

this chapter and who is reemployed in a position covered by subchapter I of chapter 63 of title 5, United States Code, shall have a new personal leave ceiling established at the lesser of his or her personal leave ceiling established under § 630.301(d) of this chapter at the time of separation or transfer or the amount of annual leave to be recredited to the SES member under paragraph (b) of this section. The new personal leave ceiling shall be subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the SES member's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(e) An employee who is reemployed in a position listed in 5 U.S.C. 6301(2) (ii), (iii), (vi), or (vii) shall not be required to refund a lump-sum payment under paragraph (a) of this section.

(f) An employee who is reemployed in a position that has no leave system to which annual leave can be recredited shall not be required to refund a lump-sum payment under paragraph (a) of this section.

(g) When an employee is reemployed in a position listed in 5 U.S.C. 6301(2) (x)–(xiii), the amount of annual leave to be recredited to the employee under paragraph (b) of this section shall remain to the employee's credit and shall become payable when the employee becomes eligible for a lump-sum payment under the conditions prescribed in § 550.1203. If the employee subsequently transfers to a position covered by subchapter I of chapter 63 of title 5, United States Code, or to a position under a different formal leave system to which his or her annual leave can be recredited, the annual leave to the employee's credit shall be recredited to the employee by the employing agency under § 550.1206(b)(1).

(h) An agency shall document the calculation of an employee's lump-sum payment as provided in § 550.1205(b) so as to permit the subsequent calculation of any refund required under paragraph (a) of this section and any recredit of annual leave required under paragraph (b) of this section.

[FR Doc. 97-19774 Filed 7-28-97; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV97-905-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule would limit the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1997-1998 season that begins in September. This proposal would provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believes this rule is necessary to help stabilize the market and improve grower returns.

DATES: Comments must be received by August 13, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5053, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 the Secretary 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 Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3⁵/₁₆ inches in diameter).

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 that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the order provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 15. The proposal would limit the volume of sizes 48 and/or 56 red seedless grapefruit by establishing the weekly percentage for each of the 11 weeks at 25 percent. This action was recommended by the committee at its meeting on May 28, 1997, by a vote of 10 in favor to 7 opposed.

For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from \$9.60 per carton (3/5 bushel) during the 1989-90 season, to \$3.45 per carton during the 1994-95 season, to a low of \$1.41 per carton during the 1996-97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

One problem contributing to the current state of the market is the excessive number of small sized grapefruit shipped early in the

marketing season. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return better prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the higher prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market that drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is \$4 to \$6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around \$10.00 per carton. This compares to an average f.o.b. of \$5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of \$7.80 per carton to an average f.o.b. of \$5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. In the past three years, the market has not recovered, and the f.o.b. for all sizes fell to around \$5.00 to \$6.00 per carton for most of the rest of the season.

The committee discussed this issue at length at several meetings. The committee believes that the overshipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF-IFAS) in May 1997, found that on tree prices have fallen from a high near \$7.00 in 1991-92 to around \$1.50 for this past season. The study projects that if the industry elects to make no changes, the on tree price will remain around \$1.50. The study also indicates

that increasing minimum size restrictions could help to raise returns.

The committee examined shipment data covering the 11 week regulatory period for the last four seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe there is an indication that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices decline on those and most other sizes of red seedless grapefruit. Without volume regulation, the industry has been unable to limit the shipments of small sizes. The committee believes that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The committee discussed at what level to establish the weekly percentages. They wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. The committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would allow the total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

In its deliberations, the committee also recognized that if crop and market conditions should change, the committee could recommend that the percentage be increased or eliminated to provide for the shipment of more small sizes in any one, or all of the 11 weeks. While the official crop estimate will not be available until October, information in the UF-IFAS study and committee discussions indicate that the 1997-98 season production will be near or greater than the 1996-97 estimate of 30.8 million boxes (1 3/5 bushel) of red seedless grapefruit. Committee members also stated that the crop is sizing well and should produce a greater number of larger sizes than the past season. Using this information on the 1997-98 crop, the committee members thought that establishing a weekly percentage of 25 percent would provide enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under the procedures in section 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the 25 percent weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season was then divided by the 33 weeks in a season to derive the average week. This average week would be the base for each handler for each of the 11 weeks contained in the regulation period. The weekly percentage, in this case, 25 percent, is multiplied by a handler's average week. The total is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this proposed rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. If the minimum size established under section 905.52 remains at size 56, handlers could 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 limits. If the minimum size under the order is 48, handlers could fill their allotment with size 48 fruit such that the total of these shipments are within the established limits. The committee staff would perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season would then be divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This would be Handler A's base. The weekly percentage of 25 percent would then be applied to this amount. This would provide this handler with a weekly allotment of 400 cartons ($1,600 \times .25$) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments would be calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, under this proposal, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

This proposed rule would establish a weekly percentage of 25 percent for each of the 11 weeks to be regulated. The regulatory period runs from the third Monday in September (September 15, 1997) through the last Sunday in November (November 30, 1997). Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee could meet and recommend a percentage above 25 percent to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried

forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party would promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee would confirm in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan.

