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PART 900—GENERAL REGULATIONS

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Subpart A—Procedural Requirements Governing Proceedings Pertaining to Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 610.

§ 900.1 Words in the singular form.

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

§ 900.2 Definitions.

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

(a) The term *Act* means Public Act No. 10, 73 Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

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

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

(d) The term *judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(f) [Reserved]

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

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

(i) The term *marketing agreement* means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(j) The term *marketing order* means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(k) The term *proceeding* means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term *hearing clerk* means the hearing clerk, United States Department of Agriculture, Washington, DC.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002; 82 FR 58098, Dec. 11, 2017]

§ 900.3 Proposals.

(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall describe any alternative procedures established pursuant to

paragraph (d) of this section; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Provided, That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

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

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers in the area proposed to be subjected to regulation as reasonably will tend to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine, should be notified.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraph (b)(1)(ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraph (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraph (b)(1)(ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

(d) *Alternative procedures.* The Administrator may establish alternative procedures for the proceeding that are in addition to or in lieu of one or more procedures in this subpart, provided that the procedures are consistent with 5 U.S.C. 556 and 557. The alternative procedures must be described in the notice of hearing, as required in paragraph (a) of this section.

[25 FR 5907, June 28, 1960, as amended at 83 FR 52944, Oct. 19, 2018; 85 FR 41174, July 9, 2020; 88 FR 82231, Nov. 24, 2023]

§ 900.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a

proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.7 Motions and requests.

(a) *General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript. Except as provided in § 900.15(b) such motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript pursuant to § 900.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 900.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing): *Provided,* That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding, provided that such interested person complies with any alternative procedures included in the hearing notice pursuant to§ 900.4. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* Wherever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person

be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative. In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the presiding officer, within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 900.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge,

after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the presiding officer.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

[25 FR 5907, June 28, 1960, as amended at 37 FR 1103, Jan. 25, 1972; 85 FR 41174, July 9, 2020]

§ 900.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 900.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits

transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) Transcripts of hearings shall be made available to any person at actual cost of duplication.

[25 FR 5907, June 28, 1960, as amended at 67 FR 10829, Mar. 11, 2002]

§ 900.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons, and (3) an appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the

record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14(b) or § 900.14(c): *Provided*, That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14(b) or § 900.14(c) have been met.

§ 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. The marketing agreement shall not become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c(8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the Act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c(8) of the Act, the Secretary makes the determinations required under section 8c(9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided*, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. (7 U.S.C. 610(c).)

[25 FR 5907, June 28, 1960, as amended at 53 FR 15659, May 3, 1988; 88 FR 82231, Nov. 24, 2023]

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of

this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the presiding officer. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in § 900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge before the record is certified by the judge or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time.* Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: Provided, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965; 67 FR 10829, Mar. 11, 2002]

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not

include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart B—Supplemental Procedural Requirements Governing Proceedings to Amend Federal Milk Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 608c(17) and 610.

SOURCE: 73 FR 49088, Aug. 20, 2008, unless otherwise noted.

§ 900.20 Words in the singular form.

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

§ 900.21 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

§ 900.22 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a Federal milk marketing agreement or order under § 900.3 of this part, the proposal shall address the following, to the extent applicable:

(a) Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

(b) What is the purpose of the proposal?

(c) Describe the current Federal order requirements or industry practices relative to the proposal.

(d) Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

(e) What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612)? Explain/Quantify.

(f) How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

(g) Would a pre-hearing information session be helpful to explain the proposal?

§ 900.23 Procedures following receipt of a proposal.

Within 30 days of receipt of a proposal to amend a Federal milk marketing agreement order under § 900.3 of this part, USDA shall either: Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or deny the request. Notice of the action

plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

§ 900.24 Pre-hearing information sessions.

A pre-hearing information session may be held by the Secretary in response to any proposals received under § 900.3 of this part. Any person proposing an amendment to a Federal milk marketing agreement or order may request that a pre-hearing information session be held. A person submitting a proposal shall have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

§ 900.25 Advance submission of testimony.

Any person proposing an amendment to a Federal milk marketing agreement or order under § 900.3 of this part, when participating as a witness, shall make copies of his or her testimony, if prepared as an exhibit, and any other exhibits available to USDA officials before the start of the hearing on the person's day of appearance. Individual dairy farmers shall not be subject to this requirement.

§ 900.26 Requesting USDA data for use at an amendatory hearing.

Requests for preparation of USDA data to be used at a Federal milk marketing agreement or order amendatory proceeding must be received by USDA at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data must be submitted within 2 days following publication of the notice of hearing in the FEDERAL REGISTER.

§ 900.27 Deadline for filing post-hearing briefs and corrections to transcript.

(a) Under § 900.10 of this part, the period of time for interested persons to file corrections to the transcript of testimony at a Federal milk marketing agreement or order amendatory proceeding shall be no more than 30 days after the hearing record is available.

(b) Under § 900.9(b) of this part, the period of time after the completion of a Federal milk marketing agreement or order amendatory hearing for interested persons to file proposed findings and conclusions, and written arguments or briefs, shall be no more than 60 days after completion of the amendatory hearing.

§ 900.28 Deadline for issuance of recommended decisions or tentative final decisions.

In a Federal milk marketing agreement or order amendatory proceeding, USDA shall issue a recommended decision under § 900.12 or, when applicable, a tentative final decision, not later than 90 days after the deadline for submission of proposed findings and conclusions, and written arguments or briefs.

§ 900.29 Deadline for filing exceptions to recommended decisions.

In a Federal milk marketing agreement or order amendatory proceeding, exceptions to a recommended decision under § 900.12 shall be filed with the hearing clerk not later than 60 days after publication of the recommended decision in the FEDERAL REGISTER, unless otherwise specified in that decision.

