

**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; Recommended Decision and Opportunity to File  
Written Exceptions to Proposed Amendments to Marketing  
Order No.905**

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

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision proposes amendments to Marketing Order No. 905 (order), which regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. Nine amendments are proposed by the Citrus Administrative Committee (Committee), which is responsible for local administration of the order. These proposed amendments would: 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 proposed amendments are intended to improve the operation and administration of the order.

**DATES:** Written exceptions must be filed by [Insert date 30 days after the date of publication in the Federal Register].

**ADDRESSES:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081-S, Washington, DC 20250-9200; Fax: (202) 720-9776 or via the internet at <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharrow, 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: Melissa.Schmaedick@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on this proceeding 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:** Prior documents in this proceeding: Notice of Hearing issued on March 28, 2013, and published in the March 28, 2013, issue of the **Federal Register** (78 FR 18899).

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**

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 905 regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, and the opportunity to file written

exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued 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).

The proposed amendments are based on the record of a public hearing held on April 24, 2013, in Winter Haven, Florida. 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.

The proposed amendments were recommended by the Committee following deliberations at a public meeting on July 17, 2012, and were submitted to the Agricultural Marketing Service (AMS) on October 25, 2012. After reviewing the recommendation and other information submitted by the Committee, AMS decided to proceed with the formal rulemaking process and schedule the matter for hearing.

The Committee's proposed amendments to the order would: 1) authorize regulation of new varieties and hybrids of citrus fruit; 2) authorize the regulation of intrastate shipments of fruit; 3) revise the process for redistricting the production area; 4) change the term of office and tenure requirements for Committee members; 5) authorize mail balloting procedures for Committee membership nominations; 6) increase the capacity of financial reserve funds; 7) authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; 8) eliminate the use of separate acceptance statements in the nomination process; and 9) require handlers to register with the Committee.

The Department of Agriculture (USDA) also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Ten industry witnesses testified at the hearing. The witnesses represented citrus producers and handlers in the production area, as well as the Committee, and they all supported the proposed amendments. The witnesses emphasized the need to restructure Committee representation and administration as well as equip the industry with more

tools to address the changing needs of fresh Florida citrus.

Witnesses offered testimony supporting the recommendation to authorize the regulation of new varieties and hybrids of citrus fruit. According to testimony, new varieties and hybrids could address the disease concerns of the industry and increase consumer demand for fresh citrus through the development of varieties with new characteristics.

Witnesses testified in support of streamlining the order by allowing mail ballots for Committee membership nominations, eliminating the use of separate acceptance statements in the nomination process, and changing the term of office and tenure requirements for Committee members to lengthen their terms of service. Witnesses stated that these three proposals would result in cost savings to the Committee and time savings for industry members. Moreover, longer term limits and overall tenure would contribute to stability in the administration of the order. The proposal to allow for greater financial reserves was supported by witnesses who indicated that additional reserves would result in less fluctuation in assessments and provide year-over-year budget stability.

Witnesses favored two proposals that would add authority to the order to regulate intrastate Florida citrus shipments in the event the Florida Department of Citrus discontinues or modifies its regulation of the fresh segment. This proposal was largely supported as a precautionary measure, with witnesses clearly stating that the authority would not be implemented unless Florida state regulations are not in effect. Witnesses also supported a similar proposal that would allow the Committee to develop different pack and container regulations for different markets, including the intrastate market.

Witnesses also supported the proposed amendment to modify the redistricting criteria and allow redistricting to occur more often than once every five years, as currently provided for under the order. The new criteria would give the Committee a clearer picture of production trends within the fresh citrus segment of the Florida citrus industry and allow the Committee to respond as necessary to best represent the fresh industry's interests.

Finally, witness testimony supported adding authority to require handler registration. Witnesses stated that handler registration would be helpful for two reasons: to assist in compliance and to provide the Committee with accurate handler information.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of July 1, 2013, for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. One brief was filed.

**Material Issues**

The material issues presented on the record of hearing are as follows:

1. Whether to amend the definitions of "fruit" and "variety" in § 905.4 and § 905.5 to update terminology and authorize regulation of additional varieties and hybrids of citrus.

2. Whether to amend the definition of "handle or ship" in § 905.9 to authorize regulation of intrastate shipments.

3. Whether to amend § 905.14 to revise the process for redistricting the production area.

4. Whether to amend § 905.20 to change the term of office of Committee members from one to two years, and change the tenure requirements for Committee members from three to four years.

5. Whether to amend § 905.22 to authorize mail balloting procedures for Committee membership nominations.

6. Whether to amend § 905.42 to authorize the Committee to increase the capacity of its financial reserve

funds from approximately six months of a fiscal period's expenses to approximately two years' fiscal periods' expenses.

7. Whether to amend § 905.52 to authorize pack and container requirements for domestic shipments and authorize different regulations for different markets.

8. Whether to amend § 905.28 to eliminate the use of separate acceptance statements in the nomination process.

9. Whether to amend § 905.7 to require handlers to register with the Committee.

#### **Findings and Conclusions**

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

#### **Material Issue Number 1 - Definitions of "Fruit" and "Variety."**

Sections 905.4, Fruit, and 905.5, Variety, should be amended to update order terminology and authorize regulation of additional varieties and hybrids of citrus.

The proposal to authorize regulation of new varieties and hybrids of citrus fruit would assist the industry in addressing declines in production caused by diseases. Research and development of disease-resistant hybrids may improve the health of Florida's fresh citrus industry. In

addition, the industry would be better able to meet consumer preferences as new and improved fruit becomes available for commercial production.

