



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 900 and 1200

[Doc. No. AMS- SC-17-0081

RIN 0581-AD74

Rules of Practice and Procedures to Formulate or Amend a Marketing Agreement, a Marketing Order, or Certain Research and Promotion Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) is adopting a final rule to amend the definition of “judge” in the rules of practice and procedure to formulate or amend a marketing agreement, marketing order, or certain research and promotion orders. The new definition adds a presiding official appointed by the Secretary, as well as an administrative law judge, as an official who may preside over the rulemaking hearing.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William Richmond, Acting Chief of Staff, AMS, 1400 Independence Avenue SW, Washington, DC 20250, (202) 720-5115.

SUPPLEMENTARY INFORMATION: AMS is issuing this final rule to amend the definition of “judge” in the rules of practice and procedure to formulate or amend a marketing agreement, marketing order, or certain research and promotion orders under 7 CFR part 900 and 1200.

AMS has rules of practice and procedure to formulate marketing agreements and marketing orders under 7 CFR part 900. Those rules of practice and procedure are applicable to

proceedings under the Agricultural Marketing Agreement Act of 1937, as amended [50 Stat. 246]. In addition, rules of practice and procedure also exist for proceedings under the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101-2119], the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701-2718], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801-4819], and the Potato Research and Promotion Act, as amended [7 U.S.C. 2611-2627]. Those rules appear under 7 CFR part 1200.

The Administrative Procedure Act (APA) prescribes general procedures for agency rulemaking. See 5 U.S.C. 553. For rulemaking hearings, the APA provides “there shall preside at the taking of evidence (1) the agency; (2) one or more members of the body which compromise the agency; or (3) one or more administrative law judges appointed under section 3105 of this title.” 5 U.S.C. 556(b). Under both 7 CFR Parts 900 and 1200, as defined, “judge” is limited to “any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.” 7 CFR 900.2(d), 900.51(d), 1200.2(f), and 1200.51(g). In order to better align with the provisions the APA, USDA is amending the definition of “judge” in both 7 CFR Parts 900 and 1200 to include a presiding official appointed by the Secretary. This revision to the definition of “judge” will provide AMS with the flexibility to have a presiding official assigned to a hearing in the event that an ALJ is not be available for the assignment or as circumstances warrant.

5 U.S.C. 553, 601, and 804

This final rule establishes agency rules of practice and procedure. Under the APA, prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Moreover, this final rule is necessary to carry

out an upcoming hearing on an emergency amendment to the Florida Federal Milk Marketing Order as part of the Government's response to hurricane relief efforts. Therefore, this final rule is effective upon publication in the Federal Register.

Furthermore, under 5 U.S.C. 804, this rule is not subject to Congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Executive Orders 12866 and 13563

This rule does not meet the definition of a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. Because this rule is not a significant regulatory action, it has not been reviewed by the Office of Management and Budget.

Executive Order 13771

Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements of Executive Order 13771. *See* OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 12988

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. There are no

administrative proceedings that must be exhausted before parties may file suit in court challenging this rule.

Executive Order 13132

This rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The review reveals that this rule does not contain policies with federalism implications sufficient to warrant federalism consultation under Executive Order 13132.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on tribal governments and would not have significant tribal implications.

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.].

List of Subjects:

7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1200

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Cotton, Dairy, Eggs, Fluid Milk, Honey, Marketing agreements, Mushrooms, Peanuts, Popcorn, Pork, Potatoes, Promotion, Reporting and recordkeeping requirements, Soybeans, Watermelons.

Accordingly, 7 CFR Parts 900 and 1200 are amended to as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 7 U.S.C. 601-674 and 7 U.S.C. 7401.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders

2. The authority citation for this subpart continues to read as follows:

Authority: 7 U.S.C. 610.

3. In § 900.2, revise paragraph (d) to read as follows:

§ 900.2 Definitions.

(d) The term *judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

4. The authority citation for this subpart continues to read as follows:

Authority: 7 U.S.C. 608c

5. In § 900.51 revise paragraph (d) to read as follows:

§ 900.51 Definitions.

(d) The term *judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or

any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

**PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING
PROCEEDINGS UNDER RESEARCH, PROMOTION, AND INFORMATION
PROGRAMS**

6. The authority for part 1200 continues to read as follows:

Authority: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6106, 6306, 6410, 7418, and 7486.

Subpart A—Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order

7. The authority for subpart A continues to read as follows:

Authority: 7 U.S.C. 2103, 2614, 2704, and 4804.

8. In § 1200.2, revise paragraph (f) to read as follows:

§ 1200.2 Definitions.

(f) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted from Research, Promotion and Information Programs

9. The authority for subpart B continues to read as follows:

Authority: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6008, 6106, 6306, 6410, 6807, 7106, 7418, 7486, and 7806.

10. In § 1200.51, revise paragraph (g) to read as follows:

§ 1200.51 Definitions.

(g) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

Dated: December 7, 2017.

Bruce Summers,
Acting Administrator,
Agricultural Marketing Service.

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