

(8) A statement that any member of the public desiring to protest or support the application may communicate in writing with the Federal Communications Commission, Washington, D.C. 20554, on or before a specified date which shall be 20 days from the date of first posting of the notice.

(b) Immediately upon the filing of an application or informal request of the nature described in paragraph (a) of this section, the applicant shall also cause to be published a notice of not less than 4 column inches in size containing information similar to that specified in paragraph (a), at least once during each of 2 consecutive weeks, in some newspaper of general circulation in the community or part of the community affected.

(c) Immediately upon the filing of an application or informal request or upon the filing of a formal application to close a public toll station (except a toll station located at a military establishment), applicant shall post a public notice at least 11 inches by 17 inches as provided in paragraph (a) of this section or, in lieu thereof, applicant shall cause to be published a newspaper notice as provided in paragraph (b) of this section.

(d) Immediately upon the filing of any application or informal request for authority to discontinue, reduce, or impair service, or any notice of resumption of service under § 63.63(b), the applicant shall give written notice of the filing together with a copy of such application to the State Commission (as defined in section 3(t) of the Communications Act of 1934, as amended) of each State in which any discontinuance, reduction or impairment is proposed.

(e) When the posting, publication, and notification as required in paragraphs (a), (b), (c) and (d) of this section have been completed, applicant shall report such fact to the Commission, stating the name of the newspaper in which publication was made, the name of the Commissions notified, and the dates of posting, publication, and notification.

10. Section 63.505 is not deleted as earlier reported, but the headnote and text are amended to read:

§ 63.505 Contents of applications for any type of discontinuance, reduction, or impairment of telephone service not specifically provided for in this part.

The application shall contain: (a) The name and address of each applicant;

(b) The name, title, and post office address of the officer to whom correspondence concerning the application is to be addressed;

(c) Nature of proposed discontinuance, reduction, or impairment;

(d) Identification of community or part of community involved and date on which applicant desires to make proposed discontinuance, reduction or impairment effective, if for a temporary period only, indicate the approximate period for which authorization is desired;

(e) Proposed new tariff listing, if any, and difference, if any, between present charges to the public and charges for the service to be substituted;

(f) Description of the service area affected including population and general character of business of the community;

(g) Name of any other carrier or carriers providing telephone service to the community;

(h) Statement of the reasons for proposed discontinuance, reduction, or impairment;

(i) Statement of the factors showing that neither present nor future public convenience and necessity would be adversely affected by the granting of the application;

(j) Description of any previous discontinuance, reduction, or impairment of service to the community affected by the application, which has been made by the applicant during the 12 months preceding filing of application, and statement of any present plans for future discontinuance, reduction, or impairment of service to such community;

(k) Description of the service involved, including:

(1) Existing telephone service by the applicant available to the community or part thereof involved;

(2) Telephone service (available from applicant or others) which would remain in the community or part thereof involved in the event the application is granted;

(1) A statement of the number of toll messages sent-paid and received-collect and the revenues from such traffic in connection with the service proposed to be discontinued, reduced, or impaired for each of the past 6 months; and, if the volume of such traffic handled in the area has decreased during recent years, the reasons therefor.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

§§ 64.202—64.298 (Subpart B)—[Repealed]

11. Part 64, Subpart B, of the Rules, "Domestic Telegraph Speed of Service

Studies" has been repealed and will be left blank.

[FR Doc. 80-2816 Filed 1-28-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 21142]

Private Land Mobile Radio Services; Replacing the Low-Pass Audio Filter Requirements With a Revised Emission Limitation Standard; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: In order to facilitate the utilization of digital voice modulation in the Police and Fire Radio Services, the Federal Communications Commission amended its rules, allowing the optional removal of the low-pass filtering requirement and revised emission limitation standards for analog and digital transmitters, in the Land and General Mobile Radio Services. The Commission's amended rules were published at 44 FR 70158, December 6, 1979. This document makes necessary corrections because of omissions and inaccuracies which occurred in preparation and printing.

