

testimony, production, or certification of records.

(f) *De minimis fees*. Fees will not be assessed if the total charge would be \$10.00 or less.

#### Subpart D—Penalties

##### § 2417.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the Chairman or the Chairman's designee, or as ordered by a Federal court after the FLRA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

Dated: December 16, 2008.

Rosa M. Koppel,

*Solicitor, Federal Labor Relations Authority.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. AO-85-A10; AMS-FV-07-0132; FV08-905-1]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement 84 and Order No. 905

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

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

**SUMMARY:** This is a recommended decision regarding proposed amendments to Marketing Agreement No. 84 and Order No. 905 (order), which regulate the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. Four amendments were proposed by the Citrus Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would modify committee representation by cooperative entities, allow substitute alternates to temporarily represent absent members at committee meetings,

authorize the committee to conduct meetings by telephone or other means of communication, and authorize the committee to conduct research and promotion programs, including paid advertising, for fresh Florida citrus. The proposals are intended to improve the operation and administration of the order. This recommended decision invites written exceptions on the proposed amendments.

**DATES:** Written exceptions must be filed by January 23, 2009.

**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 Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 385, Portland, Oregon 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Melissa.Schmaedick@usda.gov](mailto:Melissa.Schmaedick@usda.gov); or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov).

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on January 24, 2008, and published in the January 29, 2008, issue of the **Federal Register** (73 FR 5130).

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 Order 12866.

#### 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 Agreement No. 84 and 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 February 12, 2008, in Winter Haven, Florida. Notice of this hearing was published in the **Federal Register** on January 29, 2008 (73 FR 5130). The notice of hearing contained four proposals submitted by the committee.

The proposed amendments were recommended by the committee following deliberations at a public meeting on May 29, 2007, and were submitted to the Agricultural Marketing Service (AMS) on August 16, 2007. After reviewing the recommendation and other information submitted by the committee, AMS determined to proceed with the formal rulemaking process and schedule the matter for hearing.

The committee's proposed amendments to the order would: (1) Modify committee representation by cooperative entities; (2) allow substitute alternates to temporarily represent absent members at committee meetings; (3) authorize the committee to conduct meetings by telephone or other means of communication; and (4) add authority for research and promotion programs, including paid advertising, for fresh Florida citrus.

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.

Eight 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 recommended changes. The witnesses emphasized the need to modernize committee representation and administration as well as equip the industry with additional tools to address the specific research and promotion needs of fresh Florida citrus.

Witnesses offered testimony supporting the recommendation to reduce required committee representation from three each to two each for producers and handlers affiliated with cooperative marketing organizations. According to testimony, this would better reflect the current composition of the fresh Florida citrus industry.

Witnesses testified in support of allowing substitute alternates to temporarily serve at committee meetings when both a member and his or her alternate are unable to attend. This would facilitate attaining a quorum and prevent delays in committee decision making.

Witnesses also advocated adding authority to conduct committee meetings via telephone or other means of communication technology. Such authority would improve committee efficiencies and encourage greater participation by members throughout the production area.

Finally, witness testimony supported adding authority to conduct research and promotion activities. This would enable the committee to sponsor programs specific to the needs of the fresh citrus industry.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of March 31, 2008, for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No briefs were filed.

#### Material Issues

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

(1) Whether to amend the order by reducing the number of required cooperative producer and handler seats on the committee from three each to two each;

(2) Whether to amend the order to authorize substitute alternates to temporarily represent absent members and alternates to meet quorum requirements at committee meetings;

(3) Whether to amend the order to authorize the committee to conduct meetings via telephone or other means of communication technology; and

(4) Whether to amend the order by authorizing the committee to establish and conduct research and production activities, including paid advertising.

#### 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—Cooperative Representation

Sections 905.22, Nominations, and 905.23, Selection, of the order should be amended to reduce the required number of committee seats held by producers and handlers affiliated with cooperative marketing organizations from three each to two each.

The committee is comprised of 18 members, of whom nine are producers, eight are handlers, and one is a non-industry public member. The current committee structure allocates the nine producer seats between four producer districts and requires that at least three producer members represent cooperatives. The order's provisions also require that at least three of the eight handler members represent cooperatives. Witnesses testified that this membership allocation was appropriate in the past, but no longer appropriately reflects the industry's composition. Therefore, witnesses supported reducing the required number of committee producer and handler seats held by cooperative representatives from three each to two each to better reflect the composition of the modern Florida fresh citrus industry.