§ 900.30 Deadline for issuance of Secretary's (final) decisions.

A Secretary's (final) decision under § 900.13a to a proposed amendment on marketing agreement or order shall be issued not later than 60 days after the deadline for submission of exceptions to the recommended decision.

§ 900.31 Electronic submission of hearing documents.

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a Federal milk marketing agreement or order shall also be submitted electronically to the Dairy Programs, Agricultural Marketing Service, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, at the amendatory

hearing, and in each FEDERAL REGISTER publication regarding the amendatory proceeding.

§ 900.32 Informal rulemaking.

USDA may elect to use informal rulemaking procedures under 553 of Title 5, United States Code, to amend Federal milk marketing agreements and orders, other than provisions that directly affect milk prices. In making this determination, consideration shall be given to:

(a) The nature and complexity of the proposal;

(b) The potential regulatory and economic impacts on affected entities; and

(c) Any other relevant matters.

§ 900.33 Industry assessments.

If the Secretary determines it is necessary to improve or expedite an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services, including but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory proceeding may be assessed. The assessments shall be subject to the provisions of § 1000.85 (7 CFR 1000.85) concerning assessments for order administration, including the provision that assessments shall not exceed $.005 per hundredweight of milk for any given month.

Subpart C—Supplemental Procedural Requirements Governing Proceedings to Amend Fruit, Vegetable and Nut Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 608c(17) and 610.

SOURCE: 73 FR 49310, Aug. 21, 2008, unless otherwise noted.

§ 900.36 Words in the singular form.

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

§ 900.37 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

§ 900.38 Pre-hearing information sessions.

A pre-hearing information session concerning a proposal to amend a fruit, vegetable or nut marketing agreement or order may be held either prior or subsequent to submission of a proposal under § 900.3 of this part. Such sessions may be held by a marketing agreement or order committee or board or by the Secretary.

§ 900.39 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a fruit, vegetable or nut marketing agreement or order under § 900.3 of this part, the proposal shall address the following, to the extent applicable:

(a) The purpose of the proposal;

(b) The problem the proposal is designed to address with explanation and quantification;

(c) The current requirements or industry practices relative to the proposal;

(d) The expected impact on the industry, including producers, handlers, and on consumers;

(e) In the case of marketing orders, an explanation, including supporting information and data, of how the proposal would tend to improve returns to producers, and in the case of marketing agreements, how the proposal impacts the signatories to the agreement;

(f) The expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612);

(g) A description and quantification of whether the proposal would increase or decrease costs to producers, handlers, or others in the marketing chain, and to consumers, marketing order committees and boards and/or the Secretary;

(h) A description of how the proposal would be implemented; and

(i) A description, including quantification, of how compliance with the proposal would be effected.

§ 900.40 Written testimony and USDA data request requirements.

In addition to the provisions of § 900.8(b)(4), witnesses at an amendatory fruit, vegetable or nut formal rulemaking hearing shall make, to the extent practicable, at least 8 copies of their testimony, if prepared as an exhibit, and any other exhibits available to USDA before testimony is given on the day of appearance at the hearing. Industry requests for preparation of USDA data for a rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

§ 900.41 Electronic document submission standards.

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a fruit, vegetable or nut marketing agreement or order shall also be submitted electronically to the Agricultural Marketing Service, Fruit and Vegetable Programs, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing shall be provided at the amendatory formal rulemaking hearing and in each FEDERAL REGISTER publication regarding the amendatory proceeding.

§ 900.42 Industry assessments.

If the Secretary determines it is necessary to improve or expedite an amendatory fruit, vegetable or nut formal rulemaking proceeding, costs associated with improving or expediting the proceeding may be charged to the committees or boards. Such costs shall be paid with assessments from the handlers regulated under the marketing order to be amended or on signatories to the marketing agreement subject to amendment. Such assessments may supplement funds for costs associated with, but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials.

§ 900.43 Use of informal rulemaking.

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

(1) The nature and complexity of the proposal;

(2) The potential regulatory and economic impacts on affected entities; and

(3) Any other relevant matters.

Subpart D—Procedural Requirements Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

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

§ 900.50 Words in the singular form.

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

§ 900.51 Definitions.

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

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

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

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

(d) The term *judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may

hereafter be delegated to act for the Administrator.

(f) [Reserved]

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

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

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

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

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

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

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

(n) [Reserved]

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

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

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002; 82 FR 58098, Dec. 11, 2017]

§ 900.52 Institution of proceeding.

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

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition*—(1) *Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, the Administrator may, within thirty

days after the service of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(2) *Decision by the Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to §900.65: *Provided,* That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002]

§900.52a Answer to petition.

(a) *Time of filing.* Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: *Provided,* That if a motion to dismiss the petition, in whole or in part, is made pursuant to §900.52(c), the answer shall be filed within 15 days after the service of an order of the judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002]

§900.52b Amended pleadings.

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with leave of the judge or with the written consent of the adverse party.

§900.53 Withdrawal of petition.

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition without

further procedure: *Provided*, That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 Judges.

(a) *Assignment*. No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct*. The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges*. Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Examine witnesses and receive evidence;

(6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Consolidate hearings upon two or more petitions pertaining to the same order;

(10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge*. In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(e) *Disqualification of judge*. The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

§ 900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be

made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

§ 900.59 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) The judge is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary, as provided in this subpart, shall be in the discretion of the judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.60 Oral hearings before judge.

