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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

[Doc. No. AO-13-0163; AMS-FV-12-0069; FV13-905-1]

**Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Order Amending Marketing Order No. 905.**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 905 (order), which regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. The amendments were proposed by the Citrus Administrative Committee (Committee), which locally administers the order, and is comprised of growers and handlers. These amendments: authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of the financial reserve fund; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets;

eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee. All of the proposals were favored by Florida citrus growers in a mail referendum, held September 14 through October 5, 2015. Of the 200 votes cast, 96 percent or more of the vote by number and 99 percent or more by volume approved all nine amendments. The amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** This rule is effective [Insert date 1 day after the date of publication in the **Federal Register**].

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Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing

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**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing published in the March 28, 2013, issue of the **Federal Register** (78 FR 18899); a Recommended Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** (80 FR 11335); and, a Secretary's Decision and Referendum Order issued on July 14, 2015, and published in the **Federal Register** on July 21, 2015 (80 FR 43040).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Orders 12866, 13563, and 13175.

#### **Preliminary Statement**

The final rule was formulated on the record of a public hearing held on April 24, 2013, in Winter Haven, Florida. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and

procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on March 28, 2013 (78 FR 18899). The notice of hearing contained nine proposals submitted by the Committee.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS issued a Recommended Decision and Opportunity to File Written Exceptions thereto by April 2, 2015. None were filed.

A Secretary's Decision and Referendum Order was issued on July 14, 2015, directing that a referendum be conducted during the period of September 14 through October 5, 2015, among eligible Florida citrus growers to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of citrus represented by voters voting in the referendum. Voters voting in the referendum favored all of the proposed amendments.

The amendments favored by voters and included in this final order will: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the

process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of financial reserve funds; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee.

USDA also made such changes as were necessary to the order so that all of the order's provisions conform to the effectuated amendments. A conforming change was made to the title of 7 CFR part 905. The title is revised to "ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA" to reflect the addition of pummelos as a regulated fruit and the inclusion of tangelos as a regulated hybrid variety.

The amended marketing agreement was subsequently mailed to all citrus handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of citrus handled by all handlers during the

representative period of August 1, 2014, through July 31, 2015.

**Small Business Consideration**

Pursuant to the 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the 2007 US Census of Agriculture, the number of citrus growers in Florida was 6,061. According to the National Agriculture Statistic Service (NASS) Citrus Fruit Report, published September 19, 2012, the total number of acres used in citrus production in Florida was 495,100 for the 2011/12 season. Based on the number of citrus growers from the US Census of Agriculture and the total acres used for citrus production from NASS, the average citrus farm size is

81.7 acres. NASS also reported the total value of production for Florida citrus at \$1,804,484,000. Taking the total value of production for Florida citrus and dividing it by the total number of acres used for citrus production provides a return per acre of \$3,644.69. A small grower as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually. Multiplying the return per acre of \$3,644.69 by the average citrus farm size of 81.7 acres, yields an average return of \$297,720.51. Therefore, a majority of Florida citrus producers are considered small entities under SBA's standards.

According to the industry, there were 44 handlers for the 2011/12 season, down 25 percent from the 2002/03 season. A small agricultural service firm as defined by the SBA is one that grosses less than \$7,000,000 annually. Based on information submitted by industry, 21 handlers would be considered small entities under SBA's standards. A majority of citrus handlers are considered large entities under SBA's standards.

The production area regulated under the order covers the portion of the state of Florida which is bound by the Suwannee River, the Georgia Border, the Atlantic Ocean, and the Gulf of Mexico. Acreage devoted to citrus

production in the regulated area has declined in recent years.

According to data presented at the hearing, bearing acreage for oranges reached a high of 605,000 acres during the 2000/01 crop year. Since then, bearing acreage for oranges has decreased 28 percent. For grapefruit, bearing acreage reached a high of 107,800 acres during the 2000/01 crop year. Since the 2000/01 crop year, bearing acreage for grapefruit has decreased 58 percent. For tangelos, bearing acreage reached a high for the 2000/01 crop year of 10,800 acres for Florida. Since the 2000/01 crop year, bearing acreage for tangelos has decreased 62 percent. For tangerines and mandarins, bearing acreage reached a high for the 2000/01 crop year of 25,500 acres. Since the 2000/01 crop year, bearing acreage for tangerines and mandarins has decreased 53 percent.