Witnesses described various types of fresh citrus cooperatives that exist to serve members: Producer, marketing and "full service" cooperatives. Producer cooperatives provide production services to members. Marketing cooperatives market and ship members' fruit. Full service cooperatives offer production, harvest, packing, and marketing services for members.

Witnesses explained that there were numerous citrus cooperatives at the time the order was promulgated, and the committee's original structure was designed to accurately represent the interests of cooperative organizations during committee deliberations. However, over time, the number of cooperative organizations within the industry has declined. Today there are fewer cooperatives, and those that remain handle a smaller proportion of the industry's total shipments.

For example, according to witnesses, there were twenty marketing cooperatives during the 1998–99 fiscal period, and they shipped approximately 33 percent of Florida's fresh citrus. By 2006–07, only ten marketing cooperatives, shipping approximately 22 percent of the fresh citrus, remained. Witnesses explained that while there has been a consolidation of fresh citrus shippers throughout the industry, the consolidation has been relatively

greatest among cooperative marketing entities. According to witnesses, the numbers of producer cooperatives and full service cooperatives have declined also. Witnesses testified that there was broad support from cooperative organizations for the proposed amendment.

Record evidence supports reducing the number of required cooperative seats on the committee. This amendment would restructure the committee so that proportionately fewer members would be required to represent cooperative organizations, reflective of current industry composition.

Citing recent changes in industry makeup, witnesses stated that they would like to include additional language under this proposal that would allow them to review industry composition every three years and recommend appropriate adjustments to committee apportionment with respect to cooperative affiliation through informal rulemaking. However, the committee did not provide proposed order language for a modification to Proposal 1 at the hearing when requested and the matter was not pursued. Therefore, Proposal 1 is being considered by USDA as it was written in the Notice of Hearing for this rulemaking.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that §§ 905.22, Nomination, and 905.23, Selection, be amended to reduce the required number of committee seats held by producers and handlers affiliated with cooperative marketing organizations from three to two as proposed in Proposal 1.

#### Material Issue Number 2—Substitute Alternates

Section 905.29 of the order should be amended to provide that if both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum. Further, it should be provided that any such alternate member represent the same group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

As originally published in the **Federal Register** notice of hearing (73 FR 513; January 29, 2008), this proposed amendment specified that in addition to representing the same group affiliation (producer or handler) a substitute alternate should be from the same district as the absent member and

alternate. However, the committee proposed a modification at the hearing so that a substitute alternate did not have to be from the same district. Witnesses explained that substitutes with the same group affiliation would adequately represent the views of absent members. There was no testimony in opposition to this modification. Further, as provided in § 905.114 of the regulations issued under the order, one producer district is currently allocated only one member seat and one alternate member seat on the committee. In this case, if a substitute alternate could only be drawn from the absent member's district there would be no pool from which to designate a temporary alternate.

As mentioned under Material Issue Number 1, the committee is comprised 18 members, and each member has an alternate that serves in the member's stead if the member is absent. The order specifies that ten committee members constitute a quorum. For most committee actions, ten concurring votes, including five producer votes, are required for approval. There is no provision for a situation in which neither a member nor that member's alternate are available to attend meetings.

Witnesses explained that travel distance and scheduling conflicts occasionally prevent committee members and their alternates from attending meetings. Witnesses testified that these unexpected absences have led to meeting cancellations in the past because quorum requirements could not be met. According to witness testimony, cancelled meetings mean delays in conducting committee business and are costly in terms of travel time and expense.

The committee proposed that § 905.29 be amended to allow available alternates to temporarily represent absent members if the members and their respective alternates are unable to attend a meeting. Witnesses explained that all alternates have the necessary background to be able to serve on short notice if necessary. According to the record, all members and alternates receive meeting agendas and background information about upcoming meeting topics prior to the meetings. The committee also posts this information on its website. Additionally, many alternates have served previously as members or alternates and are knowledgeable about the issues that come before the committee. According to witnesses, a number of alternate producer and handler members reside in the two areas where meetings are most often held, and

could be contacted on short notice if necessary to obtain a quorum. Witnesses testified that allowing substitute alternates to serve at meetings would ensure that quorum requirements can be met and that committee business is conducted in a timely manner.

