

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 905

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Order No. 905 (order), which regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on proposals made by the Citrus Administrative Committee (Committee), which is responsible for local administration of the order, and is comprised of growers and handlers. These 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:** The referendum will be conducted from September 14 through October 5, 2015. The representative period for the purpose of the referendum is August 1, 2014, through July 31, 2015.

**ADDRESSES:** Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

**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 Email: [Melissa.Schmaedick@ams.usda.gov](mailto:Melissa.Schmaedick@ams.usda.gov) or [Michelle.Sharrow@ams.usda.gov](mailto: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 Email: [Jeffrey.Smutny@ams.usda.gov](mailto: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), and a Recommended Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** (80 FR 11335).

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

The proposed amendments are based on the record of a public hearing held on April 24, 2013, in Winter Haven, Florida, to consider such amendments to the order. The hearing was held 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). 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 amendments in this decision 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.

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.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on February 23, 2015, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 2, 2015. None were filed.

#### 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. Based on information submitted by industry, twenty one handlers would be considered small entities under SBA's standards. A majority of citrus 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 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 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.

#### **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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

AMS is also 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.

#### **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.

## Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the March 3, 2015, issue of the **Federal Register** are hereby approved and adopted.

## Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered,* That this entire decision be published in the **Federal Register**.

## Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–407) to determine whether the annexed order amending the order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of citrus in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2014, through July 31, 2015.

The agents of the Secretary to conduct such referendum are hereby designated to be Christian Nissen and Jennie Varela, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1124 First Street South, Winter Haven, Florida 33880; telephone: (863) 324–3375; or fax: (863) 291–8614, or Email: [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov) or [Jennie.Varela@ams.usda.gov](mailto:Jennie.Varela@ams.usda.gov), respectively.

## Order Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida<sup>1</sup>

### Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing

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.

### (a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 905, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the basis of the record, it is found that:

(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 oranges, grapefruit, tangerines, and pummelos grown in the production area in the same manner as, and are 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 that 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 oranges, grapefruit, tangerines, and pummelos grown in the production area; and

(5) All handling of oranges, grapefruit, tangerines, and pummelos 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.

(5) All handling of oranges, grapefruit, tangerines, and pummelos 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.

### Order Relative to Handling

*It is therefore ordered,* That on and after the effective date hereof, all

handling of oranges, grapefruit, tangerines, and pummelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** will be and are the terms and provisions of this order amending the order and are set forth in full herein.

### List of Subjects in 7 CFR Part 905

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

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 in paragraphs (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:

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

**§ 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: The number of bearing trees in each district; the volume of fresh fruit produced in each district; the total number of acres of citrus in each district; and 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. In § 905.22, revise paragraphs (a) (1) and (b) (1) and add paragraph (c) 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 20th 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. In § 905.42, revise the first sentence of paragraph (a) 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. In § 905.52, revise paragraphs (a)(4) and (5) and add paragraph (a)(6) 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: July 14, 2015.

**Rex. A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 141009847-5604-01]

RIN 0648-XD558

#### Pacific Island Fisheries; 2015 Annual Catch Limits and Accountability Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Proposed specifications; request for comments.

**SUMMARY:** NMFS proposes annual catch limits (ACLs) for Pacific Island bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures (AMs) to correct or mitigate any overages of catch limits. The proposed ACLs and AMs would be effective in fishing year 2015. The fishing year for each fishery begins on January 1 and ends on December 31, except for precious coral fisheries, which begins July 1 and ends on June 30 the following year. The proposed catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

**DATES:** NMFS must receive comments by August 5, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2014-0130, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0130>, click the "Comment Now!" icon,

complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

*Instructions:* NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the proposed annual catch limits and accountability measures. NMFS provided additional background information in the 2014 proposed and final specifications (78 FR 77089, December 20, 2013; 79 FR 4276, January 27, 2014). Copies of the environmental analyses and other documents are available at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

**SUPPLEMENTARY INFORMATION:** Fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands are managed under archipelagic fishery ecosystem plans (FEP) for American Samoa, Hawaii, the Pacific Remote Islands, and the Mariana Archipelago (covering Guam and the Commonwealth of the Northern Mariana Islands (CNMI)). A fifth FEP covers pelagic fisheries. The Western Pacific Fishery Management Council (Council) developed the FEPs, and NMFS implemented them under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Each FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at Title 50 Code of Federal Regulations Section 665.4 (50 CFR 665.4). The regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species (MUS) included in an FEP, as recommended by the Council and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council

to take action, which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action.

#### Annual Catch Limits

NMFS proposes to specify ACLs for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS in American Samoa, Guam, the CNMI, and Hawaii. NMFS based the proposed specifications on recommendations from the Council at its 160th meeting held on June 24-27, 2014. The Council recommended 112 ACLs: 26 in American Samoa, 26 in Guam, 26 in the CNMI, and 34 in Hawaii. The Council recommended that NMFS specify multi-year ACL and accountability measures effective in fishing years 2015-2018. NMFS proposes to implement the specifications for fishing year 2015, 2016, 2017, and 2018 separately prior to each fishing year (January 1 through December 31 each year, except for precious coral fisheries, which is July 1 through June 30). The proposed ACLs are identical to those that NMFS specified for the 2014 fishing year for all crustaceans (except for spiny lobster), bottomfish (except Hawaii non-Deep 7 bottomfish), and precious corals. For spiny lobster, Hawaii non-Deep 7 bottomfish, and coral reef ecosystem species, the ACLs are based on new estimates of maximum sustainable yield (MSY) and would be specified at five percent below ABC (95 percent of ABC). At the 161st meeting held October 20-23, 2014, the Council maintained its recommendations from the 160th meeting.

NMFS is not proposing ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. These MUS include all species of gold coral (78 FR 32181, May 29, 2013), the three Hawaii seamount groundfish (pelagic armorhead, alfonsin, and rafffish, 75 FR 69015, November 10, 2010), and deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010). The current prohibitions on fishing for these MUS serve as the functional equivalent of an ACL of zero.

Additionally, NMFS is not proposing ACLs for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS identified in the Pacific Remote Islands Area (PRIA) FEP. This is because fishing is prohibited in the EEZ within 12 nm of emergent land, unless authorized by the U.S. Fish and Wildlife Service (USFWS) (78 FR 32996, June 3, 2013). To date, NMFS has not received fishery data for any such approvals. In addition, there is no suitable habitat for these stocks beyond the 12-nm no-