In order to regulate newly developed citrus varieties and hybrids, authority must be added to the order. While the order currently authorizes regulation of specific hybrid fruit included in the definitions, it does not authorize regulation of new hybrids.

The proposal to amend the definitions of "fruit" and "variety" would revise order language to reflect terminology currently being used in the industry. The order currently lists varieties that are no longer commercially viable. Amendments to the definitions would remove those varieties and group other varieties under sub-definitions currently used within the industry.

The order currently identifies six types of citrus fruit that have varieties that can be regulated under the order. These are: *Citrus sinensis*, Osbeck, commonly called "oranges;" *Citrus paradisi*, MacFadyen, commonly called "grapefruit;" *Citrus nobilis deliciosa*, commonly called "tangerines;" Temple oranges; tangelos; and Honey tangerines.

The proposed amendment would revise this list by moving Temple oranges, tangelos and Honey tangerines under

the modified definition of "variety," and adding pummelos (Citrus maxima merr) as a new type. Additionally, authority would be added to regulate varieties of any hybrid fruit developed from the parent fruits of oranges, grapefruit, tangerines, and pummelos.

The definition of "varieties" currently identifies twelve classifications or groupings of varieties regulated under the order. These include: "round oranges;" late maturing oranges of the Valencia type; Temple oranges; Marsh and other seedless grapefruit, excluding pink grapefruit; Duncan and other seeded grapefruit, excluding pink grapefruit; Pink seedless grapefruit; Pink seeded grapefruit; tangelos; Dancy and similar tangerines, excluding Robinson and Honey tangerines; Robinson tangerines; Honey tangerines; and Navel oranges.

The proposed modification of this definition would re-organize the existing list and add new varieties as follows: Oranges, with sub-groupings for early and midseason oranges, Valencia, Lue Gim Gong, or similar late maturing oranges of the Valencia type, and navel oranges; Grapefruit, red grapefruit and all shades of color and white grapefruit; Tangerines and mandarins, with sub-groupings for Dancy, Robinson, Honey, Fall-Glo, Early Pride, Sunburst, and W-Murcott tangerines, and tangors; and pummelos, including

Hirado Buntan and other pink seeded pummelos. Currently regulated citrus hybrids would also be included, specifically: tangelos, including Orlando and Minneola tangelos, and Temple oranges.

A new sub-paragraph would be added to authorize regulation of any new varieties of citrus fruits specified in 905.4, Fruit, including hybrids of those fruit. Any new hybrid variety subject to regulation would be required to exhibit similar characteristics and be subject to cultural practices common to existing regulated varieties.

According to the record, the Florida citrus industry believes that newly-developed hybrids are necessary for the recovery and long-term health of the industry. The industry is funding the development of new varieties and hybrids and has developed a plan for field testing. The industry hopes to begin producing new varieties and hybrids in the next few seasons. According to the witnesses, there is great anticipation within the fresh segment of the Florida citrus industry for the introduction of new varieties and hybrids that will reverse the decline of the Florida citrus industry.

Witnesses explained that many of the varieties that have been the mainstay of the Florida fresh citrus industry have either succumbed to pest and disease challenges, or reached a

point of market obsolescence. Furthermore, for the past decade, the Florida citrus industry has been contracting due to the loss of bearing trees and production, which has been brought about by the effects of two diseases, citrus canker and greening, and natural disasters, such as hurricanes. Also, the percentage of Florida's citrus crop utilized for fresh shipment has decreased to approximately nine percent of the total volume of citrus produced in Florida.

According to the record, during the past ten years, the number of bearing citrus trees has declined by 29 percent, while production has declined by 42 percent, and fresh utilization has declined by 45 percent. In addition, the value of the juice produced by fresh fruit varieties has continued to decline, which has further depressed the fresh citrus sector.

Witnesses gave examples of changes in consumer preferences that have also impacted the fresh Florida citrus industry. According to the record, Robinson and Dancy tangerines were the preferred varieties of tangerines by consumers thirty years ago. Over time, these varieties fell out of favor and were replaced by the Fall-Glo, Sunburst and Honey varieties because of their sweeter flavor. Consumers are now losing interest in these

varieties and are showing a preference for easy-peel, seedless varieties.

These competitive varieties are grown in areas outside of Florida, such as California and Spain, and are currently not suitable for production in the state. As a result, the Florida fresh citrus industry is in the process of developing easy-peel, seedless varieties that will grow in the production area. The new fruit will likely be a hybrid fruit currently not regulated under the order. Witnesses explained that the order should be amended to authorize regulation of hybrid fruit so that this new variety can be regulated once it is ready for commercial production.

Researchers from the University of Florida (UF) testifying at the hearing stated that much research and development of new citrus fruit has been done to improve the competitiveness of the Florida citrus industry. According to the record, this research has resulted in the development and release of as many as ten new citrus fruits providing improvements such as sweeter oranges with earlier or later maturity and improved color and flavor attributes found in other citrus. In addition, research is focused on generating new and unique hybrids that may revitalize consumer interest in fresh Florida citrus. Two examples given by one witness from UF are the Sugar Belle mandarin hybrid and the

Valquarius sweet orange, which are starting to be produced for the juice industry.

According to the record, varieties developed by the UF Citrus Breeding Program are being released into a "fast-track" testing program where a limited numbers of trees are grown on a test basis by interested growers. Fruit from the test trees cannot be sold.

Once the new varieties have been assessed for their potential value and growers plant sufficient numbers of trees to produce a supply of fruit for marketing through ordinary commercial channels, commercialization will proceed. Once a new variety becomes commercially viable, its inclusion under the order is likely to be considered by the Committee. Without the authority to regulate hybrid citrus fruit, the Committee would not be able to recommend the new fruit's inclusion under the marketing order.