(a) *Time and place.* The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) *Appearances*—(1) *Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Department, if represented by counsel, shall be represented by an attorney assigned by the General Counsel of the Department, and such attorney shall present or supervise the presentation of the position of the Department.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative. In case the judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If the petitioner, after being duly notified, fails to appear at the hearing, he shall be deemed to have authorized the dismissal of the proceeding, without further procedure, and with or without prejudice as the judge may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the judge shall proceed ex parte to hear the evidence of the petitioner. *Provided,* That failure on the part of such representative of the Department to appear at a hearing shall

not be deemed to be waiver of the Department's right to file suggested findings of fact, conclusions and order; to be served with a copy of the judge's initial decision and to appeal to the Secretary with respect thereto.

(c) *Order of proceeding.* Except as may be determined otherwise by the judge, the petitioner shall proceed first at the hearing.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

(ii) Any witness may, in the discretion of the judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or any other ruling of the judge, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow which may be pursued in an appeal pursuant to § 900.65 by the party adversely affected by the judge's ruling.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner hereinafter provided in and subject to the provisions of § 900.61.

(4) *Affidavits.* Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the judge finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the judge for the use of each other party to the proceeding. The judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies. If the testimony of a witness refers to a statute, or to a report, document, or transcript, the judge, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the judge's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party

offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if on appeal the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) *Transcript.* Transcripts of hearings shall be made available to any person at actual cost of duplication.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973; 67 FR 10829, Mar. 11, 2002]

§ 900.61 Depositions.

(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the judge may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the *judge*), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Judge's order for taking deposition.* If, after the examination of the application, the judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the judge before whom the examination is to be made; (3) the name of the deponent. The judge and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of judge.* The deposition shall be taken before the judge, or before a judge authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a judge authorized by the Secretary to administer oaths.

(e) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the judge or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the judge prior to the examination and the judge shall propound such interrogatories to the deponent.

(2) The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the judge, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties

to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the judge cross-interrogatories at any time prior to the time of the examination.

(f) *Certification by judge.* The judge shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpena but has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 900.62 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the judge, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the judge upon his own motion, shall be issued only upon a certified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return post office receipt: *Provided,* That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

[25 FR 5907, June 28, 1960, as amended 67 FR 10829, Mar. 11, 2002]

§ 900.63 Fees and mileage.

Witnesses who are subpenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance

the witnesses appear, and claims therefor, as to witnesses subpenaed on behalf of the Department, shall be proved before the person issuing the subpena, and, as to witnesses subpenaed on behalf of any other party, shall be presented to such party.

§ 900.64 The Judge's decision.

(a) *Corrections to and certification of transcript.* (1) At such time as the judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the judge proposed corrections to the transcript.

(2) As soon as practicable after the filing of proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Judge's Decision.* The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare upon the basis of the record, and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk, upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding: *Provided, however,* That no decision shall be final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29799, Oct. 29, 1973; 67 FR 10830, Mar. 11, 2002; 88 FR 82231, Nov. 24, 2023]

§ 900.65 Appeals to Secretary: Transmittal of record.

(a) *Filing of appeal.* Any party who disagrees with a judge's decision or any part thereof, may appeal the decision to the Secretary by filing an appeal petition with the Hearing Clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon the other party to the proceeding by the hearing clerk.

(b) *Argument before Secretary*—(1) *Oral argument.* A party bringing an appeal may request within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse or limit any request for oral argument on appeal.

(2) *Scope of argument.* Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised by the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all the issues to be argued.

(c) *Response.* Within 20 days after service of an appeal brought by a party to the proceeding, any other party may

file a response in support of or in opposition to such appeal.

(d) *Transmittal of record.* Whenever an appeal is filed by a party to the proceeding, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; any motions and requests filed, and the rulings thereon; the transcript of the testimony taken at the hearing, as well as the exhibits filed in connection therewith; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the judge's initial decision; and the appeal petition; briefs in support thereof, and responses thereto as may have been filed in the proceeding.

[38 FR 29799, Oct. 29, 1973, as amended at 67 FR 10830, Mar. 11, 2002]

§ 900.66 Consideration of appeal by the Secretary and issuance of final order.

(a) *Consideration of appeal.* As soon as practicable after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Secretary (or, if an official other than the Secretary is to issue the order, then of such other official) during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to file a reply thereto.

(b) *Issuance of final order.* A final order issued by the Secretary shall be filed with the hearing clerk, who shall serve it upon the parties: *Provided,* That, if the terms of the order differ substantially from those proposed in the decision of the judge, the Secretary shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if exceptions are filed within a period of time (to be fixed by the Secretary but not to exceed 20 days) following the service of the tentative order, the Secretary shall give consideration, to and shall make such changes in the tentative order as he deems to be appropriate; otherwise, the tentative order shall become final, as of the day following the date of expiration of the period fixed for the filing of exceptions.

[38 FR 29799, Oct. 29, 1973]

§ 900.68 Petitions for reopening hearings; for rehearings or reargument of proceedings; or for reconsideration of orders.

(a) *Petition requisite*—(1) *Filing; service.* A petition for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order shall be made by petition addressed to the Secretary and filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the final order shall be filed within 15 days after the date of the service of such order. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 10 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce the decision granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall not be stayed pending the decision of the Secretary upon the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere in this subpart, shall be followed.

[25 FR 5907, June 28, 1960, as amended at 67 FR 10830, Mar. 11, 2002]

§ 900.69 Filing; service; extensions of time; effective date of filing; and computation of time.

(a) *Filing; number of copies.* Except as provided otherwise herein, all documents or papers required or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: *Provided,* That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Service; proof of service.* Copies of all such papers shall be served upon the parties by the hearing clerk, by the judge, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time.* The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the judge before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the judge, as the case may be, there is good reason for the extension.