EFFECTIVE DATE: January 7, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Rules Division, Private Radio Bureau, (202) 632-6497. Released: January 23, 1980.

In the matter of amendment of Parts 89, 91, 93 and 95 (General Mobile Radio Service) of the Commission's rules and regulations to replace the low-pass audio filter requirements with a revised emission limitation standard, Docket No. 21142; 44 FR 70158, December 6, 1979.

In the Appendix to the Second Report and Order in this proceeding (FCC 79-756, 44 FR 70158), the following omissions and inaccuracies occurred which are the subject of this errata.

§ 90.209 [Amended]

1. Section 90.209(c) should have been included in the amendment to read as follows:

* * * * *

(c) Except as noted in paragraphs (d), (f) and (g), the mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

§ 90.211 [Amended]

2. The amendment to § 90.211(h) should be corrected to read as follows:

(h) Transmitters subject to paragraphs (f) and (g) of § 90.209 will be exempt from the audio low-pass filter requirements of this section provided that transmitters used for digital emissions must be type accepted with the specific equipment that provide the digital modulating signal. The application for type acceptance shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f) and (g) of § 90.209.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-2788 Filed 1-28-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF AGRICULTURE**Office of the Secretary****7 CFR Part 1****Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act**

AGENCY: Office of the Secretary.

ACTION: Final rule.

SUMMARY: The rules of practice published hereafter apply to the conduct of cease and desist proceedings, under section 2 of the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 292). These rules are adopted after careful consideration of numerous comments filed with the Hearing Clerk following publication of proposed rules of practice in the Federal Register on July 6, 1979.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT:

John C. Chernauskas, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447-5935.

SUPPLEMENTARY INFORMATION: The background for the rules of practice appears in the proposal published in the Federal Register at 44 FR 39409 (July 6, 1979).

In large measure the comments received did not deal directly with the proposed rules, but rather with the report titled "Undue Price Enhancement by Agricultural Cooperatives." Comments on the report will be given consideration in the development of a unit in the Department of Agriculture

with delegated responsibilities under section 2 of the Capper-Volstead Act.

Many helpful comments were also received on the proposed rules of practice, resulting in some modification of the rules.

Under § 1.161, *Definitions*, the reference to the "Director" and the "Capper-Volstead Monitoring Office" have been deleted. The precise nature of the structure and duties of the unit or persons to which the Secretary may delegate Capper-Volstead enforcement responsibilities is still under consideration.

Under default proceedings, § 1.164(c), an addition has been made to provide for the presentation of a *prima facie* case by complainant. This change is consistent with complainant's ultimate burden of proof, and will provide for a more comprehensive record and factual findings in the event of *de novo* review or enforcement.

The sections on Prehearing Conference (§ 1.167) and Powers of the Judge (§ 1.173(d)) have been modified to clarify the important role of the Judge in developing procedures for the orderly presentation of highly complex economic and marketing evidence that may be involved in such proceedings.

The decision process has been modified (§§ 1.169 and 1.170) to provide for the issuance of an initial decision by the Administrative Law Judge which shall be final unless appealed to the Judicial Officer. This procedure is used in Administrative Procedure Act proceedings under the Department's uniform rules and will insure a final thorough review of the issues and facts prior to a possible review by a Court or enforcement at the request of the Secretary.

Several comments objected to the provision permitting limited intervention by persons with a substantial interest in the outcome of the proceeding. Since intervention is limited to briefs and arguments, it is not anticipated that intervention will delay the proceedings or expand the issues. Therefore, no change has been made in this section.

Many comments were concerned with maintaining the confidentiality of sensitive information received by the Department during the investigatory processes. The institution of a formal cease and desist proceeding will almost invariably risk making public certain data gathered during investigation. However, the general provision on motions (§ 1.172) is sufficiently broad to permit a protective order under compelling circumstances, and will allow for consideration of modification of the time for filing an answer, the time and place for hearing, as well as other

potential problems raised in various comments to the proposed rules.