One example of a new fruit that is currently in the test phase is the "UF914." This is a hybrid of pummelo and grapefruit that resembles ordinary grapefruit in appearance, but is much larger. According to the record, it generally has higher sugar levels and lower acidity than an ordinary grapefruit, yet retains the red pigmentation, flavor and aroma of a grapefruit.

A critically important attribute of this particular variety is its extremely low content of furanocoumarins, those chemicals contained in ordinary grapefruit that are responsible for the so-called "grapefruit juice effect", or a negative interaction between grapefruit juice and prescription medication, and subsequent medical recommendations for limited grapefruit consumption. As a consequence of its unique chemical composition, there could be substantial consumer demand for this variety. If this fruit were to be produced on a commercial scale, its inclusion under the order would be important to ensure and maintain quality and consistency of product in the market.

Researchers from the UF further explained that while new varieties will likely present marketing opportunities, they may also have new and unique quality attributes. Witnesses concluded that the success of these new varieties, as well as the future of Florida's fresh citrus industry, would be better secured by ensuring that new varieties will be required to meet quality standards.

In general, witnesses testifying in support of Material Issue Number One stated that, when new varieties and hybrids are available to the Florida citrus industry, it will be important that the marketing order contains the authority to regulate quality and size standards, and that its language be

inclusive of all varieties likely to emerge from the breeding programs. The ability to regulate these varieties will ensure that the quality and consistency of fruit entering channels of trade will meet consumer demand, compete with product from global production areas, and ensure a fair economic return for Florida fresh citrus growers and handlers.

Two corrections to the proposed regulatory language were offered by a witness testifying from the UF Citrus Breeding Program. These corrections include: Correcting the Latin binomial for pummelo from "Citrus grandis" to "Citrus maxima Merr," as listed in the Notice of Hearing; and, correcting the spelling of the previously listed "Poncirus trifoliate" to read "Poncirus trifoliata." These corrections have been accepted and are incorporated into the revised definition of § 905.4, Fruit, below.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that §§ 905.4, Fruit, and 905.5, Variety, be amended to update terminology and authorize regulation of additional varieties and hybrids of citrus as proposed and corrected.

A conforming change is needed in the title of 7 CFR Part 905. It is proposed to be revised to "ORANGES,

GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA" to reflect the proposed addition of pummelos as a regulated fruit and the inclusion of tangelos as a regulated hybrid variety.

**Material Issue Number 2 - Intrastate shipments.**

Section 905.9, the definition of "handle or ship," should be amended to authorize regulation of fresh Florida citrus handled and shipped within the production area. This section should be further modified to state that any regulations or requirements implemented as a result of this new authority would not conflict with Florida state statutes or regulations in effect thereunder.

The order currently regulates the grade and size of fresh Florida citrus handled and shipped to points outside of the production area, including exports, but does not regulate shipments within the state of Florida. Fresh citrus fruit handled and shipped within the state are currently regulated by the Florida Citrus Commission under the Florida Department of Citrus rules, Chapter 20.

Witnesses explained that adding authority for intrastate shipments under the Federal marketing order would create one comprehensive program for regulating fresh Florida citrus in the event that the Florida state program were to stop regulating fresh citrus shipments. Witnesses further

explained that this additional authority is being proposed as a precautionary measure and that the industry does not intend to implement this new authority while the Florida state program is in effect.

According to the record, the Committee spent approximately one and a half years thoroughly reviewing and considering this proposal. This proposal has been discussed by industry organizations and with two members of the Florida Citrus Commission, the group that oversees all Florida state citrus regulation. Witnesses stated that the proposal has industry support and, by design, would not conflict with state regulations.

According to the record, all witnesses who included remarks in their testimony about this proposal supported it as a precautionary measure for future use in the event that the State program no longer regulated fresh citrus shipments. Witnesses testifying in support of this proposal included individuals that serve or work closely with Florida state citrus regulatory programs. These witnesses stated that the Florida Citrus Commission is aware of this proposal and does not oppose it.

Witnesses also explained that the proposal to allow for different handling regulations for different market destinations under the order, further discussed in Material

Issue 8, complemented the industry's effort to streamline regulation within Florida's fresh citrus industry.

According to the record, the two proposals would result in a coordination of regulation under the Federal and State programs, and would provide an added authority under the order to regulate fresh shipments in the state of Florida in the event that the Florida Citrus Commission stopped regulating them. These proposals would streamline handling operations under both programs and would provide continuity in regulation.

No testimony or evidence opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that § 905.9, the definition of "handle or ship," be amended to authorize regulation of fresh Florida citrus handled and shipped within the production area.

**Material Issue Number 3 - Redistricting.**

Section 905.14, Redistricting, should be amended to revise the process for redistricting the production area. This amendment would provide flexibility within the order allowing for the redefining of grower districts within the production area when warranted by relevant factors.

Under the order, the Committee is authorized to consider redistricting every five years. Any recommendation to redistrict must include an analysis of

the following factors: (1) the volume of fruit shipped from each district; (2) the volume of fruit produced in each district; (3) the total number of acres of citrus grown in each district; and (4) other relevant factors. The order further requires that any redistricting must retain a minimum of eight, but no more than nine, grower membership positions on the Committee.

According to the record, the proposed amendment would modify three of the four factors used in assessing the need to change district boundaries and remove time restrictions, thereby increasing flexibility. Specifically, the amendment would change the assessment of total volume of fruit shipped from each district to the number of bearing trees in each district. It would also change the assessment of total volume of fruit produced in each district to the total volume of fresh fruit produced in each district. Finally, the consideration of total number of acres in each district would change to total number of bearing trees per district. The last remaining factor currently included in the order - other relevant factors when conditions warrant - would not be changed.

