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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV05–905–2 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule limits the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market and changes procedures used for this purpose 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). The procedural changes modify the way a handler's average week is determined by providing that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be used for the three-season average. The average week is used by the Committee in determining the handler shipment allotments. This rule also limits the volume of small sizes entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action is intended to make the regulation more responsive to industry needs and provide adequate supplies of small red seedless grapefruit without saturating all markets. It is expected to stabilize supplies and improve grower returns.

DATES: Effective September 15, 2005; comments received by October 14, 2005, 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*; 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; 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 changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by modifying the way a handler's average week is determined. The procedural changes provide that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be substituted in the three-season average. This rule also limits the volume of small sized red seedless grapefruit entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action is intended to make the regulation more responsive to industry needs and provide adequate supplies of small red seedless grapefruit without saturating all markets. It is expected to stabilize supplies and improve grower returns. The Committee unanimously recommended this action at a meeting held on May 10, 2005.

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 specifies procedures for limiting the volume of small red seedless grapefruit entering the fresh market. These procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit can be made available for fresh shipment 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 recommended percentage is applied to each handler's average week to determine the quantity of sizes 48 and 56 red seedless grapefruit the handler may ship. The average week constitutes the prior period specified in § 905.52. Therefore, an average week is calculated for each handler.

Currently, an average week is calculated using the immediately preceding three seasons. This rule amends § 905.153 to modify the way a handler's average week is determined. Provisions are added providing that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be used for the three-season average.

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 immediately preceding three seasons. This total is divided by three to establish an average season, and is then divided by the 33 weeks in a season to derive the average week. When the Committee utilizes the provisions of § 905.153 and establishes percentages for the regulatory period, a handler's average week is multiplied by the applicable percentage to establish that handler's allotment for shipping small red seedless grapefruit during that particular week.

In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The official USDA crop estimate for the 2004–05 season reflected a 69 percent decrease from the previous season's estimate. Fresh shipments of red grapefruit for the 2004–05 season were reduced by more than 63 percent in comparison to the 2003–04 season. Consequently, the percentage of size regulation was not utilized for the 2004–05 season.

The Committee met May 10, 2005, to consider implementing a percentage of size regulation for red seedless grapefruit for the 2005–06 season. During its discussions, concerns were raised regarding the impact of the 2004–05 season when calculating a handler's average week. Most handlers' shipments reflect a significant decline in volume for the 2004–05 season, with some handlers shipping no volume at all due to the damage sustained by their packinghouses. The Committee believes using figures from a season in which adverse crop conditions cause a reduction in the amount of fruit produced would distort the accuracy of a handler's average shipments. Committee members agreed including the 2004–05 season in the calculation of a handler's average week would result in averages that are not reflective of a handler's average shipments.

When a handler is fairly consistent in the amount of fruit shipped each season, one season of decreased volume has the potential to drastically reduce their shipment average. With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week on which the percentage of size regulation is based, decreasing a handler's allotment of small grapefruit sizes.

Including the 2004–05 season in base calculations would reduce the total base available to the industry by more than 20 percent. However, the impact on individual handlers could be as great as reducing their base by a third. Therefore, the Committee voted unanimously to change § 905.153 to exclude the 2004–05 season when calculating a handler's average week.

To accommodate this recommendation and provide a method to handle similar situations should they occur during future seasons, this rule amends § 905.153 to provide that should shipments from any or all of the immediately preceding three seasons be limited because of crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. Under this change, the Committee would meet prior to the issuance of a percentage size regulation and determine which seasons are to be used to calculate a handler's average week. This change gives the Committee some additional flexibility to account for adverse crop conditions and assists in providing an average reflective of a handler's normal shipments. For the 2005–06 season, each handler's average week will be computed using the 2001–02, 2002–03, and the 2003–04 seasons.

This interim final rule also limits 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 instituting weekly percentages for the first 22 weeks of the 2005–06 season. This rule establishes weekly percentages at 35 percent for the first six weeks (September 19, 2005 through October 30, 2005), and 25 percent for weeks seven through 22 (October 31, 2005 through February 19, 2005). The Committee also unanimously recommended this action at its May 10, 2005, meeting. This action is similar to those taken in previous seasons.

A normal season for Florida grapefruit runs from September through June. During the first 22 weeks, there is usually an oversupply of small red seedless grapefruit and a reduced demand for such fruit until later in the season when there is a greater demand for smaller sizes from export markets. The Committee believes the over shipment of smaller-sized red seedless grapefruit in the first 22 weeks of the season 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. When there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes. This action is intended to stabilize the early season (22-week) supply of small red seedless grapefruit and to help improve the prices received by growers. In the absence of this action, grower prices may be lower than their cost of production.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1 3⁄5 bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for the larger, more profitable sizes would increase.