Finally, witnesses testified that members should be allowed to select their own substitutes whenever possible because the members would be able to select substitutes who they feel would best represent their views during meeting deliberations and voting. However, witnesses acknowledged that in some cases members might be unable to designate substitutes prior to a meeting. In those situations, the committee should be authorized to designate substitutes with the same group affiliation at the meeting if necessary to meet quorum requirements.

No testimony or evidence opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that § 905.29, Inability of members to serve, be amended, as modified at the hearing, to specify that if neither a member nor his or her respective alternate is able to attend a committee meeting, the member may designate another alternate of the same affiliation (producer or handler) to represent him or her at the meeting. Further, the committee may designate an alternate to substitute for an absent member if the member is unable to designate a substitute alternate prior to the meeting.

#### *Material Issue Number 3—Telephone Meetings*

Section 905.34, Procedure of committees, should be amended to authorize the committee to conduct committee meetings by telephone and other means of communication.

Under the order, the committee is authorized to make recommendations regarding the administration of its programs to the Secretary. Ten members of the committee constitute a quorum, and ten concurring votes, including those of five producers, are required for approval of most committee actions. Currently, § 905.34 of the order authorizes the committee to cast votes by telephone in emergency situations. The committee is required to fully explain any proposition presented for telephone votes to each member or alternate acting for a member. The order requires all votes cast by phone to be confirmed in writing and specifies that two dissenting votes will prevent the adoption of a proposition voted upon by telephone.

The committee proposed that the order be amended to authorize the

committee to conduct any of its meetings by telephone or other means of communication. According to the record, holding regular business meetings via teleconference or videoconference has become common practice within other citrus industry organizations, and witnesses supported the proposal to authorize the committee to conduct its meetings using modern technology as well. Witnesses at the hearing testified that using the authorized telephone voting authority during past emergencies has worked well for the committee, and believe that similar benefits would derive from the authority to conduct business meetings through alternative means of communication.

According to the witnesses, authority to conduct business meetings via telephone or other means of communication would allow the committee to respond more quickly to urgent matters. Meetings could be scheduled on a timelier basis because the need for participants to plan for long-distance travel would be reduced. Witnesses testified that holding business meetings by telephone or other means of communication would also be expected to improve committee efficiency, save members travel time and expense, encourage greater industry participation, make meetings more accessible to people with disabilities, promote openness of meeting proceedings, and allow the industry to build consensus through continuing discussions on certain topics. Proponents pointed out that new communications technologies, such as videoconferencing and web conferencing, continue to be developed, and that it is the committee's intent that all such communication methods be included in the scope of this proposal.

Witnesses stated that if the proposal authorizing the committee to conduct research and promotion programs as discussed under Material Issue Number 4 below is adopted, the committee and its subcommittees would be likely to hold many more meetings as the new programs are developed. Witnesses believe that this increased meeting frequency could be handled most efficiently through the use of telephone or other communications technologies. Additionally, witnesses believe that more people would be encouraged to participate in the development of the new programs.

The hearing record shows that the committee intends to continue holding assembled meetings to deliberate matters such as its annual budget of expenses. Witnesses stated that the committee's intent would be to reserve

most controversial discussions for assembled meetings. However, proponents recognized that some emergency situations could involve controversial issues and decisions regarding those issues might have to be made during telephone meetings.

Currently, the order requires that all votes cast during an assembled meeting be cast in person and that votes cast by telephone be confirmed in writing. Under the proposed amendment, votes cast at meetings held via telephone or other means of communication would continue to require written confirmation. Witnesses stated that, in addition to current written confirmation, facsimiles and emails would be considered acceptable forms of written confirmation of a member's vote.

Witnesses anticipated that if this proposal were implemented, situations could arise where some members participate in assembled meetings by telephone or other means of communication. In situations where part of the meeting members are assembled and part of the meeting members join via communications technology, votes cast by those members not physically present at the assembled meeting location would not be considered as cast in person.

Finally, if the proposed amendment is adopted, the same quorum and voting requirements specified for assembled committee meetings would apply to meetings held by any other means.

No testimony opposing this proposal was presented at the hearing. For the reasons stated above, it is recommended that § 905.34, Procedure of committees, be amended to provide that the committee may conduct meetings via telephone or any other means of communication in addition to assembled meetings. Moreover, it is recommended that some members may participate in assembled meetings via telephone or other means of communication provided that any votes cast at assembled meetings other than in person be confirmed in writing.