The proposed amendment would also remove the restriction on redistricting any more frequently than every five years. If implemented, the proposed modification to

the order would allow for redistricting as needed when the above factors indicate that a change in district boundaries would be beneficial.

Witnesses explained that, due to the major declines in bearing tree numbers, production, and fresh shipments the Florida citrus industry has experienced over the past decade, this proposal would allow the Committee to determine the need for changes in grower districts on a timely basis using information that more accurately represents production trends within the fresh citrus industry.

For example, given the increased loss of trees per acre due to disease and natural disasters, the current guideline for calculating grower districts using acreage is no longer applicable. According to the record, when calculating production capacity within a county or grower district, the new industry standard is to consider bearing trees, not acreage. Due to heavy tree losses within producing groves, acreage is not a reliable indicator of production. Record evidence indicates that many groves have anywhere from 10 percent to as much as or more than 50 percent of their grove acreage with non-bearing trees or no trees at all. Therefore, acreage count as an indicator of production can be misleading. For this reason, the Committee is recommending

the usage of bearing trees per district rather than acreage per district.

Witnesses also explained that the Florida Agricultural Statistical Service conducts a tree census every other year. With this information, the Committee would have accurate and timely information on bearing trees, by variety and county, to utilize in their redistricting evaluations.

Witnesses stated that the importance of identifying and assessing the volume of fresh production per district is paramount to understanding trends within the fresh segment of the Florida citrus industry. According to record evidence, the Florida citrus industry utilizes 90 percent or more of its annual crop to produce processed products. Witnesses explained it is important to identify where the remaining 10 percent of fresh citrus is being produced and handled so that the Committee can assign Committee representation or re-designate districts based on the true distribution of fresh citrus production.

Witnesses explained that calculating the volume of fresh citrus produced per district can be accomplished by identifying the number of fresh citrus variety trees in each district and multiplying that number by the average yield per tree of those varieties. Witnesses identified "fresh citrus varieties" as those varieties that return to the grower an

on-tree value that exceeds the cost of production. These varieties currently would include Navel oranges, red and white grapefruit, specialty citrus varieties, Fall-Glo tangerines, Sunburst tangerines, tangelos, and Honey tangerines.

Finally, witnesses stated that the proposed amendments would allow the Committee the flexibility to adjust grower districts to reflect shifts in the production of fresh varieties and fresh volume of Florida citrus. Given industry concerns over the continued loss of trees and reduction in fresh volume, the Committee's ability to react to such changes in a timely manner is important to administer the marketing order program effectively.

No testimony opposing this proposal was presented at the hearing. For the reasons stated above, it is recommended that § 905.14, Redistricting, be amended to revise the process for redistricting the production area. This amendment would provide flexibility within the order to allow for the redefining of grower districts within the production area when relevant factors warrant redistricting.

**Material Issue Number 4 - Term of office.**

Section 905.20, Term of office, should be amended to change the term of office of Committee members from one to

two years, and change the tenure limits for Committee members from three to four years. This proposed change would provide more continuity in the administration of the order and would result in cost savings and efficiencies from fewer elections.

The order currently limits the term of office for Committee members and alternate members to one year, with the number of consecutive terms, or tenure, that a member or alternate can serve in their position limited to three terms. Therefore, the longest a Committee member can serve before being required to take a break in service is three years. The proposed amendment would lengthen this time to a total of four years, or a limit of two consecutive two-year terms.

Witnesses explained that the current requirements under the order disrupt the administration of the order. Each year nominations and new selections occur. The annual nomination process not only disrupts the work of the Committee, but it also requires time and resources from handlers and growers to participate in nominations and from the Committee to conduct them. Witnesses stated that changing the nomination process to a bi-annual occurrence would allow Committee members to work for two years without interruption, which would also reduce costs associated with

conducting and participating in nominations. The overall effect would be an increase in administrative efficiencies and stability.

Regarding the need for increased continuity in leadership, witnesses explained that the production of fresh Florida citrus is rapidly changing. According to the record, in the last 10 seasons the fresh citrus industry has experienced production declines of 50 percent and shipment declines of 40 percent. Witnesses stated that it will be important to have continuity in leadership and representation as the industry addresses the issues of disease and development of new, consumer-friendly citrus varieties to bolster production and market demand.

No testimony opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that § 905.20, Term of office, be amended to change the term of office of Committee members from one to two years, and change the tenure limit for Committee members from three to four years. This proposed change would provide more continuity in the administration of the order and would result in cost savings and efficiencies with fewer nomination meetings to conduct.

**Material Issue Number 5 - Mail balloting.**

Section 905.22, Nominations, should be amended to authorize the use of mail ballots in conducting Committee membership nominations. In addition, this section should be amended to provide that the nomination process occur in the month of June to allow ample time for the distribution and collection of mail ballots.

The order currently does not allow for voting by mail during the nomination process; all votes must be cast in person or, in the case of handlers, by proxy, at annual nomination meetings. For grower nominations, meetings are held at set locations within each of the three grower districts. Growers are entitled to one vote for each nominee in each of the districts in which he or she is a producer. Shipper nominations are held at the Florida Department of Citrus headquarters. Shippers may vote by proxy, and each shipper's vote is weighted by the volume of fruit handled by them during the then current fiscal period. The nomination process occurs in the month of July.

If implemented, this amendment would simplify the nomination and voting process and would increase industry participation, specifically grower participation. This amendment would also make the nomination process more efficient and economical by eliminating the Committee's expenses associated with holding a nomination meeting.

Lastly, this change would reduce financial and other burdens currently required of growers commuting to vote.