According to data presented at the hearing, the total utilized production for oranges reached a high during the 2003/04 crop year of 242 million boxes. Since the 2000/01 crop year, total utilized production for oranges has decreased 34 percent. For grapefruit, the total utilized production reached a high during the 2001/02 crop year of 46.7 million boxes. Since the

2000/01 crop year, total utilized production for grapefruit has decreased 59 percent. For tangelos, the total utilized production reached a high during the 2002/03 crop year of 2.4 million boxes. Since the 2000/01 crop year, total utilized production for tangelos has decreased 45 percent. For tangerines and mandarins, the total utilized production reached a high during the 2001/02 crop year of 6.6 million boxes. Since the 2000/01 crop year, total utilized production for tangerines and mandarins has decreased 23 percent.

**Material Issues**

This action amends the order to: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of financial reserve funds; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee.

These amendments will streamline program operations, but are not expected to result in a significant change in industry production, handling or distribution activities.

During the hearing held on April 24, 2013, interested persons were invited to present evidence on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have any burdensome effects on small agricultural producers or firms.

In discussing the impacts of the amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing Committee duties and responsibilities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of the order for the benefit of the Florida citrus industry.

#### **Paperwork Reduction Act**

Current information collection requirements for Part 905 are approved by the Office of Management and Budget

(OMB) under OMB Number 0581-0189 - "Generic OMB Fruit Crops." In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the termination of the Letter of Acceptance has been submitted to the Office of Management and Budget (OMB) for approval. The Letter of Acceptance has no time or cost burden associated with it due to the fact that handlers simply sign the form upon accepting nomination to the Committee. As a result, the current number of hours associated with OMB No. 0581-0189, Generic Fruit Crops, would remain the same: 7,786.71 hours.

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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

#### **Civil Justice Reform**

The amendments to the order contained herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive

effect. The amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 no later than 20 days after the date of entry of the ruling.

**Order Amending the Order Regulating the Handling of  
Oranges, Grapefruit, Tangerines, and Tangelos Grown in  
Florida<sup>1</sup>**

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<sup>1</sup> This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

*Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

*(a) Findings and Determinations Upon the Basis of the Hearing Record*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 905, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions

thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of oranges, grapefruit, tangerines, and pummelos grown in the production area; and

(5) All handling of oranges, grapefruit, tangerines, and pummelos grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional findings.

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the amendments for the new crop year, which begins August 1, 2016.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551-559).

(c) Determinations. It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping citrus covered by the order as hereby amended) who, during the period August 1, 2014, through

July 31, 2015, handled 50 percent or more of the volume of such citrus covered by said order, as hereby amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, was favored or approved by at least two-thirds of the growers who participated in a referendum on the question of approval and who, during the period of August 1, 2014, through July 31, 2015 (which has been deemed to be a representative period), have been engaged within the production area in the production of such citrus, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of citrus in the production area pursuant to the declared policy of the Act.

**Order Relative to Handling**

*It is therefore ordered,* That on and after the effective date hereof, all handling of oranges, grapefruit, tangerines, and pummelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Secretary's Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** (80 CFR 11335) will be and are the terms and provisions of this order amending the order and are set forth in full below.

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

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

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

**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS 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. Revise the heading for part 905 to read as set forth above.

3. Revise § 905.4 to read as follows:

**§ 905.4 Fruit.**

Fruit means any or all varieties of the following types of citrus fruits grown in the production area:

(a) *Citrus sinensis*, Osbeck, commonly called "oranges";

(b) *Citrus paradisi*, MacFadyen, commonly called "grapefruit";

(c) *Citrus reticulata*, commonly called "tangerines" or "mandarin";

(d) *Citrus maxima* Merr (L.); Osbeck, commonly called "pummelo"; and,

(e) "Citrus hybrids" that are hybrids between or among one or more of the four fruits in paragraphs (a) through (d) of this section and the following:

trifoliate orange (*Poncirus trifoliata*), sour orange (*C. aurantium*), lemon (*C. limon*), lime (*C. aurantifolia*), citron (*C. medica*), kumquat (*Fortunella* species), tangelo (*C. reticulata* x *C. paradisi* or *C. grandis*), tangor (*C. reticulata* x *C. sinensis*), and varieties of these species. In addition, citrus hybrids include: tangelo (*C. reticulata* x *C. paradisi* or *C. grandis*), tangor (*C. reticulata* x *C. sinensis*), Temple oranges, and varieties thereof.