(d) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(e) *Computation of time.* Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: *Provided,* That when the time for filing a document or

paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

[25 FR 5907, June 28, 1960, as amended at 67 FR 10830, Mar. 11, 2002]

§ 900.70 Applications for interim relief.

(a) *Filing the application.* A person who has filed a petition pursuant to § 900.52 may by separate application filed with the hearing clerk apply to the Secretary for an order postponing the effective date of, or suspending the application of, the marketing order or any provision thereof, or any obligation imposed in connection therewith, pending final determination of the proceeding.

(b) *Contents of the application.* The application shall contain a statement of the facts upon which the relief is requested, including any facts showing irreparable injury. The application must be signed and sworn to by the petitioner and any facts alleged therein which are not within his personal knowledge shall be supported by affidavits of a person or persons having personal knowledge of such facts or by proper documentary evidence thereof.

(c) *Answer to application.* Immediately upon receipt of the application, the hearing clerk shall transmit a copy thereof, together with all supporting papers, to the Administrator, who shall, within 20 days, or such other time fixed by the Secretary, after the filing of the application file an answer thereto with the hearing clerk.

(d) *Contents of answer.* The answer shall contain a statement of the objections, if any, of the Administrator to the application for interim relief, and may be supported by affidavits and documentary evidence.

(e) *Transmittal to Secretary.* Upon receiving the answer of the Administrator or upon the expiration of the time for filing the answer, the hearing clerk shall transmit to the Secretary for his decision all papers filed in connection with the application.

(f) *Hearing and oral argument.* The Secretary may, in his discretion, permit oral argument or the taking of testimony in connection with such application. However, unless written request therefor is filed with the hearing clerk prior to the transmittal of the papers to the Secretary, the parties shall be deemed to have waived oral argument and the taking of testimony.

(g) *Decision by Secretary.* The Secretary may grant or deny the application. Any action taken by the Secretary shall be in the form of an order filed with the hearing clerk and shall contain a brief statement of the reasons for the action taken. The hearing clerk shall cause copies of the order to be served upon the parties.

[25 FR 5907, June 28, 1960, as amended at 67 FR 10830, Mar. 11, 2002]

§ 900.71 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided*, That he may issue a tentative order in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final order.

Subpart E—Supplemental Procedural Requirements for Marketing Orders, Marketing Agreements, and Requirements Covering Fruits, Vegetables, and Nuts

AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 61 FR 20717, May 8, 1996, unless otherwise noted.

§ 900.80 Words in the singular form.

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

§ 900.81 Definitions.

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

(a) The term *Act* means Public Act No. 10, 73 Congress (48 Stat. 31) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

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

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

(d) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) The term *proceeding* means a proceeding before the Secretary arising under sections 8a, 8b(b), 8c(14), 8e, 10(c) and 10(h).

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

(g) The term *marketing agreement* means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(h) The term *marketing order* means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

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

(j) The term *importer* means any person who, by the terms of section 8e of the act, is subject thereto.

(k) The term *person* means any individual, corporation, partnership, association, or any other business unit.

§ 900.82 Stipulation procedures.

The Administrator, or the Administrator's representative, may, at any time before the issuance of a complaint seeking a civil penalty under the Act, enter into a stipulation with any handler or importer in accordance with the following procedures:

(a) The Administrator, or the Administrator's representative, shall give the handler or importer notice of the alleged violation of the applicable marketing order or marketing agreement, or the requirements issued pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e, and an opportunity for a hearing thereon as provided by the Act;

(b) In agreeing to the proposed stipulation, the handler or importer expressly waives the opportunity for a hearing and agrees to pay a specified civil penalty within a designated time;

(c) The Administrator, or the Administrator's representative, agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time;

(d) In cases where the handler or importer does not pay the specified civil penalty within the designated time, or the handler or importer does not agree to the stipulation, the Administrator may issue an administrative complaint; and

(e) The civil penalty that the Administrator may have proposed in a stipulation agreement shall have no bearing on the civil penalty amount that the Department may seek in a formal administrative proceeding against the same handler or importer for the same alleged violation.

§ 900.83 Conducting Meetings via Electronic Communication or Otherwise.

Notwithstanding any other provisions of a marketing order in this part, administrative bodies of fruit, vegetable, and specialty crop marketing orders, and their committees/subcommittees may, upon due notice to all members and the public:

(a) Conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles members and the public, and facilitates open communication.

(b) Vote by any means of communication available, electronic or otherwise; Provided, That votes cast are verifiable and that quorum and other procedural requirements of each respective marketing order are met.

(c) With the approval of the Secretary, each administrative body may prescribe any additional procedures necessary to carry out the objectives of paragraphs (a) and (b) of this section.

[83 FR 22832, May 17, 2018]

Subpart F—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products

AUTHORITY: Sec. 3, 50 Stat. 248; 7 U.S.C. 671.

§ 900.100 Words in the singular form.

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

§ 900.101 Definitions.

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

(a) The term *act* means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671);

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

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

(d) The term *General Counsel* means the General Counsel of the Department;

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead;

(f) The term *Service* means the Agricultural Marketing Service;

(g) The term *Division* means the Dairy Division of the Service;

(h) The term *cooperative* means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term *arbitrator* means any officer or employee of the Service designated by the Administrator, pursuant to the act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term *mediator* means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term *hearing clerk* means the hearing clerk, United States Department of Agriculture, Washington, DC.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7797, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 88 FR 82231, Nov. 24, 2023]

§ 900.102 Filing of applications for mediation or arbitration.

All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 Application for mediation.

An application for mediation by a cooperative, shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, by-laws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its

products; and data relative to the distribution of membership by States, the distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 Inquiry by the Administrator.

Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.

The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 Assignment of mediator.