In consideration of the foregoing, 7 CFR Part 1 is amended by adding a new Subpart I to read as follows.

Bob Bergland,

Secretary of Agriculture.

January 22, 1980.

PART 1—ADMINISTRATIVE REGULATIONS**Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act****Sec.**

- 1.160 Scope and applicability of rules in this part.
- 1.161 Definitions.
- 1.162 Institution of proceedings.
- 1.163 The complaint.
- 1.164 Answer.
- 1.165 Amendments.
- 1.166 Consent order.
- 1.167 Prehearing conference.
- 1.168 Procedure for hearing.
- 1.169 Post-hearing procedure and decision.
- 1.170 Appeal to the Judicial Officer.
- 1.171 Intervention.
- 1.172 Motions and requests.
- 1.173 Judges.
- 1.174 Filing; service; extension of time; and computation of time.
- 1.175 Procedure following entry of cease and desist order.

Authority.—42 Stat. 388, 7 U.S.C. 291, 292.

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act**§ 1.160 Scope and applicability of rules in this part.**

The rules of practice in this part shall be applicable to cease and desist proceedings, initiated upon complaint by the Secretary of Agriculture, pursuant to section 2 of the Capper-Volstead Act.

§ 1.161 Definitions.

As used in this part, words in the single form shall be deemed to import the plural, and vice versa, as the case may require. The following terms shall be construed, respectively, to mean:

(a) "Act" means the Capper-Volstead Act, approved February 18, 1922, 42 Stat. 388, 7 U.S.C. 291, 292.

(b) "Complaint" means a formal complaint instituted by the Secretary of Agriculture requiring respondent to show cause why an order should not be made directing it to cease and desist from acts of monopolization or restraint of trade, which result in undue price enhancement.

(c) "Complainant" or "Secretary" means the Secretary of Agriculture, United States Department of Agriculture, or any officer(s) or

employee(s) to whom authority has heretofore been delegated, or whom authority may hereafter be delegated, to act in his stead.

(d) "Respondent" means the cooperative associations, or association, against whom a complaint has been issued.

(e) "Hearing Clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

(f) "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (the Administrative Procedure Act) and assigned to the proceeding involved.

(g) "Judicial Officer" means an official of the United States Department of Agriculture delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1976 ed., Appendix, p. 764), to perform the function involved (7 CFR 2.35), or the Secretary if he exercises the authority so delegated.

(h) "Decision" means: (1) the Judge's decision, and includes (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law, or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and order submitted by the parties, and (2) the decision and order by the Judicial Officer upon an appeal of the Judge's decision.

(i) "Hearing" means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

(j) "Association" means a cooperative association, a federation of cooperatives, or other association of agricultural producers, as defined in section 1 of the Act.

§ 1.162 Institution of proceedings.

(a) *Filing of Information.* Any person having information that any agricultural association, as defined in the Capper-Volstead Act, is engaged in any practice which monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, may submit such information to the Secretary. Such information shall be in writing and shall contain a complete statement of facts detailing the price enhancement and the practices alleged.

(b) *Consideration of Information.* The Secretary shall consider all information filed under part (a) of this section, and any other information which he may obtain relating to a violation of section 2 of the Act. If the Secretary finds that there is reason to believe that any

association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby he shall cause a complaint to be filed, requiring the association to show cause why an order should not be made directing the association to cease and desist from such monopolization or restraint of trade. The complaint shall be filed with the Hearing Clerk, who shall assign to the proceeding a docket number and effect service upon respondent.

§ 1.163 The complaint.

The complaint shall state briefly all allegations of fact which constitute a basis for the proceeding, and shall designate a time and place for the hearing in the matter, which shall be at least 30 days after the service of the complaint upon the respondent.

§ 1.164 Answer.