Consequently, in 1996, the Committee recommended changing their rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks for the 2001–02, 2002–03, and 2003–04 seasons. Due to the extensive damage from three major hurricanes in 2004, percentage of size regulation was not utilized for the 2004–05 season. When percentage of size regulation has been utilized, prices have increased and movement stabilized when compared to seasons without regulation.

Because of the damage from the 2004 hurricanes, production of red seedless grapefruit for the 2005–06 season is not anticipated to be as large as in seasons past. The crop is expected to rebound from last season's weather reduced volume. However, an accurate estimate of the crop will not be available until the official USDA crop estimate is released in October. In addition, for four of the last five seasons prior to the hurricanes, the crops have displayed a tendency toward a greater volume of small sizes than in previous seasons. It is possible that trees stressed by last season's storms may produce an even greater volume of small-sized fruit.

Based on the available information, the Committee believes that for the 2005–06 season, small sized red seedless grapefruit would again negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000 carton per week level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted unanimously to utilize the provisions of § 905.153 and establish percentage of size regulation for each week of the 22-week regulatory period for the 2005–06 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. One such indicator is a study commissioned by the Committee to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled ''An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule,'' dated July 1, 2003, evaluated the effectiveness of past percentage of size regulations.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the last seven seasons compared to $5.83 for the three seasons prior to using percentage of size regulation. The Barber study shows that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $5.28 for the seasons 1998–99 through 2003–04 with percentage of size regulation compared to $3.08 for the three seasons prior to regulation.

In September 2004, the University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2003–04 season. The cost to produce grapefruit for the fresh market was estimated at $1,089.13 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production ranges from 325 boxes per acre to 525 boxes per acre and has averaged around 445 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.45 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1998–99 through 2003–04, the on-tree value has averaged $2.88 per box for red grapefruit.

Small growers have struggled the last ten seasons to receive returns above the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals for percentage of size regulation was maintaining the price differential between larger and smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. For 2003–04, the f.o.b. price for a size 27 averaged $12.38 per carton in October 2003. This compares to an average f.o.b. price of around $6.38 per carton for a size 56 during the same period. In the three seasons before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three seasons before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the seven seasons with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.51 at the end of October, $3.83 in mid-December, and remained at around $3.36 the first week in May. The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, they further indicated that if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), the margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last seven seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 80 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited affect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

There are also other conditions warranting the consideration of establishing percentage of size regulation for the 2005–06 season. For the five seasons, 1999–2000 through 2003–04, the percentage of the remaining crop represented by small sizes in February averaged around 45 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These five seasons, 1999–2000 through 2003–04, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98.

For the eight of the nine seasons prior to the 2004–05 season, there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. Currently, it is unclear how the 2005–06 crop will size. Due to hurricane damage in 2004, it is anticipated that the 2005–06 crop will be smaller than in past seasons, but production will be significantly greater than last season. However, it is possible that because of the weather damage sustained during the 2004–05 seasons, a larger quantity of the fruit produced may be small sizes, making an even greater supply of small-sized fruit available for market.

European and Asian markets also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. The increase in the value of currency in these markets compared to the dollar resulted in more shipments of smaller-sized red seedless grapefruit to these markets. However, a reduction in shipments to these areas could occur during the coming season if market conditions change. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 48 percent of red seedless grapefruit was used for processing in 2003–04, with the majority being squeezed for juice. However, this outlet offers limited returns. Of the last eight seasons, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. Returns for 2003–04 processed red seedless grapefruit averaged a negative $0.13 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1999–2000 through 2003–04, the differential between fresh prices and processed prices has averaged $5.06 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

By the start of the season, the Florida Department of Citrus projects that around 26 weeks worth of juice will remain in inventory. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2005–06 season are expected to remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional volume of small sizes could be shifted toward the fresh market, as was the case last season, further aggravating problems with excessive volumes of small sizes.

The percentage of size regulation has a positive impact on grower returns and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the seven seasons prior to the hurricanes have been effective and that problems successfully addressed by percentage of size regulation will return without regulation. In its discussion of this issue, the Committee recognized that the crop size would reflect the damage sustained from last season's hurricanes. However, they still support the use of percentage size regulation for the 2005–06 season.

Even though the overall crop may be reduced, a substantial increase in volume is expected in comparison to the 2004–05 season. In addition, as was the case last season, a greater percentage of the overall volume may be shifted to the fresh market, further increasing fresh shipments. In the seasons prior to last season, approximately 50 percent of the crop went for processing. However, with last season's weather reduced crop, approximately 65 percent of the crop was shipped to the fresh market. Further, it is anticipated that a greater percentage of the crop will be small sizes. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2005–06 season. The Committee recommended establishing weekly percentages at 35 percent for the first six weeks and 25 percent for weeks seven through 22.