#### *Material Issue Number 4—Research and Promotion*

A new § 905.54, providing authority to establish and conduct research and promotion programs, including paid advertising, should be added to the order.

The Act lists under 5 U.S.C. 608c(1) specific commodities for which paid advertising may be conducted under marketing order programs. Citrus is included in that list.

Currently, the order does not provide authority for the committee to

recommend or conduct research or promotion projects. This proposed amendment would authorize the committee to recommend, conduct, and fund approved production research and market research and promotion programs, including paid advertising, to address the specific needs of fresh citrus growers and handlers.

The Florida citrus industry as a whole conducts a number of research and promotion programs. Some of the citrus production and marketing problems addressed through these programs are shared by all segments of the industry. But many challenges are unique to the fresh citrus industry. Currently, research and promotion for fresh citrus is encapsulated within the programs of the larger industry, which has a processing orientation since approximately 90 percent of all Florida citrus produced is used for processing. The fresh citrus industry believes that research and promotion programs established under the order might better address their unique needs and that the committee should be authorized to recommend and conduct such programs.

Witnesses identified issues facing the fresh citrus industry and described how authority to conduct research and promotional programs would help them address those issues specifically. Witnesses testified that research to improve fresh citrus production and handling practices could benefit the industry by reducing the incidence and spread of bacterial canker.

The record shows that there has been a decline in fresh Florida citrus production in recent years. According to evidence presented at the hearing, bearing acreage of Florida grapefruit has decreased by more than 50 percent of the 1996–97 total of 139,200 acres. Consequently, grapefruit production has mirrored the loss of acreage, with drops from the previous 5-year average of 69 percent in 2004–05 and 53 percent in 2005–06, due to hurricane damage. At the time of the hearing, witnesses expected that there would be a further drop in production of approximately 10 percent between the 2006–07 and 2007–08 crops due to disease. Similar declines were described for Florida orange production. Bearing acreage has trended downward from a total of 609,200 acres in 1996–97 to 475,900 acres in 2006–07. Yields also declined in the same period, from 18.05 tons per acre to 12.20 tons per acre. Total production during the same ten seasons decreased from 10,980,000 tons to 5,805,000 tons. According to witnesses, some of that loss is attributable to hurricane damage, but much is also due to removal of diseased trees. Data was

also presented at the hearing to show that bearing acreage of Florida tangerines and tangelos has declined from 40,000 acres in 1997–98 to 21,000 acres in 2006–07. Total utilized tangerine and tangelo production for that span of years decreased from 375,000 tons to 275,000 tons.

In 1997–98, 43 percent of Florida grapefruit, 4.5 percent of Florida oranges, and 54 percent of Florida tangerines were utilized in the fresh market. By comparison, fresh utilization for those crops in 2006–07 was 40 percent of grapefruit, 5 percent of oranges, and 60 percent of tangerines and tangelos. Although the percentage of the crops utilized for fresh market has not changed considerably over that time period, the decreases in total production make less fruit available for fresh market utilization. According to witnesses, packing houses are not packing at full capacity because there is a shortage of fruit acceptable for the fresh market. As described above, some of the shortage may be due to losses from hurricane damage. But much may be attributed to diseases. Production research is needed to develop disease resistant citrus varieties and better disease management strategies to improve fresh citrus yields and increase returns to producers and handlers.

According to witness testimony, competition in the global market means that fresh Florida citrus must meet market demands for cosmetically acceptable fruit. One witness suggested that production research focused on improved windbreak systems could reduce cosmetic scarring as well as the spread of bacterial canker. Witnesses also mentioned the need for development of new varieties of fruit that would be not only disease resistant, but easier to peel and seedless, in response to consumer demands.

Witnesses testified that Florida's share of U.S. fresh citrus sales has declined in recent years. Evidence provided at the hearing shows that Florida's share of fresh U.S. grapefruit shipments is down from 72 percent in 1997–98 to 64 percent in 2006–07. Florida's share of U.S. tangerine and tangelo shipments has decreased from 72 percent in 1997–98 to 65 percent in 2006–07. Percentages for fresh Florida orange shipments have remained fairly consistent over the same 10-year period, generally around 20 percent of the U.S. total. Witnesses believe there is a need for the fresh Florida citrus industry to sponsor consumer research and market development programs that would revitalize that sector.