(a) *Filing and Service.* Within 20 days after service of the complaint, or such other time as may be specified therein, the respondent shall file with the Hearing Clerk, an answer, signed by the respondent or his attorney. The answer shall be served upon the complainant by the Hearing Clerk.

(b) *Contents.* The answer shall clearly admit, deny, or offer an explanation in response to each of the allegations of the complaint, and shall clearly set forth any affirmative defense.

(c) *Default.* Failure to file an answer shall constitute an admission of the allegations in the complaint, and may be the basis for a decision upon the presentation of a *prima facie* case by the complainant.

§ 1.165 Amendments.

Amendments to the complaint may be made prior to the filing of an answer in which case the time for filing the answer shall be extended 20 days or for other time agreed to by the parties. After the answer is filed, amendments to the complaint, or to the answer or other pleading, may be made by agreement of the parties or allowed at the discretion of the Judge. In case of an amendment which significantly changes the issues, the hearing shall, on the request of a party, be postponed or adjourned for a reasonable period, if the Judge determines that such action is necessary to avoid prejudice to the party.

§ 1.166 Consent order.

At any time, complainant and respondent may agree to the entry of a consent order. Such order shall be entered by the Judge (prior to a decision) or the Judicial Officer (after a decision

by the Judge), and become effective on the date specified therein.

§ 1.167. Prehearing conference.

Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a prehearing conference when the Judge finds the proceeding would be expedited by prehearing discussions on matters of procedure and/or possible stipulations, for the purpose of (a) simplifying the issues, (b) limitation of expert or other witnesses, (c) orderly presentation of complex evidence, and (d) such other matters as may expedite and aid in the disposition of the proceeding.

§ 1.168. Procedure for hearing.

(a) *Time and Place.* The oral hearing shall be held at such time and place as specified in the complaint, and not less than 30 days after service thereof. The time and place of the hearing may be changed for good cause, by the Judge, upon motion of either complainant or respondent.

(b) *Appearances.* The parties may appear in person or by counsel or by other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Order of Proceeding.* Except as otherwise may be agreed by the parties and approved by the Judge, the complainant shall proceed first at the hearing.

(d) *Failure to Appear.* If respondent, after being duly notified, fails to appear at the hearing, and no good cause for such failure is established, complainant shall present a *prima facie* case on the matters denied in the answer.

(e) *Evidence.* (1) The testimony of witnesses at the hearing shall be upon oath or affirmation, reported verbatim, and subject to cross-examination.

Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination, he shall briefly state the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the Judge. The ruling of the Judge on any objection shall be part of the transcript.

Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Official Records or Documents.* An official record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be *prima facie* evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof, or by a copy certified by a person having legal authority to make such certification.

(4) *Exhibits.* Unless the Judge finds that the furnishing of multiple copies is impracticable, four copies of each exhibit shall be filed with the Judge unless the Judge finds that a greater or lesser number is desirable. A true copy of an exhibit may be substituted for the original.

(5) *Official Notice.* Official notice shall 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 opposing party shall be given adequate opportunity to show that such facts are erroneously noticed.

(6) *Offer of Proof.* Whenever evidence is deleted 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 excluded. 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 and record if the Judicial Officer decides that the Judge's ruling in excluding the evidence was erroneous and prejudicial. The Judge shall not allow the insertion of such excluded evidence in toto if the taking of such evidence will consume considerable time at the hearing. In the latter event, if the Judicial Officer decides that the Judge's ruling excluding the evidence was both prejudicial and erroneous, the hearing may be reopened to permit the taking of such evidence.

(7) *Affidavits.* Affidavits may be submitted into evidence, in lieu of witness testimony, only to the extent, and in the manner agreed upon by the parties.

§ 1.169. Post-hearing procedure and decision.

(a) *Corrections to Transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the manner prescribed, the transcript

shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record.