The committee would compute each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

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.

During committee deliberations, several concerns were raised regarding this proposed regulation. One area of concern was the possible impact this regulation may have on exports. Several members stated that there is a strong demand in some export markets for small sizes. Other members responded that the percentage set should allow handlers enough volume of small sizes to meet the demand in these markets. It was also stated that any shortfall an individual handler might have could be filled by loan or transfer. There was also some discussion that markets that normally demand small sizes have shown a willingness to purchase larger sizes. In addition, committee data indicate that the majority of export shipments occur after the 11 week

period when there are no restrictions on small sizes.

Another concern raised was the effect this proposal may have on packouts. It was stated that this rule could reduce the volume packed, resulting in higher packinghouse costs. The purpose of this rule is to limit the volume of small sizes marketed early in the season. Larger sizes could be substituted for smaller sizes with a minimum effect on overall shipments. This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF-IFAS study presented indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. This also would allow growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that would be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton. Therefore, this action should have a positive impact on grower returns.

Several members were concerned about what would happen if market conditions were to change. Other committee members responded that if industry conditions were to change (for example, if there was a freeze, or if the grapefruit was not sizing), the committee would meet and recommend that the percentage be raised to allow for more small sizes, or that the limits be removed all together.

Another concern raised was that market share could be lost to Texas. According to the Economic Analysis Branch (EAB), of the Fruit and Vegetable Division, of the Agricultural Marketing Service (AMS), limiting shipments of small Florida grapefruit would probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and would have higher freight costs to some markets supplied by Florida. The UF-IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

One handler expressed that they ship early in the season and this action could be very restrictive. Members responded that the availability of loans and transfers would address these concerns. There was also discussion of how restrictive this proposal would actually be. Based on shipments from the past four seasons, available allotment would have exceeded actual shipments for each of the first three weeks that would

be regulated under this rule. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. A large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit would still be allowed into all channels of trade, and allowances would be in place to help handlers address any market shortfall.

After considering the concerns expressed, and the available information, the committee determined that this rule was needed to regulate shipments of small sized red seedless grapefruit.

Section 8(e) 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/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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

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

There are approximately 80 handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Based on the Florida Agricultural Statistics Service and committee data for the 1995-96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995-96 season

was \$5.00 per 4/5 bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were 23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

The committee believes that the overshipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from \$9.60 per carton (3/5 bushel) during the 1989-90 season, to \$3.45 per carton during the 1994-95 season, to a low of \$1.41 per carton during the 1996-97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

Under the authority of section 905.52 of the order, this proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 15. The proposal would limit the volume of sizes 48 and/or 56 red seedless grapefruit by establishing the weekly percentage for each of the 11 weeks at 25 percent. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee would calculate a handler's weekly allotment of small sizes. This proposal would provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The committee believes this rule is necessary to help stabilize the market and improve grower returns.

At the meeting, there was discussion regarding the expected impact of this

change on handlers and growers in terms of cost. Discussion focused on the possibility that market share would be lost to Texas and that this proposed rule could increase packinghouse costs.

According to EAB, limiting shipments of small Florida grapefruit would probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and would have higher freight costs to some markets supplied by Florida. The UF-IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

The concern about packinghouse costs was that this proposal would mean lower packouts which may increase cost. However, the availability of loans and transfers would provide some flexibility. Also, this proposal would only affect small sizes and only during the 11 week period. By substituting larger sizes and using loans and transfers, packouts should approach the weekly volume of seasons prior to this proposal.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. Based on shipments from the past four seasons, the total available weekly allotment of 244,195 cartons would exceed actual shipments for each of the first three weeks that would be regulated under this rule. In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to last season, an average of 4.2 percent of overall shipments during that period would have been affected. A large percentage of this volume most likely could have been replaced by larger sizes. Under this proposal a sufficient volume of small sized red grapefruit would still be allowed into all channels of trade, and allowances would be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The committee also discussed the state of the market and the cost of doing nothing. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. For the remainder of the season, sizes 48 and 56 represent only 26 percent of total shipments. While

there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

The early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is \$4 to \$6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around \$10.00 per carton. This compares to an average f.o.b. of \$5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of \$7.80 per carton to an average f.o.b. of \$5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. This leaves the f.o.b. for all sizes around \$5.00 to \$6.00 per carton for the rest of the season.