The Committee considered the percentages set in previous seasons as a basis for the 2005–06 season. They also took into consideration the damage to the citrus industry as a result of the 2004 hurricanes and how more information regarding the crop would be available following the start of the season. Members of the Committee agreed that there will be a smaller than usual crop of red seedless grapefruit for the 2005–06 season, but believe that percentages need to be established to prevent a glut on the market to provide some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages, and set the first six weeks at 35 percent. Setting the percentages at 35 percent provides a total industry base of 242,739 cartons (35 percent of the total industry base of 693,540 cartons). This allows total industry shipments to approach the 250,000 carton level without exceeding it.

For the remaining 16 weeks, the Committee recommended setting weekly percentages at 25 percent, the tightest restriction allowed under the order's rules and regulations. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes, the size of the overall crop, or the impact of the lingering effects of last season's storms. The Committee recognized the first reports on how the crop is sizing will not be available until after September, and that more information regarding the current season will be available following the official USDA crop estimate in October.

Setting the weekly percentages at 25 percent for each of the remaining weeks provides the Committee with the greatest flexibility in responding to the information regarding this season as it comes available. As was their practice during the first seasons of percentage of size regulation, the Committee believes it is best to set regulation for these weeks at the most restrictive level, and then relax the percentage as conditions warrant.

Because of the likelihood that this season will differ considerably from previous seasons where percentage of size regulation was implemented, the Committee wants to ensure it has the best information available when considering the established percentages. Consequently, the Committee intends to meet as needed during the season to consider adjustments in the weekly percentage rates, as was done in previous seasons. Further, at the May 10, 2005, meeting, it was stated that the 48 and Smaller Red Grapefruit Subcommittee (subcommittee) will meet shortly after the 2005–06 crop estimate is released on October 11, 2005. At that time, the subcommittee will review the information available and develop recommendations for consideration by the full Committee, including increasing the set percentages to release greater quantities of sizes 48 and 56, or even withdrawing regulation should conditions warrant.

Therefore, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season based on the additional information as it comes available. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

This rule establishes weekly percentages at 35 percent for the first six weeks and 25 percent for weeks seven through 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. The set percentage is applied to a handler's average week to determine that handler's allotments of small sizes. Utilizing the provisions discussed in the first part of this rule and the Committee's recommendation at its May 10, 2005, meeting, a handler's average week for the 2005–06 season will be calculated using the 2001–02, 2002–03, and 2003–04 seasons.

Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period begins the third Monday in September, September 19, 2005. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

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 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 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 $6,000,000, 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 ⅘-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 changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by modifying the way a handler's average week is determined. The changes provide that if crop conditions limit shipments from any of the immediately preceding three seasons, a prior season or seasons can be used for the three-season average. This rule also limits the volume of small sizes entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action makes the regulation more responsive to industry needs and provides adequate supplies of small red seedless grapefruit without saturating all markets. This is intended to help stabilize supplies and improve grower returns. This rule revises the provisions of § 905.153 and utilizes these provisions to establish the percentage size regulation. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended these changes at a meeting held on May 10, 2005.

The first action in this rule revises the 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 or result in any additional costs for the industry.

Prior to this change, a handler's average week, which is used as a base during percentage of size regulation, was calculated using the immediately preceding three seasons. This change provides that should shipments from any or all of the three prior seasons be limited because of crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. This change provides the Committee with some additional flexibility to account for adverse crop conditions and assists in providing an average reflective of a handler's normal shipments.

Using shipment figures from a season where adverse crop conditions reduced the amount of fruit shipped would distort the accuracy of a handler's average shipments. In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes, reducing the official USDA crop estimate by 69 percent from the previous season. Most handlers' shipments reflected a significant decline in volume, with some handlers shipping no volume at all due to the damage sustained by their packinghouses.

With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week, decreasing a handler's allotment of small size. Including the 2004–05 season in base calculations for the 2005–06 season would reduce the total industry base available by more than 20 percent, with the possible reduction for individual handlers being as much as a third.

Consequently, this change provides additional allotment in seasons following years where the crop was reduced by adverse weather conditions. It allows the Committee to exclude those seasons, thus, providing an average week that more closely reflects a handler's shipments and makes additional allotment available.

In terms of the second action implemented by this rule, while the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates that spot picking only fractionally increases harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this action is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an estimated average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

Handlers can also transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments (over shipments are not allowed during the last regulated week). Approximately 315 loans and transfers were used during the 2003–04 season. Statistics for 2003–04 show the total available allotment was used in only 3 weeks of the regulated period. Therefore, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2005–06 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation than without regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, to an average f.o.b. price of $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the seven seasons utilizing percentage of size regulation compared to $5.83 for the three seasons prior to using regulation. The Barber study estimates that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $5.28 for the seasons 1998–99 through 2003–04 with percentage of size regulation, compared to $3.08 for the three seasons prior to regulation. Small growers have struggled the last nine seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period.