The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.

All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.

The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.

An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.

An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103(b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;

(f) Suggested time and place for arbitration hearing.

The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 Inquiry by the Administrator.

Upon receipt of an application for arbitration, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 Notification.

The Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 Submission.

(a)(1) Within a reasonable time after the receipt of the Administrator's consent to arbitrate, the parties to the dispute shall file with the Administrator a formal submission, which shall contain the following information:

(i) Names in full of the parties;

(ii) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;

(iii) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;

(iv) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;

(v) Name of arbitrator;

(vi) Time and place of arbitration, including street address;

(vii) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;

(viii) Agreement by the parties that they will consider the award as final and will comply therewith;

(ix) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;

(x) Stipulation that a stenographic report of the proceedings must be made.

(2) The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

(3) A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof, and the arbitrator shall include it in the record of the arbitration.

(b) [Reserved]

§ 900.114 Designation of arbitrator.

The Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 Hearing.

(a) The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

(b) Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

(c) All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

(d) The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

(e) No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received.

(f) Final determination as to what will be considered confidential information shall be made by the arbitrator.

(g) The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

(h) When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

(i) A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 Award.

(a) An award shall be made within ten days after the close of the hearing.

(1) The award shall be in writing and shall cover only points of dispute raised in the submission.

(2) The arbitrator, in making the award, may use his own technical

knowledge in addition to the evidence submitted by the parties.

(3) The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Administrator, unless or until the Administrator withdraws his approval.

(4) The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated the arbitrator shall sign in the presence of each other.

(5) Copies of the award shall be delivered to the parties by the Division.

(b) [Reserved]

§ 900.117 Approval of award.

The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 Costs.

The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Administrator, ultimately to be filed in the office of the hearing clerk. The arbitrator shall not receive compensation for parties to the dispute.

Subpart G—Miscellaneous Requirements

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.200 Definitions.

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

(a) The term *Act* means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U.S.C. 601), as amended;

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

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

(d) The term *General Counsel* means the General Counsel of the Department;

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term *mail* means to transmit either electronically or through a postal or other delivery system, information or a package (*e.g.*, letter or envelope) to a recipient.

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

(h) The term *marketing agreement* means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act;

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

(j) The term *person* means any individual, corporation, partnership, association, or any other business unit;

(k) The term *official* means the Secretary, any officer, employee, or other person employed or appointed by the Department, and any agency or agent appointed by the Secretary to administer a marketing agreement or a marketing order, and any agent or employee of any such agency or agent;

(l) The term *information* means and includes reports, books, accounts, records, and the facts and information contained therein and required to be furnished to or acquired by any official

pursuant to the provisions of any marketing agreement or marketing order.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 83 FR 27682, June 14, 2018]

§ 900.201 Investigation and disposition of alleged violations.

Whenever the Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Administrator and the General Counsel, the facts developed as a result of such investigation or hearing warrant such action, the General Counsel shall refer the matter to the Attorney General for appropriate action.

§ 900.202 Restrictions applicable to Committee personnel.

Members and employees of Federal marketing order boards and committees are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the respective marketing order is authorized by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601–674, or the provisions of the respective order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to raise, fix, stabilize, or set a floor for commodity prices, or limit the quantity or quality of commodity imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

[80 FR 45396, July 30, 2015]

§ 900.210 Disclosures of information.

All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpena by any court of competent jurisdiction.

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to

section 8c(15)(A) of the Act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and:

(1) Which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the Act, or (iii) for the purpose of collecting any monies due under a marketing agreement or marketing order, or

(2) In which the validity of any marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10(i) of the Act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

§ 900.211 Penalties.

Any official who shall have violated the provisions of § 900.210 by willfully divulging, disclosing, or making public any information acquired by or furnished to or in the possession or custody of such official pursuant to the provisions of a marketing agreement or marketing order shall be subject to a penalty of the amount specified at § 3.91(b)(1) (viii) of this title for each offense. (The civil penalty provided in this section is prescribed under the authority contained in sec. 10(c) of the Act (7 U.S.C. 610(c)); this provision is not intended to supersede the provision in section 8d(2) of the Act (7 U.S.C. 608d(2)) for criminal liability and removal from office.)

[25 FR 5907, June 28, 1960, as amended at 75 FR 17560, Apr. 7, 2010; 88 FR 82231, Nov. 24, 2023]

Subpart H—Procedure for Conduct of Referenda To Determine Producer Approval of Milk Marketing Orders To Be Made Effective Pursuant to Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

SOURCE: 30 FR 15412, Dec. 15, 1965, unless otherwise noted.

§ 900.300 General.

Unless otherwise prescribed, the procedure contained in this subpart shall be applicable to each producer referendum conducted for the purpose of ascertaining whether the issuance by the Secretary of a milk marketing order is approved or favored, as required under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U.S.C. 601–674). The procedure in this subpart replaces the procedure for conducting similar referenda (15 FR 5177) issued August 7, 1950.

§ 900.301 Definitions.

As used in this subpart and in all supplementary instructions, forms, and documents, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) *Act*. *Act* means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) *Department*. *Department* means the United States Department of Agriculture.

(c) *Secretary*. *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator*. *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has

been delegated or may hereafter be delegated to act in his stead.

(e) *Person*. *Person* includes any individual, partnership, corporation, association, and any other business unit.

(f) *Order*. *Order* means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(g) *Producer*. *Producer* means any person who is a dairy farmer and who, during the representative period, met the requirements of the term *producer* as defined in the order had such order been in effect during the representative period.

(h) *Handler*. *Handler* means any person who, during the representative period, met the requirements of the term *handler* as defined in the order had such order been in effect during the representative period.