(3) At any time prior to the filing of the Judge's decision and after consideration of any objections filed as to the transcript, the Judge may issue an order making any corrections in the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed Findings of Fact, Conclusions, Order and Briefs.* The parties may file with the Hearing Clerk proposed findings of fact, conclusions and orders based solely upon the record and on matters subject to official notice, and briefs in support thereof. The Judge shall announce at the hearing a definite period of time within which these documents may be filed.

(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 order, and briefs in support thereof, shall prepare, upon the basis of the record and matters officially noticed, and shall file with the Hearing Clerk, the Judge's decision, a copy of which shall be served by the Hearing Clerk upon each of the parties. Such decision shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.170: *Provided*, That no decision shall be final for purposes of a request for Judicial Review, as provided in § 1.175(a) herein, except a final decision of the Judicial Officer on appeal.

§ 1.170. Appeal to the Judicial Officer.

(a) *Filing of Petition.* Within 30 days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.167(e)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall

contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition.

(b) *Response to Appeal Petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of Record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral Argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral arguments before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of Argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer 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 issues to be argued.

(f) *Notice of Argument; Postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of Argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on Briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the Judicial Officer on 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 Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of a request for judicial review as provided in § 1.175(a) herein.

§ 1.171 Intervention.

Intervention under these rules shall not be allowed, except that, in the discretion of the Judicial Officer, or the Judge, any person showing a substantial interest in the outcome of the proceeding shall be permitted to participate in oral or written argument pursuant to sections 1.169 and 1.170 herein.

§ 1.172 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and shall be served upon the parties, except those made on record during the oral hearing. The Judge shall rule upon all motions and requests filed or made prior to the filing of the certification of the transcript. Thereafter, the Judicial Officer will rule on any motions or requests.

(b) *Motions Entertained.* Any motion will be entertained except a motion to dismiss on the pleadings. All motions and requests concerning the complaint must be made within the time allowed for filing an answer.

(c) *Contents.* All written motions and requests shall state the particular order,

ruling, or action desired and the grounds therefor.

(d) *Response to Motions in Request.* Within ten days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer the opposing party may file a response to the motion or request.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the time when the Judge's certification of the transcript is filed with the Hearing Clerk, shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 1.173 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any party to the proceeding, or (3) has participated in the investigation preceding the institution of the proceeding or in determination that it should be instituted or in the preparation of the moving paper or in the development of the evidence to be introduced therein.

(b) *Disqualification of Judge.*

(1) Any party to the proceeding may, by motion made to the Judge, request that the Judge disqualify himself and withdraw from the proceeding. Such motion shall set forth with particularity the alleged disqualification. The Judge may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) A Judge will withdraw from any proceeding in which he deems himself disqualified for any reason.

(c) *Conduct.* At no stage of the proceeding between its institution and the issuance of the final decision shall the Judicial Officer or the Judge discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding as an advocate or in an investigative capacity, or with any representative of such person: *Provided*, That procedural matters shall not be included within the limitation; and *Provided further*, That the Judicial Officer or Judge may discuss the merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Judicial Officer or a

Judge, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of any party or any interested person, shall be filed with the Hearing Clerk. A copy thereof shall be served upon the parties to the proceeding, and, in the discretion of the Judge or the Judicial Officer, opportunity may be given to file a reply thereto within a specified period.

(d) *Powers.* Subject to review by the Judicial Officer as provided elsewhere in this part, the Judge, in any proceeding assigned to him shall have power to:

- (1) Rule upon motions and requests;
- (2) Set the time and place of any requested formal pre-hearing conference, adjourn the hearing from time to time, and change the time and place of hearing;
- (3) Administer oaths and affirmations;
- (4) Examine witnesses and receive relevant 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 orderly presentation of evidence, maintenance of order, and the efficient conduct of the proceeding.

(e) *Who May Act in the Absence of the Judge.* In case of the absence of the Judge or upon his inability to act, the powers and duties to be performed by him under these Rules of Practice in connection with a proceeding assigned to him may, without abatement of the proceeding, be assigned to any other Judge.

