For the 2003–04 season, this exemption accounted for additional fresh shipments totaling over 32,000 cartons.

This rule will not impose any additional costs on the grower. It will have the opposite effect of providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action will allow growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers

will be able to reduce handling costs and use those savings toward developing additional markets not serviced by the traditional packinghouses. This regulation will help growers by providing another outlet for their fruit. This will benefit all growers regardless of size, but it is expected to have a particular benefit for small growers who need additional revenue to meet operating costs.

The Committee considered one alternative to this action. The possible alternative was to not continue the exemption. However, the Committee believes the exemption provides other possible outlets for fruit and may help increase returns to growers. Therefore, this alternative was rejected.

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. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. 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.

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. Like all Committee meetings, the June 15, 2004, meeting was a public meeting and all entities, both large and small, were able 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 exempting small-quantity shipments of tree run citrus free from grade, size, and assessment requirements under the order. 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 good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place before September 20, 2004, to cover as many shipments during the 2004–05 season as possible. Also, growers can begin making plans on how to utilize the exemption. In addition, growers and handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided for in this rule and any comments received will be considered prior to finalization.

#### 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.

#### § 905.149 [Amended]

■ 2. Section 905.149 is amended by:

■ A. Removing in paragraph (d) “July 31, 2004” and adding the words “the end of the fiscal period” in its place.

■ B. Removing paragraph (f)(3) and redesignating paragraphs (f)(4), (f)(5), and (f)(6), as paragraphs (f)(3), (f)(4), and (f)(5), respectively.

Dated: August 10, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–18614 Filed 8–13–04; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV04–905–3 IFR]

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

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

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

**SUMMARY:** This rule limits the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2004–05 season by establishing weekly percentages beginning September 20, 2004. This action supplies enough small red seedless grapefruit without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

**DATES:** Effective 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/jv/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](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 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 the 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 limits the volume of small red seedless grapefruit entering the fresh market. This rule restricts the volume of sizes 48 and 56 fresh red seedless grapefruit shipped during the first 22