

§ 900.43

7 CFR Ch. IX (1–1–10 Edition)

§ 900.43 Use of informal rulemaking.

(a) Notwithstanding the provisions of §§ 900.1 through 900.18, and 900.36 through 900.42 of this part, the Secretary may determine that informal rulemaking procedures under § 553 of Title 5, United States Code be used to amend fruit, vegetable or nut marketing agreements and marketing orders. In making this determination, consideration shall be given to:

- (1) The nature and complexity of the proposal;
- (2) The potential regulatory and economic impacts on affected entities; and
- (3) Any other relevant matters.

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

AUTHORITY: 7 U.S.C. 608c.

§ 900.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term *Department* means the United States Department of Agriculture;

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary;

(d) The term *judge* means any Administrative Law Judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or em-

ployee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(f) [Reserved]

(g) The term *FEDERAL REGISTER* means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term *marketing order* means any order or any amendment thereto which may be issued pursuant to section 8c of the act;

(i) The term *handler* means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;

(j) The term *proceeding* means a proceeding before the Secretary arising under section 8c(15)(A) of the Act.

(k) The term *hearing* means that part of the proceeding which involves the submission of evidence;

(l) The term *party* includes the Department;

(m) The term *hearing clerk* means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(n) [Reserved]

(o) The term *decision* means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(p) The term *petition* includes an amended petition.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002]

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the