Witnesses advocated providing the industry with necessary tools to

strengthen grower returns and enhance demand while elevating consumer awareness and appreciation of fresh Florida citrus.

Addition of the authority to conduct research and promotion programs would merely authorize the committee to recommend such programs and, following USDA approval, to plan and conduct such activities. As mentioned above, research and promotion programs for the broader Florida citrus industry is currently conducted through the Florida Department of Citrus and other industry organizations. Funding for those programs comes from fees collected by those entities. Witnesses at the hearing testified that projects addressing the specific needs of the fresh industry would shift to the committee. Funding for the committee's projects would come from the collection of assessments from handlers of fresh Florida citrus, as authorized under the order with funding for other projects to remain with the other entities. Therefore, witnesses believed that total costs to handlers would not be significantly different from their current total industry assessments.

Supporters of the proposed amendment emphasized that stakeholders in the fresh citrus industry should be the ones to determine which programs would best meet the industry's needs. One witness representing the committee said that if the proposed amendment is adopted, the committee would likely establish two varietal subcommittees for oranges/specialty crops and grapefruit to consider and recommend research and promotion projects to benefit the different types of fresh citrus grown in the production area. For example, most of Florida's fresh grapefruit shipments are to export markets, while only a limited percentage of fresh oranges and tangerines are exported. Market development projects could be planned that would enhance the marketing of each different crop. The varietal subcommittees would help ensure that the market differences between the varieties are recognized and addressed in any research and promotion programs that might be established as a result of this additional authority.

According to witness testimony, many Florida citrus producers and handlers grow and/or ship more than one type of citrus, such as oranges and tangerines. Most also provide fruit for both the processing and fresh markets. Witnesses offering testimony at the hearing represented this group of diversified Florida citrus producers and handlers. Each was supportive of this proposal and testified that the Florida citrus

industry as a whole was supportive of the committee's efforts to undertake responsibility for fresh citrus research and promotion programs.

The committee's proposal included provision language that would require the committee to report on the status and accomplishments of its research and promotion programs annually. Similarly, contracting parties working on such projects with the committee would be required to file and maintain complete project reports and make them available to the committee.

No testimony opposing this proposal was provided at the hearing. For the reasons stated above, it is recommended that a new § 905.54 be added to the order to provide authority to establish and conduct production research projects, marketing research and development projects, and marketing promotion programs, including paid advertising, to enhance the production and marketing of fresh Florida citrus. Additionally, the section should require that the committee provide annual project status reports to its members and to USDA. Moreover, contractors should be required to file and maintain project reports and records and make them available to the committee and USDA.

#### **Conforming Changes**

AMS also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. Amendments to § 905.22 Nominations, as described under Material Issue 1, would replace the word "he" in the first sentence of paragraph (a)(2) to "he or she." As conforming changes in § 905.22, AMS recommends replacing the word "he" in the second sentence of paragraph (a)(2) with "he and she", and replacing the word "his" in the last sentence of paragraph (b)(2) with the words "his or her."

#### **Small Business Considerations**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (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 business 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.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. Small agricultural producers have been defined as those with annual receipts of less than \$750,000.

There are approximately 48 handlers of fresh citrus subject to regulation under the order and approximately 7,700 producers of fresh citrus in the regulated area. Information provided at the hearing indicates that over 90 percent of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of producers would also be considered small entities according to the SBA's definition.

The order regulates the handling of fresh citrus grown in the state of Florida. Total bearing citrus acreage has declined from a peak of approximately 800,000 acres in 1996–97 to about 550,000 acres in 2006–07, largely due to hurricane damage and the removal of diseased citrus trees. Approximately 7.236 million tons of citrus were produced in Florida during the 2006–07 season—a decline of approximately 6 million tons compared to the 1996–97 season. According to evidence provided at the hearing, approximately 10 percent of Florida citrus is used in the fresh market, while the remainder is used in the production of processed juice products. Generally, 40 percent of Florida's fresh citrus is shipped to export markets, including the Pacific Rim countries, Europe, and Canada.

