

## Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B) to quickly implement the waiver extension granted by the Child Nutrition and WIC Reauthorization Act of 2004. Thus, the Department of Agriculture has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public participation.

## Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, religion, or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the National School Lunch Program.

## List of Subjects

### 7 CFR Part 210

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and record keeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

### 7 CFR Part 220

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and record keeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

### § 210.10 [Amended]

■ 2. In § 210.10:

■ a. The last sentence of paragraph (i)(5)(i) is amended by removing the year "2003" and adding in its place the year "2009".

■ b. The last sentence of paragraph (l)(4)(viii) is amended by removing the year "2003" and adding in its place the year "2009".

## PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for 7 CFR part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

### § 220.8 [Amended]

■ 2. In § 220.8:

■ a. The last sentence of paragraph (e)(5)(i) is amended by removing the year "2003" and adding in its place the year "2009".

■ b. The last sentence of paragraph (h)(3)(viii) is amended by removing the year "2003" and adding in its place the year "2009".

Dated: November 24, 2004.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 04-26933 Filed 12-7-04; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

[Docket No. FV04-905-5 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). This rule continues in effect changes in the way a handler's average week is calculated when quantities of small red seedless grapefruit are regulated and changes the provisions governing overshipments. This action makes the regulation more responsive to industry needs and better allocates base quantities.

**DATES:** Effective January 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799

Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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 continues in effect changes in the procedures used to limit the volume of sizes 48 and 56 red seedless

grapefruit entering the fresh market. This rule changes the way a handler's average week is calculated when quantities of small red seedless grapefruit are regulated by adjusting the prior period used from five preceding seasons to three preceding seasons. This action also changes the provisions governing overshipments. This rule makes the regulation more responsive to industry needs and better allocates base quantities. The Committee unanimously recommended these changes at a meeting held on June 15, 2004.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and approved by USDA.

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

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

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

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

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

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

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

industry, and better allocates the base quantities for all handlers of red seedless grapefruit.

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

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

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

The Committee also discussed revising the provisions in § 905.153(d) relating to overshipments and the loan or transfer of allotment during week 22. As stated previously, any handler may ship an amount of sizes 48 and 56 red seedless grapefruit up to 10 percent greater than their allotment during any regulated week. The quantity of such overshipment is deducted from the handler's allotment for the following week. Prior to this change, the rules and

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

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

Section 8e of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

#### Final Regulatory Flexibility Analysis

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

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

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

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit

during the 2003–04 season was approximately \$7.58 per ⅔-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 continues in effect revisions to the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order. This rule changes the way a handler's average week is calculated for purposes of this limitation by adjusting the prior period used from the five preceding seasons to the three preceding seasons. This action also amends the language governing overshipments for the last week of regulation. This rule revises the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action at a meeting on June 15, 2004.

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

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

In addition, if handlers require additional allotment, they can still

transfer, borrow, or loan allotment based on their needs in a given week. Approximately 315 loans and transfers were utilized last season. This rule will help reduce the need for loans and transfers by better allocating the available base. This will help reduce the amount of time and effort needed to reallocate allotment through loans and transfers. This may result in a cost savings by reducing administrative costs for the Committee.

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

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

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, 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 on all issues. Like all Committee meetings, the June 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 16, 2004. Copies of the rule were mailed or sent via facsimile to all Committee members and grapefruit growers and handlers. In addition, the rule was made available through the internet by USDA and the Office of the Federal Register. That rule provided for a 30-day comment period,

which ended September 15, 2004. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register**, (69 FR 50275, August 16, 2004) will tend to effectuate the declared policy of the Act.

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

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

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

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 69 FR 50275 on August 16, 2004, is adopted as a final rule without change.

Dated: December 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-26861 Filed 12-7-04; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1775

RIN 0572-AB75

#### Technical Assistance Grants

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, amends the regulation utilized to administer the technical assistance grant programs. This action is necessary to separate the technical assistance and training grant and solid waste management grant programs for clarification purposes, and to bring the regulation in line with revisions to OMB circulars. Additionally, it eliminates the requirement that applicants submit a pre-application when applying for grant

funds. This action also transfers grant processing and servicing from the National Office to Rural Development State Offices. The intended effect is to separate the technical assistance and solid waste management programs and to reduce regulatory burdens on applicants.

**DATES:** This rule is effective January 7, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Saulnier, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235-S, Stop 1570, Washington, DC 20250-1570. Telephone (202) 690-2526. E-Mail: [ssaulnie@rus.usda.gov](mailto:ssaulnie@rus.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled, "Technical Assistance and Training Grants Program; Proposal to Exclude Program and Activity From Executive Order 12372," (53 FR 44505) which determined that the RUS grants were not covered by Executive Order 12372.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and, in accordance with Section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C section 6912(e)), administrative appeal procedures, if any are required, must be exhausted prior to initiating any action against the Department or its agencies.

#### Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments reflect only statutory changes that Congress has

mandated and over which RUS has no discretion.

#### Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule have been cleared under OMB control number 0572-0112 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.761, Technical Assistance and Training Grants and 10.762, Solid Waste Management Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402-9325, telephone number (202) 512-1800.

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### Background

On November 2, 1987, the Farmers Home Administration (FmHA) (predecessor of RUS) published 7 CFR part 1942, subpart J, Technical Assistance and Training Grants, as a final rule in the **Federal Register** (52 FR 41950) implementing a new grant program. On February 5, 1992, FmHA published 7 CFR part 1942, subpart J, Technical Assistance and Training Grants, as a final rule in the **Federal Register** (57 FR 4357) revising the regulation to implement another new grant program. In 1994, when RUS assumed the functions of the Water and Waste Disposal programs from the former FmHA and the Rural Development Administration (RDA), RUS changed the Technical Assistance