Witnesses stated that the current process can limit grower participation due to time and travel requirements to attend nominating meetings. Given that the state of Florida production area is divided into three grower districts, each of these districts covers a large geographic area.

According to witnesses, the burdens of commuting to a nomination meeting have led to poor voter turnout. A considerable number of growers do not live within an easily commutable radius of the nomination meeting locations. Time spent commuting to nomination meetings can be costly in terms of lost wages, time spent away from the workplace, and fuel costs for travel to and from the nomination meetings.

The Committee anticipates that this change will foster increased participation. By allowing voting by mail or other means, participation should increase, and the level of diversity among the members involved in the nomination process may increase as well. According to the record, the Committee believes that it will realize cost savings from conducting the nominations of members and alternate members by mail or other means. As presented earlier, this measure is coupled with the proposal to extend the term of office

from a one-year term to a two-year term, which would decrease administrative and travel costs associated with nomination meetings. However, if there is any cost increase, it would be outweighed by the benefit of increased participation and involvement.

The Committee further proposed that the nomination process take place in the month of June in order to allow extra time for the mailing and receipt of mail ballots. The expense of mailing the ballots would be outweighed by the savings in travel and time-related costs of industry members no longer needing to travel to nomination meetings.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 905.22, Nominations, be amended to authorize the use of mail ballots in conducting Committee membership nominations and to conduct nominations in June.

**Material Issue Number 6 - Financial reserve fund.**

Section 905.42, Handler's accounts, should be amended to authorize the Committee to increase the capacity of its financial reserve funds from approximately six months of a fiscal period's expenses to approximately two years' fiscal periods' expenses.

The order currently provides authority to hold in reserve funds equal to approximately one-half of one fiscal

period's expenses. According to witnesses, this limits the Committee's flexibility to develop and implement projects requiring advertising, promotion or research without raising the assessment rate during the season. The proposed amendment would allow the Committee to increase their reserves up to two fiscal periods' expenses. The larger reserve fund would provide greater flexibility in the administration of the marketing order program and promote assessment rate stability.

Assessment revenue funds the Committee's administrative, research, and promotion activities. As production has declined over time, the Committee has had to either increase the assessment rate to generate more revenue, or rely on its reserves to fund some of its activities. This has caused the assessment rate to fluctuate substantially over time. The Committee's proposal to raise the reserve cap to two fiscal periods' expenses would reduce assessment rate fluctuation and make more funds available for the Committee to use in fiscal years when assessment revenue isn't sufficient to cover expenses.

According to the record, the Committee's fiscal year begins on August 1 and ends on July 31 of the following year. The shipping season for Florida fresh citrus begins in September and lasts about eight months, with approximately 87

percent of the volume being shipped in six months. The volume of regulated fresh citrus declined 17 percent in the last five seasons, and 41 percent in the last decade. Committee data indicates that 2013-2014 fresh shipments from Florida are projected to decrease another 10 percent from last season. Moreover, the 2013-2014 crop year projection of fresh shipments of 13.2 million boxes will be the lowest since the 1919-1920 season.

Witnesses explained that the Committee has tried to avoid assessment increases each year, and would rather establish an assessment rate that would fully fund its operations and build its reserves to handle the fluctuations in fresh shipments. However, with the current assessment rate and reserve threshold combination, reserves are being drawn down faster than they are being replenished year-over-year. Without raising the cap on reserves, witnesses stated that it will become increasingly difficult for the Committee to avoid annual increases in the assessment rate.

Witnesses testifying in favor of this proposal stated that raising the assessment rate to a level that would properly fund the Committee's operations and simultaneously build ample reserves to handle production fluctuations can only be achieved by increasing the amount of reserves the

Committee is allowed to carry over from one fiscal year to the next.

According to the record, the Committee did consider a proposal that would increase the reserve threshold from one half year to one fiscal period's expenses. However, this option was ultimately rejected because current fluctuations in regulated shipments indicate that the Committee's reserve needs are greater than one year's annual expenses. Witnesses explained that it has been the Committee's practice to hold excess assessments during the past few fiscal years to ensure that there would be ample reserves to fully fund their operations.

Witnesses further stated that the proposal to increase the reserve threshold to two fiscal periods' worth of Committee expenses is essential to the Committee's financial stability moving forward, until fluctuations in production can be remedied through the development of disease-resistant citrus and new plantings of varieties with the characteristics desired by consumers of fresh Florida citrus.

Lastly, if the proposed amendment to increase the reserve fund were approved, witnesses stated that the Committee should begin building the reserves immediately.

No testimony opposing the proposed amendment was presented at the hearing. For the reasons stated above, it

is recommended that Section 905.42, Handler's accounts, be amended to authorize the Committee to increase the capacity of its financial reserve funds from approximately six months of a fiscal period's expenses to approximately two fiscal periods' expenses.

**Material Issue Number 7 - Regulation of shipments.**

Section 905.52, Issuance of regulations, should be amended to authorize pack and container requirements for domestic shipments and authorize different regulations for different markets. Additionally, in the event that the State of Florida opted to no longer regulate intrastate fresh citrus shipments, this amendment would also allow for such shipments to be regulated under the Federal marketing order.

The order currently regulates the size, capacity, weight, dimensions, marking, or pack of containers used for fresh citrus export shipments, provided that the container is not prohibited under Chapter 601 of the Florida Statutes. The Committee recommends that the order be amended to allow for the establishment of such regulation for both export and interstate shipments, and that these requirements may be different for different market destinations. By adding this authority, the Committee could recognize and meet the differing demands of customers and consumers domestically and

abroad. Witnesses explained that having the flexibility to meet differing demands is important in maintaining current markets and creating new markets for any new varieties developed in the future.