4. Revise § 905.5 to read as follows:

**§ 905.5 Variety.**

Variety or varieties means any one or more of the following classifications or groupings of fruit:

(a) Oranges. (1) Early and Midseason oranges;

- (2) Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type;
- (3) Navel oranges.
- (b) Grapefruit. (1) Red Grapefruit, to include all shades of color;
- (2) White Grapefruit.
- (c) Tangerines and mandarins. (1) Dancy and similar tangerines;
- (2) Robinson tangerines;
- (3) Honey tangerines;
- (4) Fall-Glo tangerines;
- (5) US Early Pride tangerines;
- (6) Sunburst tangerines;
- (7) W-Murcott tangerines;
- (8) Tangors.
- (d) Pummelos. (1) Hirado Buntan and other pink seeded pummelos;
- (2) [Reserved].
- (e) Citrus hybrids—(1) Tangelos. (i) Orlando tangelo;
- (ii) Minneola tangelo.
- (2) Temple oranges.
- (f) Other varieties of citrus fruits specified in § 905.4, including hybrids, as recommended and approved by

the Secretary. Provided, That in order to add any hybrid variety of citrus fruit to be regulated under this provision, such variety must exhibit similar characteristics and be subject to cultural practices common to existing regulated varieties.

5. Revise § 905.7 to read as follows:

**§ 905.7 Handler.**

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting fruit for another person) who, as owner, agent, or otherwise, handles fruit in fresh form, or causes fruit to be handled. Each handler shall be registered with the Committee pursuant to rules recommended by the Committee and approved by the Secretary.

6. Revise § 905.9 to read as follows:

**§ 905.9 Handle or ship.**

Handle or ship means to sell, transport, deliver, pack, prepare for market, grade, or in any other way to place fruit in the current of commerce within the production area or between any point in the production area and any point outside thereof.

7. Revise § 905.14 to read as follows:

**§ 905.14 Redistricting.**

(a) The Committee may, with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: Provided, That the membership shall consist of at least eight but not more than nine grower members, and any such change shall be based, insofar as practicable, upon the respective averages for the immediately preceding three fiscal periods of:

(1) The number of bearing trees in each district;

(2) The volume of fresh fruit produced in each district;

(3) The total number of acres of citrus in each district; and

(4) Other relevant factors.

(b) Each redistricting or reapportionment shall be announced on or prior to March 1 preceding the effective fiscal period.

8. Revise § 905.20 to read as follows:

**§ 905.20 Term of office.**

The term of office of members and alternate members shall begin on the first day of August of even-numbered years and continue for two years and until their successors are selected and have qualified. The

consecutive terms of office of a member shall be limited to two terms. The terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in §§ 905.22 and 905.23.

9. In § 905.22, revise paragraphs (a)(1) and (b)(1) and add paragraph (c) to read as follows:

**§ 905.22 Nominations.**

(a) Grower members. (1) The Committee shall give public notice of a meeting of producers in each district to be held not later than June 10th of even-numbered years, for the purpose of making nominations for grower members and alternate grower members. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All

nominations shall be submitted to the Secretary on or before the 20<sup>th</sup> day of June.

\* \* \* \* \*

(b) Shipper members. (1) The Committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than June 10th of even-numbered years, for the purpose of making nominations for shipper members and their alternates. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and the balloting thereat. The chairperson of each such meeting shall publicly announce at the meeting the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of June.

\* \* \* \* \*

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, nomination and election of

members and alternate members to the Committee may be conducted by mail, electronic mail, or other means according to rules and regulations recommended by the Committee and approved by the Secretary.

10. Revise § 905.28 to read as follows:

**§ 905.28 Qualification and acceptance.**

Any person nominated to serve as a member or alternate member of the Committee shall, prior to selection by the Secretary, qualify by filing a written qualification and acceptance statement indicating such person's qualifications and willingness to serve in the position for which nominated.

11. In § 905.42, revise the first sentence of paragraph (a) to read as follows:

**§ 905.42 Handler's accounts.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: Provided, That funds already in the reserve do not exceed approximately two fiscal periods' expenses. \*

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12. In § 905.52, revise paragraphs (a) (4) and (5) and add paragraph (a) (6) to read as follows:

**§ 905.52 Issuance of regulations.**

(a) \* \* \*

(4) Establish, prescribe, and fix the size, capacity, weight, dimensions, marking (including labels and stamps), or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit.

(5) Provide requirements that may be different for the handling of fruit within the production area, the handling of fruit for export, or for the handling of fruit between the production area and any point outside thereof within the United States.

(6) Any regulations or requirements pertaining to intrastate shipments shall not be implemented unless Florida statutes and regulations regulating such shipments are not in effect.

\* \* \* \* \*

Dated: February 25, 2016

Elanor Starmer  
Acting Administrator  
Agricultural Marketing Service

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