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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-FV-11-0076; FV11-905-1 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redistricting and Reapportionment of Grower Members, and Changing the Qualifications for Grower Membership on the Citrus Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule redefines districts, reapportions representation, and modifies the qualifications for membership on the Citrus Administrative Committee (Committee). The Committee is responsible for local administration of the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). This final rule reduces the number of districts, reapportions representation among the districts, and allows up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 905, 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."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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. 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 final rule redefines districts, reapportions representation, and modifies the qualifications for membership on the Committee. This rule reduces the number

of districts, reapportions grower representation among the districts, and allows up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee. These changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

Section 905.14 of the order provides the authority to redefine the districts into which the production area is divided and to reapportion or otherwise change the grower membership of the districts to assure equitable grower representation on the Committee. This section also provides that such changes are to be based, so far as practicable, on the averages for the immediately preceding five fiscal periods of: (1) the volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and, (3) the total number of acres of citrus in each district. It also requires that the Committee consider such redistricting and reapportionment during the 1980-81 fiscal period and only in each fifth fiscal period

thereafter. The recommendation of July 14, 2011, is consistent with the time requirements of this section.

Section 905.19 provides for the establishment of and membership on the Committee, including the number of grower and handler members and their corresponding qualifications to serve. In addition, this section provides the authority for the Committee, with the approval of the Secretary, to establish alternative qualifications for grower members. The qualifications in this section specify that grower members cannot be shippers or employees of shippers.

Prior to this change, § 905.114 of the order's administrative rules and regulations listed and defined four grower districts within the production area. District One included the counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District Two included the counties of Polk and Osceola. District Three included the counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto,

Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. District Four included St. Lucie County and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County.

Section 905.114 also specifies the grower representation on the Committee from each district. Previously, District One was represented by one grower member and alternate; District Two was represented by two grower members and alternates; Districts Three and Four were represented by three grower members and alternates.

Since the last redistricting and reapportionment in 1991, total citrus acreage has fallen by 24 percent, production has fallen by 23 percent, and fresh shipments have fallen by 60 percent. Citrus production and growing acreage have gradually shifted from the north and central parts of the state to the eastern and southwestern growing regions following damaging freezes. The industry has also seen an overall decrease in acreage and production due to real estate development and the impact of several hurricanes. Increased production costs associated with

replanting, cultivating, and battling citrus diseases, such as canker and greening, have also contributed to changes in production.

Considering the numerous changes to the industry, the Committee discussed the need to redistrict the production area and reapportion grower membership at its meeting on July 14, 2011. During the discussion, Committee members agreed that industry conditions have been stabilizing, making this an appropriate time to consider redistricting and reapportionment. Trees planted to replace acreage lost to disease and hurricane damage are now producing, new production practices are helping to mitigate the effects of disease, and a weakened housing market has reduced development. These factors have all contributed to greater stability within the industry.

In considering redistricting and reapportionment, the Committee reviewed the information and recommendations provided by the subcommittee tasked with examining this issue. The subcommittee reviewed the numbers for acreage, production, and shipments from all counties in the production area as required in the order. While this information was beneficial in showing how the industry had changed since the last time the production area was

redistricted, there were concerns about how representative these numbers were of the fresh citrus industry.

The majority of Florida citrus production goes to processing for juice, and the available numbers for acreage and production by county do not delineate between fresh and juice production, making it difficult to determine if those numbers reflect fresh production. Further, reviewing the available data for fresh shipments also presented problems in that the numbers were more reflective of handler activity rather than grower activity, as fruit from many counties is handled in counties other than where the fruit is grown, and often in separate districts from where the fruit is grown.

In an effort to provide numbers reflective of grower production utilized for fresh shipments, the subcommittee used the available information on trees by variety in each county combined with the percentage of fresh production by variety to calculate a fresh production estimate for each county. Currently, 3 percent of orange, 44 percent of grapefruit, and 58 percent of specialty citrus production are shipped to the fresh market. Using these estimates, District One currently accounts for 9 percent of fresh

production; District Two, 13 percent; District Three, 31 percent; and District Four, 47 percent of fresh production.