The regulation of pack and containers for intrastate shipments falls under the authorities outlined in Chapter 20 of the Florida statutes. Changes to these regulations are developed by the Florida fresh citrus industry and presented to the Florida Citrus Commission for their approval. The Florida Citrus Commission oversees state regulation for both the fresh and processed segments of the state's citrus industry.

According to the record, intrastate markets have been recognized by the Florida citrus industry as being unique from the interstate and export markets in that much of the in-state fruit is sold locally by fruit stands and gift-fruit shippers. Typically, this fruit is sold in bins and ten-box containers so that the consumer may choose their own fruit. This is different from interstate or export shipments, which are typically packed and sold in cartons or bags. Intrastate shipments of fresh Florida citrus represent roughly six percent of the industry's total fresh shipments.

The Committee recommends amending the order to provide authority to regulate intrastate shipments of fresh citrus in

the event that the State of Florida ceases to regulate them. This amendment would allow for orderly marketing of fresh citrus to continue if state regulations were no longer in effect. Witnesses explained that this amendment was proposed as a precautionary measure and that the Committee's recommendation had been discussed openly with the Florida Citrus Commission. No opposition was expressed.

USDA recommends modifying the proposed amendatory text published in the Notice of Hearing. USDA's modifications simplify the proposed amendatory text to more clearly state the intent of the Committee's recommendation and that which was supported by witness testimony. The modified language is included here below.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 905.52, Issuance of regulations, be amended to: authorize different regulations for different market destinations; allow for the regulation of pack and container requirements for interstate shipments; and, in the absence of state regulation, allow for the establishment of requirements for intrastate shipments. Any regulation implemented under this authority would not conflict with Florida state statutes or regulation in effect thereunder.

**Material Issue Number 8 - Nomination acceptance.**

Section 905.28, Qualifications and acceptance, should be modified to allow the Committee nominee acceptance statement and the background statement to be combined into one form.

The order currently requires each member and alternate to complete an acceptance letter in addition to the background statement when nominated to serve on the Committee.

This proposal would combine the separate acceptance and background statements into one form. Nominees agreeing to serve on the Committee would complete a background statement that would also include a statement of acceptance. If implemented, this proposal would reduce paperwork associated with the nomination process and result in time savings for nominees filling out the forms.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 905.28, Qualifications and acceptance, be amended to allow the acceptance statement and the background statement to be combined into one form.

**Material Issue Number 9 - Handler registration.**

Section 905.7, Handler, should be amended to require handlers to register with the Committee. This amendment

would require handlers who intend to handle fresh citrus to provide the Committee with their contact information at the beginning of each crop year. This would assist in administering the compliance provisions of the order.

The order does not currently require handlers to register with the Committee. At the beginning of each crop year, the Committee receives a manifest of handlers who are handling fresh citrus from the state Department of Agriculture and Consumer Service. The information is gathered by the state of Florida through the state's dealer license requirements and through product inspection and certification. The Committee then uses this manifest for compliance purposes and to generate their assessment billings.

According to the record, the State of Florida Department of Citrus, Chapter 601, Florida Statutes, Florida Citrus Code 601.4, requires each packing house or handler that prepares Florida citrus for the fresh market in Florida to register annually with the Florida Department of Agriculture through the Division of Fruit and Vegetables (Division). In addition, Section 601.56, Florida Statutes, also referred to as the Florida Citrus Code, requires Florida citrus handlers to be approved by the Department of Citrus for a citrus fruit dealer's license.

Under the order, § 905.53, Inspection and certification, requires each lot of fresh citrus handled to be inspected by the Division. The Division certifies that the lot of fruit meets all applicable minimum grade and size requirements of the order. The Committee contracts annually with the Division to furnish the Committee, by month, information on each handler's regulated shipments, both interstate and export. This information allows the Committee to calculate each handler's assessment, as well as monitor compliance with grade and size regulation of fresh Florida citrus shipments.

Witnesses explained that while the Committee has not experienced major compliance issues in the past, adding authority for it to require handler registration would provide the Committee with a timely and accurate list of handlers who intend to handle fresh citrus each crop year. Witnesses further explained that in the event the Florida state program were to stop regulating fresh citrus shipments the Committee would be able to gather necessary information through a handler registration requirement to continue monitoring handler compliance under the program.

According to the record, the Committee monitors compliance (for both adherence to the order's grade and size requirements and assessment payments) through provisions of

both its compliance and internal controls plans. There are procedures in both to ensure that handlers are fully informed of any violations and are given time to take corrective actions.

Witnesses explained that, in the very limited cases of minimum grade and size regulation violations, the majority of the reported violations involved less than a full pallet of fruit each, which would be equivalent to 54 cartons of citrus. Furthermore, most of the violations have been clerical errors made by the handlers' shipping departments. In the last few seasons, with most shippers using bar coding systems for loading trucks or containers, these violations have almost been eliminated. The Committee has not experienced many late or uncollectible assessments. Nonetheless, witnesses advocated the need to implement a handler registration requirement. This authority would provide the Committee with a timely and accurate list of handlers handling fresh citrus each crop year for the purposes of compliance and communication.

Witnesses explained that, if the amendment was approved, the Committee would have the authority to develop a handler registration form along with other guidelines to implement the collection of information. The handler registration form would likely require contact information

along with other pertinent information deemed necessary for the operation of the order. Completed handler registration forms would provide accurate contact information that would improve the effectiveness of communications between handlers and the Committee, and assist in administering the compliance provisions of the order. Other than the time required to complete the registration form, witnesses stated that this proposal would not require handlers to bear any additional costs. Witnesses also stated that this proposal is not controversial and has support within the industry.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 905.7, Handler, be amended to require handler registration.