Under the order, outgoing quality regulations are established for fresh citrus shipments, and statistical information is collected. Program activities administered by the committee are designed to support large and small citrus producers and handlers. The 18-member committee is comprised of both producer and handler representatives from the production area, as well as a public member. Committee meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

After discussions within the citrus industry, the committee considered developing its own research and marketing promotion programs focusing on fresh Florida citrus. An amendment study subcommittee was formed to explore this idea and other possible order revisions. The subcommittee

developed a list of proposed amendments to the order, which was then presented to the committee and shared with other industry organizations. The proposed amendments were also posted on the committee's Web site for review by the Florida citrus industry at large.

The committee met to review and discuss the subcommittee's proposals at its meeting on May 29, 2007. At that time, the committee voted unanimously to support the four proposed amendments that were forwarded to AMS.

The proposed amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing fresh Florida citrus. Record evidence indicates that the proposals are intended to benefit all producers and handlers under the order, regardless of size.

All grower and handler witnesses supported the proposed amendments at the hearing. Some witnesses commented on the implications of implementing specific marketing, research, and development programs. In that context, witnesses stated that they expected the benefits to producers and handlers to outweigh any potential costs.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

#### *Proposal 1—Cooperative Representation*

Proposal 1 would amend the order by reducing the required number of cooperative producer and cooperative handler seats on the committee from three each to two each.

At the time the order was promulgated, there were numerous cooperative entities in the industry. The committee's original structure was designed to afford proportional representation for cooperative producers and handlers on the committee. The shrinking number of cooperatives entities, especially cooperative marketing entities, over time has prompted the committee to evaluate the appropriateness of the current committee structure. The committee believes that reducing the number of required cooperative seats on the committee would better reflect the current composition of the industry. The reduction would ensure that the interests of all large and small producers and handlers, whether independent or members of cooperatives, are represented appropriately during committee deliberations. Adoption of the proposed amendment would have

no economic impact on producers or handlers of any size.

#### *Proposal 2—Substitute Alternates*

Proposal 2 would amend the order by allowing members who are unable to attend committee meetings to designate available alternates to represent them if their own alternates are also unavailable in order to achieve a quorum. If members are unable to designate substitute alternates, the committee could designate substitutes at the meeting if necessary to secure a quorum. Under current order provisions, only a member's respective alternate may represent the member if the member is unable to attend a meeting. There is no provision for a situation in which both the member and his or her alternate are unavailable for a meeting. In the past, meetings have been cancelled at the last minute because attendance was insufficient to meet quorum requirements.

If implemented, the proposed amendment would allow alternates not otherwise representing absent members to represent other members at committee meetings in order to secure a quorum. This would help ensure that quorum requirements could be met and that committee business could be addressed in a timely manner. This amendment would have no adverse economic impact on producers or handlers of any size.

#### *Proposal Number 3—Telephone Meetings*

Proposal 3 would amend the order by adding authority to conduct committee meetings by telephone or other means of communication. Currently, the committee is limited to meeting in person, with provision for emergency voting by telephone. This amendment would give the committee greater flexibility in scheduling meetings and would be consistent with current practices in other citrus industry settings.

Witnesses stated that using modern communication technology would allow the committee to respond more quickly to urgent industry needs and would provide greater access to meetings by members and other industry participants. Greater meeting flexibility would make it easier for the committee to hold additional meetings where there is a need for lengthier discussion and consensus building. The quorum and voting requirements specified for assembled meetings would also apply to meetings held via telephone or teleconference. The votes of members participating by telephone or other means of communication would be

confirmed in writing. Faxes and emails would be considered acceptable forms of written vote confirmation by the committee.

This amendment is expected to benefit producers and handlers of all sizes by improving committee efficiencies, encouraging greater participation in industry deliberations and is not expected to result in any significant increased costs to producers or handlers.

#### *Proposal Number 4—Research and Promotion*

Proposal 4 would amend the order by adding authority to establish research and promotion programs. If this authority was implemented, the committee would be able to address the specific needs of the Florida fresh citrus industry by recommending, conducting, and funding research projects and promotional programs, including paid advertising, that focus on the production, handling, and marketing of fresh citrus.

Witnesses testified that the committee's assessment rate would increase to cover the costs of any newly authorized research and promotion projects, and that there may be an offset by decreases in payments by the industry to fund projects through other entities. Any increased assessment costs would be based on the volume of fresh citrus shipped by each handler. Therefore, any increased costs would be applied proportionately to all handlers.

