



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Doc. No. AMS-SC-17-0086; SC18-900-1 FR]

General Regulations for Federal Fruit, Vegetable, and Specialty Crop Marketing Agreements and Orders; Authority to Meet Via Electronic Communications

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the general regulations for Federal fruit, vegetable, and specialty crop marketing agreements and marketing orders (orders) and allows such programs to conduct meetings and vote using electronic means of communication.

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

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Julie Santoboni, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone:

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Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under the general regulations for Federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget's (OMB) 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).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

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. Such 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 final rule authorizes administrative bodies of Federal fruit, vegetable, and specialty crop orders that

currently do not have authority to conduct meetings using electronic communication means to do so.

This action also stipulates that each program follow its respective quorum and voting requirements when conducting meetings via electronic communication. Lastly, this action allows administrative bodies to recommend, subject to approval by the Secretary of Agriculture (Secretary), new requirements specific to meetings and verifying votes made at meetings conducted other than in-person.

Adding this authority increases operating efficiencies by adding flexibility to the methods by which meetings may be held and decisions made. Additionally, time and travel costs of attending meetings will be reduced. Of the 29 fruit, vegetable, and specialty crop orders currently in effect, six either do not have authority to meet other than in person or are limited specifically to phone or mail voting as alternatives.

Administrative Procedure Act and Regulatory Flexibility Act

This final rule establishes agency rules of practice and procedure. Under the Administrative Procedure Act (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). Therefore, this final rule is effective upon publication in the Federal Register.

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.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 900

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

For the reasons set forth above, 7 CFR part 900 is amended 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.

2. Add § 900.83 to subpart E read as follows:

§ 900.83 Conducting Meetings via Electronic Communication or Otherwise.

Notwithstanding any other provisions of a marketing order in this part, administrative bodies of fruit, vegetable, and specialty crop marketing orders, and their

committees/subcommittees may, upon due notice to all members and the public:

(a) Conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles members and the public, and facilitates open communication.

(b) Vote by any means of communication available, electronic or otherwise; Provided, That votes cast are verifiable and that quorum and other procedural requirements of each respective marketing order are met.

(c) With the approval of the Secretary, each administrative body may prescribe any additional procedures necessary to carry out the objectives of paragraphs (a) and (b) of this section.

Dated: May 11, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

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