§ 1.174 Filing; service; extensions of time; and computation of time.

(a) *Filing; Number of Copies.* Except as otherwise provided by the Judge or the Secretary, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in quadruplicate: *Provided*, That, where there are parties to the proceeding in addition to complainant and respondent, an additional copy shall be filed for each such additional party. Any document or paper, required or authorized under the rules in this part 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 documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk, shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. 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 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 or residence of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record and mailing by regular mail another copy to each person at such address; or (3) by registering or certifying 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 residence or principal office or place of business: *Provided*, That if the registered or certified document or paper is returned undelivered because the addressee refused or failed to accept delivery, the document or paper shall be served by remailing it by regular mail. Proof of service hereunder shall be made by the certification of the person who actually made the service: *Provided*, That if the service be made by mail, as outlined in subparagraph (3) of this paragraph proof of service shall be made by the return post office receipt, in the case of registered or certified mail, or by the certificate of the person who mailed the matter by regular mail. The certificate and post office receipt contemplated herein shall be filed with the Hearing Clerk, and the fact of filing thereof shall be noted in the record of the proceeding.

(c) *Extension of Time*. The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge prior to the filing of the certification of the transcript if there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

(d) *Effective Date of Filing*. Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Department of Agriculture in Washington, D.C.; or, if authorized to be filed with an officer or employee of the Department at any place outside the District of Columbia, it shall be deemed to be filed at the time when it reaches the office of such officer or employee.

(e) *Computation of Time*. Saturdays, Sundays and Federal holidays shall be

included in computing the time allowed for the filing of any document or paper: *Provided*, That when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

§ 1.175 Procedure following entry of cease and desist order.

(a) *Request for Judicial Review*. An association subject to a cease and desist order may, within thirty days following the date of the order, request the Secretary to institute proceedings for judicial review of the order. Such request shall, to the extent practicable, identify findings of fact, conclusions of law, and any part of the order which the association claims are in error. The Secretary shall, thereupon, file in the district in the judicial district in which such association has its principal place of business, a certified copy of the order and of all records in the proceeding, including the request of the association, together with a petition asking that the order be affirmed and enforced.

(b) *Enforcement*. If an association subject to a cease and desist order fails or neglects, within thirty days of the date of the order, or at any time thereafter, to obey such order, and has not made a request for judicial review as provided above, the Secretary shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all records in the proceeding, together with a petition asking that the order be enforced.

(c) *Notice*. The Secretary shall give notice of the filing of a petition for enforcement or review to the Attorney General, and to the association, by service of a copy of the petition.

This action has been determined exempt from procedures under Executive Order 12044 because it is administrative in nature.

[FR Doc. 80-2822 Filed 1-28-80; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 3, Amdt. 6]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter (size) requirements for Honey tangerines for domestic shipments from 2 1/16 inches to 2 1/8 inches for the period January 25, 1980, through October 12, 1980. This action recognizes current market demand for smaller sizes of this fruit and is consistent with the size composition of the available crop in the interest of growers and consumers.

EFFECTIVE DATE: January 25, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: *Findings.*

(1) This regulation is issued under marketing agreement and Order No. 905, both as amended (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations of the committee established under the marketing agreement and order, and upon other available information. It is found that the regulation of shipments of Florida Honey tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The minimum size requirements, herein specified, for domestic shipments of Honey tangerines reflect the Department's appraisal of the need for the amendment of the current regulation to permit handling of smaller sizes of the designated fruit based on current supply and demand conditions. Relaxation of the minimum size requirements for Honey tangerines will tend to promote the orderly marketing of this fruit.

The Citrus Administrative Committee, at an open meeting on January 22, 1980, reported there is a good market demand for smaller size Honey tangerines. With the marketing of Dancy variety tangerines and tangelos nearly finished, the Honey tangerines will help fill demand.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers, and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the