#### **Small Business Considerations**

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 initial 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. Twenty one handlers would be considered a small entity under SBA's standards. A majority of 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.

During the hearing held on April 24, 2013, interested persons were invited to present evidence at the hearing 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.

**Material Issue Number 1 – Definitions of “Fruit” and “Variety.”**

The proposal described in Material Issue 1 would amend the definitions of “fruit” and “variety” in § 905.4 and § 905.5 to update terminology and authorize regulation of additional varieties and hybrids of citrus.

Currently, the New Varieties Development and Management Corporations, a non-profit research organization, is actively working to identify, acquire and sub-license promising citrus varieties and hybrids for the Florida citrus grower. In order to regulate these new varieties and hybrids, the definitions of fruit and variety must be amended so that these new varieties and hybrids can be regulated under the order.

Witnesses supported this proposal and stated that Florida growers have invested heavily and steadily in the development of new citrus varieties to meet changing demand and consumer preferences. Witnesses stated that it is imperative that the order be amended to keep pace with a rapidly changing industry and maximize its relevance and utility to the industry. No significant impact on small business entities is anticipated from this proposed change.

**Material Issue Number 2 – Intrastate shipments.**

The proposal described in Material Issue 2 would amend the definition of "handle or ship" in § 905.9 to authorize regulation of intrastate shipments.

Currently, the Florida Citrus Commission, under the Florida Department of Citrus Rules Chapter 20, regulates the grade and size of intrastate shipments, while the Federal order regulates all interstate shipments and exports of fresh citrus. If the proposed amendment were implemented, authority to regulate intrastate shipments would be added to the Federal order. This amendment would allow for the eventual regulation of all fresh citrus shipments under the order if intrastate shipments were no longer regulated by the Florida Department of Citrus.

Witnesses explained that adding the authority to regulate intrastate shipments to the order would be a precautionary measure. If the Florida Department of Citrus were to stop regulating fresh citrus shipments, having the authority to do so under the Federal order would facilitate a streamlined transition of regulation from one program to the other. Such a transition would benefit growers and handlers as shipments of fresh citrus could continue without interruption.

Witnesses anticipated that handlers would incur little to no additional costs as a result of the proposed amendment. As currently proposed, the amendment would simply add an authority to the order. This authority would not be implemented unless warranted by other factors. If implemented, handlers of intrastate fresh citrus shipments would be subject to assessments under the order. However, the Florida Department of Citrus already collects assessments on intrastate shipments. Therefore, the cost of assessments collected on intrastate shipments, whether under the State or Federal program, would continue. In conclusion, it is determined that the benefits of adding the authority to regulate intrastate shipments of fresh citrus to the order would outweigh any costs.

**Material Issue Number 3 – Redistricting.**

The proposal described in Material Issue 3 would amend § 905.14 to revise the process for redistricting the production area.

The proposed amendment would grant flexibility to the Committee in redefining grower districts within the production area when the criteria and relevant factors within the production area warrant redistricting. Disease and natural disasters over the past decade have significantly affected bearing acreage. The proposed

amendment would allow the Committee at any time, subject to the approval of the Secretary, to base their determination of grower districts on the number of bearing trees, volume of fresh fruit, total number of citrus acres, and other relevant factors when conditions warrant redistricting.

According to a witness, the proposed amendment would give the Committee, in future seasons, the flexibility to adjust grower districts to reflect the shift in production of fresh varieties and fresh volume. In addition, the Committee would be able to adjust grower districts based on the number of trees lost to disease and natural disasters. Thus, it is not expected that this proposal would result in any additional costs to growers or handlers.

**Material Issue Number 4 – Term of office.**

The proposal described in Material Issue 4 would amend § 905.20 to change the term of office of Committee members from one to two years, and change the tenure limits for Committee members from three to four years.

According to a witness, a two-year term would allow for biennial nomination meetings, which would provide administrative efficiencies and stability. The current one-year term of office is administratively inefficient and requires additional Committee resources. Moreover, limiting terms to one year results in an annual effort to

nominate and appoint new members. This process is costly to the Committee and requires time and resources for industry members to participate. A two-year term would reduce these costs. For the reasons described above, it is determined that the proposed amendment would benefit industry participants and improve administration of the order. The costs of implementing this proposal would be minimal, if any.

**Material Issue Number 5 – Mail balloting.**

The proposal described in Material Issue 5 would amend § 905.22 to authorize mail balloting procedures for Committee membership nominations. Nomination meetings have low participation rates due to time, travel, and administrative costs.

The proposed amendment would allow the Committee to conduct the nomination and/or election of members and alternates by mail or other means according to the rules and regulations recommended by the Committee and approved by the Secretary. Currently, the Committee holds grower nomination meetings in each of the three grower districts and one shipper nomination meeting annually. Witnesses indicated that attending these meetings is costly due to travel expenses and time away from their growing or handling operations. While the proposed amendment would

result in some increased expenses for printing and mailing of ballot materials, witnesses indicated that the potential savings to growers and handlers far exceed those costs.

Moreover, witnesses indicated that the additional benefit of increased participation in the nomination process as a result of materials being sent to all interested parties would outweigh the costs of conducting nominations by mail. This would be particularly true in the case of small business entities that have fewer resources and relatively less flexibility in managing their businesses compared to larger businesses. For these reasons, it is determined that the cost savings, increased participation, and other benefits gained from conducting nomination meetings via mail would outweigh the potential costs of implementing this proposal.

