



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Doc. No. AMS-SC-18-0066; SC18-900-2 FR]

General Regulations for Federal Fruit, Vegetable, and Specialty Crop Marketing Agreements and Orders; Electronic Mailing of Notice of Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the general regulations for Federal fruit, vegetable, and specialty crop marketing agreements and marketing orders (orders) to allow the use of electronic communication as a method for notifying industry and the public of hearings for proceedings related to proposing new or amending existing orders.

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

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Senior Marketing Specialist, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, CA 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906 or Email: Debbie.Wray@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

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 Email: 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 USDA's Agricultural Marketing Service (AMS) to use either electronic communication or a postal or other delivery service to mail a notice of hearing to industry and the public for

proceedings related to proposing new or amending existing orders.

Part 900 provides the procedural requirements that govern proceedings to formulate orders and when necessary, to amend existing orders. These proceedings include holding a public hearing where, among other things, witnesses provide testimony about the proposal and evidence is admitted for consideration by the Secretary of Agriculture.

Section 900.4(b) requires AMS to mail a true copy of a notice of hearing to each of the persons known to the AMS Administrator to be interested in the proceedings. However, the method to be used for mailing the notice is not specified. Historically, AMS has mailed paper copies of the notice using the United States Postal Service or other postal delivery services. These mailings may number in the hundreds, depending on the industry affected by the proposal.

This final rule revises § 900.4 to provide that the mailing of a notice of hearing may be done electronically or by using a postal or other delivery service. By providing that electronic communication may be used for

mailing, this action will help strengthen and modernize AMS's outreach process and will reduce costs associated with paper mailings. Eventually, if all notice recipients have access to electronic communication as a delivery method and have adapted to its use, the older, more costly paper delivery methods could be eliminated.

Administrative Procedure Act and Regulatory Flexibility Act

This final rule revises agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the revision 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. In § 900.4, revise paragraph (b) (1) (ii) to read as follows:

§ 900.4 Institution of proceeding.

* * * * *

(b) * * *

(1) * * *

(ii) By mailing a true copy of the notice of hearing, using a postal or other delivery service or electronic communication, to each of the persons known to the Administrator to be interested therein;

* * * * *

Dated: October 15, 2018

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2018-22761 Filed: 10/18/2018 8:45 am; Publication Date: 10/19/2018]