As previously stated, the on tree price of red seedless grapefruit has also been falling. On tree prices for fresh red seedless grapefruit have declined steadily from \$9.60 per carton during the 1989-90 season, to \$3.45 per carton during the 1994-95 season, to a low of \$1.41 per carton during the 1996-97 season. In many cases, prices during the past two seasons have provided returns less than production costs. This price reduction could force many small growers out of business. If no action is taken, the UF-IFAS study indicates that on tree returns would remain at levels around \$1.50.

This proposal would provide a supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believes that if the supply of small sizes were limited early in the season, prices could be stabilized at a higher level. This would provide increased returns for growers. In addition, if more small grapefruit were allowed to remain on the tree to increase in size and maturity, it could provide greater returns to growers.

The committee surveyed shipment data covering the 11 week regulatory period for the last four seasons and examined tables outlining weekly f.o.b. figures for each size. The committee

believes that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers.

This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF-IFAS study indicated that returns could increase if growers would harvest selectively and return to repick groves as the grapefruit sized. This also would allow growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that would be sent to the less profitable processing market. The study indicated that selective harvesting can reduce the f.o.b. cost per carton. The study also indicates that increasing minimum size restrictions could help to raise returns.

Fifty-nine percent of red seedless grapefruit is shipped to fresh market channels. There is a processing outlet for grapefruit not sold into the fresh market. However, the vast majority of processing is squeezing the grapefruit for juice. Because of the properties of the juice of red seedless grapefruit, including problems with color, the processing outlet is limited, and not currently profitable. Therefore, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action would only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season. Even if this action was successful only in raising returns a few pennies a carton, when applied to 34 million cartons of red seedless grapefruit shipped to the fresh market, the benefits should more than outweigh the costs.

The limits that would be established under this action would be based on percentages applied to a handler's average week. This process was established by the committee because it was the most equitable. Also, all handlers would have access to loans and transfers. All handlers and growers would benefit from increased returns. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The committee discussed alternatives to this action. The committee discussed eliminating shipments of size 56 grapefruit all together. Several members expressed that there is a market for size 56 grapefruit. Members favored the percentage rule recommended because it would supply a sufficient quantity of small sizes should there be a demand for size 56. Therefore, the motion to eliminate size 56 was rejected. Another alternative discussed was to do nothing. However, the committee rejected this option, taking in account that returns would remain stagnant without action.

This rule would change the requirements under the Florida citrus marketing order. Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the committee. The rule would increase the reporting burden on approximately 80 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and assigned OMB number 0581-0094. 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 Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 28, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping

grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time. The committee has kept the industry well informed on this issue. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

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

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

Authority: 7 U.S.C. 601-674.

2. In § 905.306, paragraphs (a) and (b), the word "During" is removed and the words "Except as otherwise provided in section 905.601, during" are added in its place.

3. A new § 905.601 is added to read as follows:

§ 905.601 Red seedless grapefruit regulation 101.

The schedule below establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under section 905.306 for red seedless grapefruit is size 56, 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. If the minimum size in effect under section 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments are within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/15/97 through 9/21/97	25
(b) 9/22/97 through 9/28/97	25
(c) 9/29/97 through 10/5/97	25

Week	Weekly percentage
(d) 10/6/97 through 10/12/97	25
(e) 10/13/97 through 10/19/97	25
(f) 10/20/97 through 10/26/97	25
(g) 10/27/97 through 11/2/97	25
(h) 11/3/97 through 11/9/97	25
(i) 11/10/97 through 11/16/97	25
(j) 11/17/97 through 11/23/97	25
(k) 11/24/97 through 11/30/97	25

Dated: July 25, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 97-20034 Filed 7-25-97; 1:13 pm]

BILLING CODE 3410-02-U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AC01

Prevention of Deposit Shifting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule; withdrawal.

SUMMARY: The FDIC is withdrawing a proposed rule to implement a statute prohibiting the shifting of deposits insured under the Savings Association Insurance Fund (SAIF) to deposits insured under the Bank Insurance Fund (BIF) for the purpose of evading the assessment rates applicable to SAIF deposits. The FDIC is taking this action in response to comments received on the proposed rule, which was published in the **Federal Register** on February 11, 1997.

DATES: The proposed rule is withdrawn July 29, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898-7349, Legal Division; or George Hanc, Associate Director, Division of Research and Statistics, (202) 898-8719, Federal Deposit Insurance Corporation, Washington, D. C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Funds Act and the Deposit Shifting Statute

A provision of the Deposit Insurance Funds Act of 1996 (Funds Act) requires the Comptroller of the Currency, the Board of Directors of the FDIC, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision (federal banking agencies) to take "appropriate actions" to prevent insured depository institutions and holding companies