(i) *Referendum agent*. *Referendum agent* means the person designated by the Secretary to conduct the referendum.

(j) *Representative period*. *Representative period* means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(k) *Cooperative association*. *Cooperative association* means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.

[30 FR 15412, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum: *Provided*, *however*, That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for balloting, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person's milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c(5)(B) of the act, as amended, any cooperative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit, with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

(1) Records of the Department;

(2) Producer records supplied by handlers;

(3) Health authority records;

(4) Certifications signed by dairy farmers who claim to be producers;

(5) Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

(1) When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer requires the shipment of milk to a handler or a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.

(2) When the order requires shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section, unless his name appears on the handler's producer records.

(3) In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.

(4) No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.

(5) In the event the health authority records are not available, are inaccurate, or are incomplete, the appearance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.

(6) In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied by each cooperative association which wishes to vote on behalf of producers, as follows:

(1) Examine the records of the cooperative association for the purpose of ascertaining whether each producer claimed by the cooperative association is a member of, stockholder in, or under contract with the cooperative association.

(2) Identify the persons ascertained to be members of, stockholders in, or under contract with a cooperative association which wishes to vote on behalf of its producers with the names of producers which appear on the record compiled pursuant to paragraph (a) of this section.

(3) In determining whether a cooperative association may vote on behalf of a producer the following criteria shall be used:

(i) The cooperative association may vote for each producer who is a member of, stockholder in, or under contract with such cooperative association on the date of the order directing that the referendum be conducted.

(ii) The cooperative association may cast only one ballot for all such producers.

(iii) Whenever more than one cooperative association claims the right to vote for a producer only the cooperative association which furnished evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

[30 FR 15412, Dec. 15, 1965, as amended at 88 FR 82231, Nov. 24, 2023]

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least 5 days prior to the final date for balloting:

(1) Mail to each cooperative association which has elected to cast a ballot

on behalf of its producers and to each of all other known producers, a notice of the referendum which will include instructions for completing the ballot, a statement as to the time within which the ballot must be mailed to, and received by, the referendum agent, a copy of the final decision, and a ballot containing a description of the terms and conditions of the order.

(2) Give public notice of the referendum:

(i) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) serving the area, announcing the time within which ballots must be completed and mailed to and received by the referendum agent, eligibility requirements, where additional information may be procured, and other pertinent information; and

(ii) By such other means as said agent may deem advisable.

(b) [Reserved]

§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.

§ 900.308 Tabulation of ballots.

(a) *General.* The referendum agent shall verify the information supplied with each ballot. If he ascertains that the person who cast the ballot was eligible to do so, that the ballot is complete and was mailed and received within the prescribed time, the ballot shall be eligible to be counted. If the referendum agent ascertains that the person who cast the ballot was not eligible to do so, or if the producer who cast the ballot was a member of, stockholder in, or under contract with a cooperative association which cast a valid ballot, or if the ballot is not completed or cast in accordance with instructions, or if the ballot was not mailed to or received by the referendum agent within the prescribed time, the ballot shall be marked ''disqualified'' with a notation on the ballot as to the reason for the disqualification. The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of eligible ballots cast approving and the number of eligible ballots cast disapproving the issuance of the order shall also be ascertained. The ballots marked ''disqualified'' shall not be considered as approving or disapproving the issuance of the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Individual-handler pool provisions.* Whenever separate approval of the pooling provisions of the order is required by section 608c(5)(B)(i) of the act, any ballot which approves the issuance of the order and disapproves the pooling provisions, or approves the pooling provisions and disapproves the issuance of the order, shall be disqualified; and the referendum agent shall mark the ballot accordingly.

(c) *Record of results of the referendum.* The referendum agent shall notify the Administrator of the number of eligible ballots cast, the count of the votes, the number of disqualified ballots and the number of producers who were eligible to cast ballots. The referendum agent shall seal the ballots, including those marked ''disqualified'', the list of eligible voters and tabulation of ballots, and shall transmit to the Administrator a complete detailed report of all action taken in connection with the referendum together with all the ballots cast and all other information furnished to or compiled by the referendum agent.

(d) *Announcement of the results of the referendum.* Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots cast.

§ 900.309 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 900.310 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent

with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 900.311 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart I—Procedure for Determining the Qualification of Cooperative Milk Marketing Associations

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

SOURCE: 32 FR 9821, July 6, 1967, unless otherwise noted.

§ 900.350 General statement.

Cooperative marketing associations apply for qualification by the Secretary under the Federal milk order program for certain privileges and exemptions. These privileges and exemptions are expressed in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) as amended, and the milk marketing orders issued pursuant to its provisions.

§ 900.351 Applications for qualification.

Any association of producers may apply for determinations as to whether it is a qualified cooperative association with authority to represent producers in order referendums; has authorization to collect payment from handlers for members' milk; and is rendering specified marketing services to producers. Applicant associations should supply information for these determinations, using as a guide Application Form DA–25. The application form may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250. Determinations required of the Secretary of Agriculture, or the Administrator of the Agricultural Marketing Service, by delegation are made by the Director of the Dairy Division. Once issued they are valid until amended, suspended or terminated.

§ 900.352 Confidential information.

The documents and other information submitted by an applicant association and otherwise obtained by investigation, examination of books, documents, papers, records, files and facilities, and in reports filed subsequent to initial determinations of qualification, shall be regarded as confidential and shall be governed by § 900.210.

§ 900.353 Qualification standards.

Statutory requirements for qualification of cooperative associations are provided in subsections (5) and (12) of section 608c of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). The association must: (a) Be a cooperative marketing association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the ''Capper-Volstead Act,'' (7 U.S.C. 291, 292); (b) have its entire organization and all of its activities under the control of its members; (c) have full authority in the sale of its members' milk; and (d) be engaged in making collective sales or marketing of milk or milk products for the producers thereof. Qualification for exemption from deductions for marketing service payments under specific marketing orders and payment for milk of members under specific orders shall be determined in accordance with the terms of the respective marketing orders.