Witnesses testified that the benefits expected to accrue to producers and handlers following implementation of this amendment would outweigh the costs. Witnesses advocated the establishment of production research programs that would assist with the development of new varieties and post-harvest handling methods to improve the marketability of fresh Florida citrus. Witnesses expect that marketing programs specific to fresh citrus would increase consumer demand and sales, which would in turn increase returns to producers and handlers. There was unanimous support for this proposal from witnesses at the hearing.

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 is that implementation of the proposals to reallocate membership seats, authorize the use of substitute alternates, and authorize use of modern communication technology at meetings would have little or no impact on producers and handlers. Adding authority to conduct research and

promotion programs would result in additional costs being imposed on handlers once implemented. Evidence provided at the hearing shows that committee expenses, and therefore handler assessments, would increase with the implementation of the proposal to authorize research and promotion programs. However, the record indicates that there may be an offset by decreases in payments to other industry entities now conducting research. Improved production and marketing strategies developed under the authorized programs would be expected to outweigh any additional costs to the Florida fresh citrus industry. In addition, any increased costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

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 citrus industry, and all interested persons were invited to attend the meetings and the hearing and 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." No 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 Marketing Order No. 905 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 the entry of the ruling.

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

Briefs and proposed findings and conclusions based on the record evidence were solicited in this proceeding. No briefs were filed.

#### **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 agreement and 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 agreement and 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 agreement and 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 agreement and 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 agreement and 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 timely received 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, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is proposed to be amended as follows:

#### **PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Amend § 905.22 by revising paragraphs (a)(2) and (b)(2) to read as follows:

#### **§ 905.22 Nominations.**

(a) \* \* \*

(1) \* \* \*

(2) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a

producer. At least two of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) \* \* \*

(1) \* \* \*

(2) Nomination of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations for not more than six members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his or her authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit by such handler during the then current fiscal period.

3. Revise § 905.23 to read as follows:

**§ 905.23 Selection.**

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select one member and one alternate member to represent District 2 and two members and two alternate members each to represent Districts 1, 3, 4, and 5 or such other number of members and alternate members from each district as may be prescribed pursuant to § 905.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

(b) From the nominations made pursuant to § 905.22(b) or from other qualified persons, the Secretary shall select at least two members and their alternates to represent bona fide cooperative marketing organizations which are handlers, and the remaining members and their alternates to represent handlers who are not so affiliated.

4. In § 905.29, redesignate paragraph (b) as paragraph (c), and add a new paragraph (b) to read as follows:

**§ 905.29 Inability of members to serve.**

\* \* \* \* \*

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum: *Provided*, That such alternate member represents the same group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

\* \* \* \* \*

5. Revise paragraph (c) of § 905.34 to read as follows:

**§ 905.34 Procedure of committees.**

\* \* \* \* \*

(c) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

\* \* \* \* \*

6. Add a new § 905.54 to read as follows:

**§ 905.54 Marketing, research and development.**

The committee may, with the approval of the Secretary, establish, or provide for the establishment of, projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. The expenses of such projects shall be paid by funds collected pursuant to § 905.41. Upon conclusion of each project, but at least annually, the committee shall summarize the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project, the contracting party shall be required to maintain records of money received and expenditures, and such shall be available to the committee and the Secretary.

Dated: December 19, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-30670 Filed 12-23-08; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2008-1114; **Airspace Docket No. 08-AGL-17**]

RIN 2120-AA66

**Proposed Establishment of Low Altitude Area Navigation Route (T-Route); Rockford, IL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish a low altitude Area Navigation (RNAV) route, designated T-265, in the

Chicago/Rockford International Airport, IL, terminal area. T-routes are low altitude Air Traffic Service routes, based on RNAV, for use by aircraft that have instrument flight rules (IFR) approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. This action would enhance safety and improve the efficient use of the navigable airspace in the Chicago/Rockford International Airport, IL, terminal area west of Chicago, IL.

**DATES:** Comments must be received on or before February 9, 2009.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2008-1114 and Airspace Docket No. 08-AGL-17 at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2008-1114 and Airspace Docket No. 08-AGL-17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2008-1114 and Airspace Docket No. 08-AGL-17." The postcard will be date/time stamped and returned to the commenter.