Based on the fresh production estimates and other information available, the subcommittee recommended reducing the number of districts from four to three by combining current Districts One and Two into a new District One. Current District Three becomes District Two, and District Four becomes District Three. The subcommittee also recommended that the nine grower members be reapportioned as follows based on the estimates for fresh production: two grower members and alternates for District One, three grower members and alternates for District Two, and four grower members and alternates for District Three.

With nine growers serving on the Committee, each member represents approximately 11 percent of fresh production. Under the subcommittee recommendation, District One, with 22 percent of the fresh production, is represented by 22 percent of the grower members and alternates on the Committee, with two grower members and alternates. District Two, with 31 percent of fresh production, is represented by 33 percent of the grower members and alternates on the Committee, with three grower members and alternates. District Three, with 47 percent of

fresh production, is represented by 44 percent of the grower members and alternates on the Committee, with four grower members and alternates.

In discussing the recommendations of the subcommittee, Committee members found that the estimated fresh production numbers were a good indicator of fresh production and were beneficial when considering how the production area should be redistricted and grower membership distributed. Based on the new districts and the estimated fresh production, the Committee agreed that the subcommittee's recommendations evenly allocated grower membership. Consequently, the Committee voted unanimously in support of the changes.

Accordingly, District One includes the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District One is represented by two grower members and alternates.

District Two includes the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. District Two is represented by three grower members and alternates.

District Three includes the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district has four grower members and alternates.

In addition to discussing redistricting and reapportionment of grower representation on the Committee, the Committee also considered changes to the grower membership qualifications established under the order. When the qualifications for grower membership were established, the line between growers and shippers was clearer, with more growers in the business of just producing fresh fruit for the fresh market and not involved in the shipping aspect of the industry. However, over the years, the industry has seen more growers partnering to

form shipping interests or vertically integrating with shippers.

This trend began in the 1990s, when the industry was in an oversupply situation, and growers were looking for ways to assure their fruit was purchased. This consolidation between growers and shippers continued as the industry adjusted to changes in production and reacted to the pressures of disease, rising land values, hurricanes and freezes. Also, the same pressures that have encouraged consolidation and vertical integration have prompted many growers to leave the industry, further reducing the number of growers solely engaged in production.

Prior to this change, a grower who was affiliated with or was an employee of a shipper did not qualify to serve as a grower member on the Committee. In discussing this issue, the Committee recognized the changes in the makeup of the industry, and the need to revise the qualifications for grower membership to reflect these changes. Committee members agreed that with growers who are affiliated with shippers playing an increasing role in the industry, a change should be made to facilitate their participation on the Committee. Several Committee members stated that they thought such a change was important, but that the majority

of grower seats on the Committee should be maintained for pure growers, those not affiliated with a shipper.

To create an opportunity for shipper-affiliated growers to serve on the Committee, while maintaining the majority of positions for pure growers, it was determined that the grower qualifications for membership on the Committee be modified so that up to four grower members may be growers affiliated with or employed by shippers, with the remaining five seats open only to pure growers who are not affiliated with or employed by shippers. Committee members supported this change because it does not mandate that the four positions be filled by growers affiliated with shippers, but does create the opportunity for these types of growers to serve on the Committee. This change provides the flexibility to expand grower membership to include growers who are affiliated with shippers without limiting the opportunity for pure growers to serve.

The Committee believes this change makes the Committee more reflective of the fresh segment of the Florida citrus industry. Providing the opportunity for growers affiliated with shippers to serve on the Committee helps bring additional perspectives and ideas to the Committee, allows another segment of growers to serve on the Committee, and

creates an increased opportunity for participation by small citrus operations. Further, retaining five of the nine grower seats as seats for only pure growers helps maintain a balance between grower and shipper representation on the Committee.

With growers who are affiliated with the shipping segment of the industry playing an increasing role in the industry and the expectation that this segment of growers will continue to increase, the Committee believes facilitating their inclusion on the Committee will better reflect the current industry structure. Widening the pool of growers from which members are nominated also creates additional opportunities for growers with different backgrounds and perspectives to serve on the Committee. Therefore, the Committee unanimously recommended revising grower member qualifications to allow up to four growers who are affiliated with or employed by shippers to serve as grower members on the Committee.