[32 FR 9821, July 6, 1967, as amended at 88 FR 82231, Nov. 24, 2023]

§ 900.354 Inspection and investigation.

The Secretary of Agriculture, or his duly authorized representative, shall have the right, at any time after an application is received, to examine all books, documents, papers, records, files and facilities of the association, to verify any of the information submitted and to procure such other information as may be required to determine whether the association is qualified in accordance with its application.

§ 900.355 Annual reporting.

Determinations of qualification for privileges and exemptions are subject

to amendment, termination or suspension if the association does not currently meet the qualification standards. An association found to be qualified pursuant to the Act is required to file an annual report after its annual meeting has been held following the close of its fiscal year. Form DA–24 is used for this purpose. The report form is available at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250. The association is required to file a copy of its report with the Dairy Division at Washington and with the market administrator of each order under which it operates.

§ 900.356 Listing of qualified associations.

A copy of each determination of qualification is furnished to the respective association. Copies are also filed in the Dairy Division, Agricultural Marketing Service, and with the Hearing Clerk, Office of the Secretary, U.S. Department of Agriculture, Washington, DC 20250, where they are available for public inspection. A list of qualified associations engaged in marketing milk under a particular milk marketing order is maintained at the office of the market administrator of the order.

§ 900.357 Denial of application; suspension or revocation of determination of qualification.

Any cooperative association whose application has been wholly or partially denied, or whose determination of qualification has been wholly or partly revoked or suspended, may petition the Secretary for a review of such action. Such petition shall state facts relevant to the matter for which review is sought. After due notice to such cooperative association, the Director of the Dairy Division, or in his absence the Acting Director, shall hold, in the manner hereinafter specified, an informal hearing.

(a) *Notice.* Notice shall be given in writing and shall be mailed to the last known address of the association, or of an officer thereof, at least 3 days before the date set for a hearing. Such notice shall contain: A statement of the time and place of the hearing, said place to be as convenient to the association as can reasonably be arranged, and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented.

(b) *Parties.* Hearings are not to be public and are to be attended only by representatives of the association and of the Government, and such other persons as either the association or the Government desires to have appear for purposes of submitting information or as counsel.

(c) *Conduct of hearing.* The Director or Acting Director of the Dairy Division, or a person designated by him, shall preside at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the association within the time specified by the presiding officer.

(d) *Preliminary report.* The presiding officer shall prepare a preliminary report setting forth a recommendation as to what action shall be taken and the basis for such action. A copy of said report shall be served upon the association by mail or in person. The association may file exceptions to said report within 10 days after service thereof.

(e) *Final report.* After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final report setting forth the action to be taken and the basis for such action.

Subpart J—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

SOURCE: 30 FR 15414, Dec. 15, 1965, unless otherwise noted.

§ 900.400 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a marketing order to regulate the handling

of any fruit, vegetable, or nut, or product thereof, or the continuance or termination of such an order, is approved or favored by producers or processors shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 900.401 Definitions.

(a) *Act* means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended (7 U.S.C. 601–674).

(b) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and *Department* means the United States Department of Agriculture.

(c) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) *Order* means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) *Referendum agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(f) *Representative period* means the period designated by the Secretary pursuant to section 8c of the act (7 U.S.C. 608c).

(g) *Person* means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term *partnership* includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called *joint ventures*, wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of the commodity for market and the authority to transfer title to the commodity so produced.

(h) *Producer* means any person defined as a producer in the order who: (1) Owns and farms land, resulting in his ownership of the commodity produced thereon; (2) Rents and farms land, resulting in his ownership of all or a portion of the commodity produced thereon; or (3) Owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the commodity produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the commodity grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[30 FR 15414, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.402 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that: (1) In a landlord-tenant relationship, where in each of the parties is a producer, each such producer shall be entitled to one vote in the referendum; and (2) a cooperative association of producers, bona fide engaged in marketing the commodity or product thereof proposed to be regulated, or in rendering services for or advancing the interest of the producers of such commodity or product, may, if it elects to do so, vote, both by number and total volume, for the producers who are members of, stockholders in, or under contract with such association.

(b) Whenever, as required by the act, processors vote on the issuance of an order, each processor who is engaged in canning or freezing within the production area of the commodity covered by the order shall be entitled to vote in the referendum the quantity of such commodity canned or frozen within the production area for market by him during the representative period determined by the Secretary.

(c) Proxy voting is not authorized but an officer or employee of a corporate producer, processor or cooperative association, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, processor, estate, or cooperative association. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, processor, or cooperative association, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) Each producer, cooperative association of producers, and processor entitled to vote in a referendum shall be entitled to cast one ballot in the referendum. Each producer, cooperative association of producers, and processor casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer, cooperative association of producers, or processor in such referendum.

§ 900.403 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or processors, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and

(2) The total volume (i) produced for market during the representative period, or (ii) canned or frozen for market during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers and the aforesaid cooperative associations which indicate to the agent their intentions to vote, and to processors when required, instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer (and processor when required) whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.404 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers (and to processors when required) and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 900.405 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.406 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.407 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart K—Public Information

AUTHORITY: 5 U.S.C. 301, 552.

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

§ 900.500 General.

This subpart is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A, of subtitle A of this title (7 CFR 1.1 through 1.16), and appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

[40 FR 20267, May 9, 1975]

§ 900.501 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under §1.2(a) of this title will be provided by AMS during normal information should be made to the Freedom of Information Act Officer at the following address:

Freedom of Information Act Officer, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(b) Copies of such material may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director, Office of Operations and Finance, USDA.