**Material Issue Number 6 – Financial reserves fund.**

The proposal described in Material Issue 6 would amend § 905.42 to authorize the Committee to increase the capacity of its financial reserve funds from approximately six months of a fiscal period's expenses to approximately two fiscal periods' expenses. Such reserve funds could be used to cover any expenses authorized by the Committee or to cover necessary liquidation expenses if the order is terminated.

The proposed amendment would allow the Committee to increase their reserves up to two fiscal periods' expenses. Currently, reserves are capped at approximately one half of one year's expenses. Witnesses explained that the current cap on reserves is too restrictive and could limit the Committee's ability to develop and implement projects requiring advertising, promotion or research without raising the assessment rate during the season.

As discussed earlier in this recommended decision, witnesses considered the need to develop and promote new hybrid varieties and markets to be essential to reviving the health of the fresh citrus sector. According to them, not increasing the reserve cap would inhibit the Committee's ability to address these needs.

Also, without the proposed amendment it would become more difficult for the Committee to avoid assessment rate increases annually or during a season. According to the record, the proposed amendment would also provide greater stability in the administration of the order's assessment rate. Under the current reserve limit, the Committee would need to increase the assessment rate mid-season if the need for additional revenues for research or promotion activities occurs after the assessment rate and budget are finalized. Increasing the assessment rate mid-season

confuses industry members and creates additional burdens in administering the order.

For the reasons discussed above, it is determined that the benefits of increasing the maximum level of funds that can be held in the financial reserves would outweigh the costs.

**Material Issue Number 7 – Regulation of shipments.**

The proposal described in Material Issue 7 would amend § 905.52 to: authorize different regulations for different market destinations; allow for the regulation of pack and container requirements for interstate shipments; and, in the absence of state regulation, allow for the establishment of requirements for intrastate shipments.

This would allow shippers to meet varying customer demands in different market destinations. In addition, the proposed amendment would allow regulation and orderly marketing to continue for intrastate shipments if Florida State fresh citrus regulations were discontinued. This authority will not be implemented unless state regulations were no longer in effect.

The proposed amendment to regulate containers and establish quality standards for the production area would not have any adverse effects on small businesses if approved. Continued orderly marketing of fresh citrus

shipments within the State of Florida would equally benefit all segments of the industry and consumers by maintaining quality standards and consistency.

**Material Issue Number 8 – Nomination acceptance.**

The proposal described in Material Issue 8 would Amend § 905.28 to eliminate the use of separate acceptance statements in the nomination process. Currently, nominees complete both background and acceptance statements when they are nominated. The elimination of the acceptance statement would reduce paperwork and administrative costs. Therefore, it is determined that the proposed amendment would benefit both large and small-scale fresh citrus businesses, and would reduce costs and improve the administration of the order.

**Material Issue Number 9 – Handler registration.**

The proposal described in Material Issue 9 would Amend § 905.7 to require handlers to register with the Committee. Currently, the Florida Department of Agriculture and Consumer Services, Division of Fruit and Vegetables has a registration program for handlers of Florida citrus. The Committee contracts annually with the Division to obtain information on each handler's regulated shipments, both interstate and export, on a monthly basis.

A handler registration form would serve as an efficient means for obtaining handler information that would improve communication between the Committee and handlers. It would also assist the Committee in monitoring and enforcing compliance. If a handler were to not comply with regulations in effect under the order, the Committee would have that handler's contact information on file to begin the compliance enforcement process. Moreover, if a handler failed to respond to compliance enforcement requests, the Committee could revoke a handler's registration. Without the registration, a handler would not be able to ship citrus subject to order regulation.

Witnesses stated that while a handler registration program may result in additional administrative costs, the benefits of this proposed amendment would outweigh those costs. Also, the proposal would not disproportionately disadvantage small-sized businesses as all handlers, regardless of size, would be required to register with the Committee. Furthermore, the new requirement would not result in a direct cost to handlers as the cost of administering a handler registration program would be borne by the Committee.

For these reasons, it is determined that the benefits of requiring handlers to register with the Committee would be greater than the costs.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that implementation of the proposals 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 intrastate 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 would improve the operation of the order and are not anticipated to impact small businesses disproportionately.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the

operation and administration of the order and to assist in the marketing of fresh Florida citrus.

Committee meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the Florida citrus industry, and all interested persons were invited to attend the meetings and the hearing to participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

#### **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.

No other changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

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.

#### **Civil Justice Reform**

The amendments to the order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would 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.

#### **Rulings on Briefs of Interested Persons**

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

#### **General Findings**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously

made in connection with the issuance of the marketing agreement and 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.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of fresh citrus grown in the production area (Florida) in the same manner as, and is 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 proposed to be further amended, is limited in its application to the smallest regional production area which 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 proposed to be 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 fresh citrus grown in the production area; and

(5) All handling of fresh citrus 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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized and the Committee and industry would like to avail themselves of the opportunity to implement the changes as soon as possible. All written exceptions received within the comment period will be considered and a grower referendum will be conducted before any of these proposals are implemented.

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

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

**Recommended Further Amendment of the Marketing Order**

For the reasons set out in the preamble, 7 CFR part 905 is proposed to be 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 of 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 (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.**

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:

- (a) The number of bearing trees in each district;

(b) the volume of fresh fruit produced in each district;

(c) the total number of acres of citrus in each district; and

(d) other relevant factors.

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. Revise paragraphs (a) (1) and (b) (1) and add a new paragraph (c) in § 905.22 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. Revise the first sentence of paragraph (a) in § 905.42 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. \* \* \*

\* \* \* \* \*

12. Revise paragraphs (a) (4) and (a) (5), and add a new paragraph (a) (6) in § 905.52 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 23, 2015.

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