The Barber study estimates that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per ⅘-bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the consumption of red seedless grapefruit. The benefits of this action are expected to be available to all red seedless grapefruit growers and handlers regardless of their size of operation. This action will likely help small, under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing these actions. One alternative was maintaining the way a handler's average week is calculated using the immediately preceding three seasons. The Committee believes that including numbers from the 2004–05 season would result in averages unreflective of a handler's shipments. Therefore, this alternative was rejected. The Committee also considered not recommending percentage of size regulation for the 2005–06 season. However, because more information regarding the season would be available in October, the Committee agreed percentage of size regulation should be established at the levels recommended. Following the announcement of the official crop estimate on October 11, 2005, the question of whether to adjust the levels recommended or to remove regulation entirely will be revisited. Therefore, this alternative was also 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. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

In addition, 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).

Further, 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 May 10, 2005, meeting was a public meeting and all entities, both large and small, were able to express their 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/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 revising the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order and on limiting the volume of small red seedless grapefruit entering the fresh market during the first 22 weeks of the 2005–06 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: (1) This rule needs to be in place when the regulatory period begins September 19, 2005, 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; (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.

§ 905.153 [Amended]

■ 2. In § 905.153, paragraph (a), a new sentence is added following the third sentence to read as follows: ''If crop conditions limit shipments from any or all of the immediately preceding three season(s), the committee may use a prior season or seasons for the purposes of calculating an average week.''

■ 3. Section 905.350 is added 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 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks, are as follows:

Week	Weekly percentage
(a) 9/19/05 through 9/25/05	35
(b) 9/26/05 through 10/2/05	35
(c) 10/3/05 through 10/9/05	35
(d) 10/10/05 through 10/16/05	35
(e) 10/17/05 through 10/23/05	35
(f) 10/24/05 through 10/30/05	35
(g) 10/31/05 through 11/6/05	25
(h) 11/7/05 through 11/13/05	25
(i) 11/14/05 through 11/20/05	25
(j) 11/21/05 through 11/27/05	25
(k) 11/28/05 through 12/4/05	25
(l) 12/5/05 through 12/11/05	25
(m) 12/12/05 through 12/18/05	25
(n) 12/19/05 through 12/25/05	25
(o) 12/26/05 through 1/1/06	25
(p) 1/2/06 through 1/8/06	25
(q) 1/9/06 through 1/15/06	25
(r) 1/16/06 through 1/22/06	25
(s) 1/23/06 through 1/29/06	25
(t) 1/30/06 through 2/5/06	25
(u) 2/6/06 through 2/12/06	25
(v) 2/13/06 through 2/19/06	25

Dated: September 9, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18279 Filed 9–13–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20475; Directorate Identifier 2004–NM–157–AD; Amendment 39–14250; AD 2005–18–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This AD requires modification of the splice plate assemblies installed under the floor panels at the forward and aft edges of the cabin aisle. This AD results from reports of cracking of the aluminum splice plates under the floor panels in the cabin aisle. We are issuing this AD to prevent loss of the capability of the cabin floor and seat track structure to support the airplane interior inertia loads under emergency landing conditions. Loss of this support could lead to galley or seat separation from attached restraints, which could result in blocking of the emergency exits and consequent injury to passengers and crew.

DATES: This AD becomes effective October 19, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of October 19, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2005–20475; the directorate identifier for this docket is 2004–NM–157–AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777–200, –200ER, and –300 series airplanes. That action, published in the **Federal Register** on March 3, 2005 (70 FR 10337), proposed to require modification of the splice plate assemblies installed under the floor panels at the forward and aft edges of the cabin aisle.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Add Optional Inspection Program

One commenter asks that, in addition to the terminating action specified in the proposed AD, an optional inspection program be implemented to do inspections of the most affected areas, with replacement or repair of affected parts on attrition. The commenter states that such an inspection should be added as a compliance option, in lieu of a full modification, or in conjunction with a longer compliance time. The commenter adds that, in order to accomplish the modification, access to some locations will be difficult; therefore, consideration should be given to adding inspections to extend the compliance time. The commenter suggests adding to the proposed AD an internal general visual inspection of the floor splice plates that are visible from the forward and aft pit. In addition, the commenter recommends inspecting from above for flexing and ''clicking'' noises commonly associated with splice plate cracking of the remaining areas located in the overwing section and not viewable from the pits. The commenter suggests that the inspections be done at intervals no longer than 48 months apart, and that a full general visual inspection of all affected splice plates be done within a 72-month period to allow for normal maintenance cycles that facilitate the inspection.

The commenter states that it was instrumental in identifying and reporting cracked splice plate discrepancies to the airplane manufacturer in December 1999. The reports brought about changes addressing the subject issue that were