The next round of grower nominations will be held in May 2013. In order to give the industry ample notice of these changes, and because Section 905.14 requires that this announcement occur on or before March 1 of the then current fiscal year, the modifications need to be in effect

prior to March 1, 2013, to be utilized in the May 2013 elections.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 8,000 producers of oranges, grapefruit, tangerines, and tangelos in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, 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 citrus during the 2010-11 season was approximately \$12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, and assuming a normal distribution, at least 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices reported by the National Agricultural Statistics Service and the total number of Florida citrus producers, the average annual producer revenue is less than \$750,000. Therefore, the majority of handlers and producers of Florida citrus may be classified as small entities.

This final rule reduces the number of districts from four to three, reapportions grower representation among the districts, and allows up to four growers who are shippers or employees of shippers to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the

opportunity for more growers to serve on the Committee. This rule revises § 905.114 of the regulations regarding grower districts and the allotment of members amongst those districts, and adds a new paragraph to § 905.120 of the rules and regulations to revise grower membership qualifications. The authority for these actions is provided in §§ 905.14 and 905.19 of the order, respectively. These changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

It is not anticipated that this action will impose any additional costs on the industry. This action will have a beneficial impact as it more accurately aligns grower districts and reapportions grower membership in accordance with the production of fresh Florida citrus. This action also creates an opportunity for growers that are affiliated with or employees of shippers to serve on the Committee as grower members. These changes should provide equitable representation to growers on the Committee and increase diversity by allowing more growers the opportunity to serve. These changes are intended to make the Committee more representative of the current industry. The effects of this rule will not be disproportionately greater or less for small entities than for larger entities.

The Committee discussed alternatives to these changes including making no changes to the districts or the apportionment of grower membership. The Committee recognized that there had been some significant changes to the industry since the last time the production area was redistricted and members reapportioned in 1991. The Committee determined that some changes were needed to make the districts and the apportionment of members reflective of the current industry structure. In discussing alternatives to changing grower member qualifications, the Committee explored making no changes to the qualifications or setting more restrictive limits on the alternate qualifications for growers affiliated with shippers. However, the Committee agreed that changes to the structure of the industry, including increasing vertical integration, support making a change to grower membership qualifications. Further, the Committee believes allowing up to four growers affiliated with or employed by shippers to serve on the Committee creates an opportunity for these growers, but maintain a majority of seats for pure growers who are not affiliated with shippers. Therefore, for the reasons above, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189 Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule requires textual changes to the form FV-163, Confidential Background Statement. However, the changes are purely cosmetic and do not affect the burden. In light of the redistricting, District Four is removed as a check-off option. A statement on the form is also reworded to accommodate the revision in grower member qualifications. With this change, the OMB currently approved total burden for completing FV-163 remains the same. A Justification for Change for this change has been submitted to OMB for approval.

As noted in the initial regulatory flexibility analysis, this final rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

In addition, the Committee's meeting was widely publicized throughout the Florida 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 July 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 12, 2012 (77 FR 73961). Copies of the rule were mailed or sent via facsimile to all Committee members and Florida citrus handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 11, 2013, was provided to allow

interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because Committee nominations are scheduled to be held in the spring, and these changes need to be in effect in advance so that industry stakeholders are familiar with the new grower districts, reapportionment, and qualifications prior to the nomination process. Further, to be effective for the next nomination cycle, the order requires that the

redistricting and reapportionment actions be announced on or before March 1, 2013. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 905

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

For the reasons set forth in the preamble, 7 CFR part 905 is 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. Section 905.114 is revised to read as follows:

**§ 905.114 Redistricting of citrus districts and
reapportionment of grower members.**

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union

and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) Citrus District Two shall include the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have four grower members and alternates.

3. In § 905.120, add paragraph (g) to read as follows:

§ 905.120 Nomination procedure.

* * * * *

(g) Up to four grower members may be growers who are also shippers, or growers who are also employees of shippers.

Dated: February 25, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

Billing code 3410-02 P

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