[44 FR 39151, July 5, 1979]

§ 900.502 Indexes.

Pursuant to the regulations in §1.4(b) of this title, AMS will maintain and make available for public inspection and copying current indexes of all material required to be made available in §1.2(a) of this title. Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

[44 FR 39151, July 5, 1979]

§ 900.503 Request for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.3(a) of this title. Authority to make determinations regarding initial requests in accordance with §1.4(c) of this title is delegated to the Freedom of Information Act Officer of AMS. Requests should be submitted to the FOIA Officer at the following address:

Freedom of Information Act Officer (FOIA Request). Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in §1.3 of this title.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to

(1) Make determinations to grant requests or deny initial requests,

(2) Extend the administrative deadline,

(3) Make discretionary release of exempt records, and

(4) Make determinations regarding charges pursuant to the fee schedule.

[44 FR 39151, July 5, 1979, as amended at 88 FR 82231, Nov. 24, 2023]

§ 900.504 Appeals.

Any person whose request under §900.503 above is denied shall have the right to appeal such denial in accordance with §1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

[40 FR 20267, May 9, 1975]

Subpart L—Information Collection

AUTHORITY: 44 U.S.C. Ch. 35.

§ 900.600 General.

This subpart shall contain such requirements as pertain to the information collection provisions under the Paperwork Reduction Act of 1995.

[63 FR 10492, Mar. 4, 1998]

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR parts 905 through 998 under the Paperwork Reduction Act of 1995.

(b) *Display.*

TABLE 1 TO PARAGRAPH (b)

7 CFR part, where identified and described	Current OMB control No.
905, Florida Citrus	0581–0189
906, Texas Citrus	0581–0189
915, Florida Avocados	0581–0189
920, California Kiwifruit	0581–0189
922, Washington Apricots	0581–0189
923, Washington Sweet Cherries	0581–0189
925, California Desert Grapes	0581–0189
927, Oregon & Washington Pears	0581–0189
929, Cranberries	0581–0189
930, Tart Cherries	0581–0177
932, California Olives	0581–0178
945, Idaho-Eastern Oregon Potatoes	0581–0178
948, Colorado Potatoes	0581–0178
955, Vidalia Onions	0581–0178
956, Walla Walla Onions	0581–0178
958, Idaho-Eastern Oregon Onions	0581–0178
959, South Texas Onions	0581–0178
966, Florida Tomatoes	0581–0178
981, California Almonds	0581–0178
981, California Almond Salmonella	0581–0242
982, Oregon & Washington Hazelnuts	0581–0178
983, Pistachios	0581–0215
984, California Walnuts	0581–0178
985, Far West Spearmint Oil	0581–0178
986, Pecans	0581–0291
987, California Dates	0581–0178
989, California Raisins	0581–0178
990, Domestic Hemp	0581–0318
993, California Dried Prunes	0581–0178

[63 FR 10492, Mar. 4, 1998, as amended at 88 FR 82231, Nov. 24, 2023]

Subpart M—Assessment of Exemptions

§ 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an exemption from the portion of the assessment used to fund marketing promotion activities under a marketing order and the procedures for applying for such an exemption under 7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term ''assessment period'' means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term ''marketing promotion'' means marketing research and development projects or marketing promotion, including paid advertising designed to assist, improve, or promote the marketing, distribution, or consumption of the applicable commodity.

(b) A handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan and is subject to assessments under a part or parts specified in paragraph (a) of this section may be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising, provided that:

(1) Only agricultural commodities certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205);

(4) Any handler so exempted shall continue to be obligated to pay assessments under such part or parts specified that are associated with any agricultural products that do not qualify for an exemption under this section; and

(5) For exempted products, any handler so exempted shall be obligated to pay the portion of the assessment associated with the other authorized activities under such part or parts other than marketing promotion, including paid advertising.

(c) *Assessment exemption application.* (1) To be exempt from paying assessments for these purposes under a part or parts listed in paragraph (a) of this section, the handler shall submit an application to the board or committee established under the applicable part or parts prior to or during the assessment period. This application, Form SC–649, ''Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,'' shall include:

(i) The date, applicable committee or board, and Federal marketing order number;

(ii) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(iii) Certification that the applicant maintains a valid certificate of organic operation under the OFPA and the NOP;

(iv) Certification that the applicant handles or markets organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(v) Certification that the applicant is otherwise subject to assessments under the Federal marketing order program for which the exemption is requested;

(vi) The number of organic certified producers for whom they handle or market product (including the applicant);

(vii) A requirement that the applicant attach a copy of their certificate of organic operation and all applicable producer certificates of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(viii) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(ix) Such other information as the committee or board may require, with the approval of the Secretary.

(2) The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption request and provide written notification of such to the applicant within 30 days. If the application is disapproved, the committee or board will provide written notification of the reason(s) for such disapproval within the same timeframe.

(3) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

(d) *Assessment exemption calculation.* (1) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The modified assessment rate shall then be applied to the quantity of certified ''organic'' or ''100 percent organic'' products handled under an approved organic assessment exemption as provided in paragraph (c)(2) of this section. Products handled not subject to an approved organic assessment exemption shall be assessed at the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (*e.g.*, salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities.

(2) If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects are funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

(3) For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(5) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments or collection of underpayments.

[80 FR 82020, Dec. 31, 2015, as amended at 88 FR 82232, Nov. 24, 2023]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA

Subpart A—Order Regulating Handling

DEFINITIONS

Sec.

905.1 Secretary.
905.2 Act.
905.3 Person.