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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 251

RIN 3206–AG38

Agency Relationships With Organizations Representing Federal Employees and Other Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing agency relations with managerial, supervisory, professional, and other organizations that are not labor organizations. These regulations are being issued as part of the implementation of the Federal Personnel Manual (FPM) sunset. The regulations incorporate certain provisions that existed in former FPM chapters 251 and 252.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Hal Fibish, (202) 606–1170.

SUPPLEMENTARY INFORMATION: OPM published for comment in the Federal Register on October 2, 1995, at 60 FR 51371–51373, proposed regulations on agency relationships with organizations representing Federal employees and other organizations (hereinafter sometimes referred to as non-labor organizations). A total of 19 comments and/or suggestions were received: 7 from agencies, 2 from unions, 9 from various non-labor organizations, and 1 from an individual. With the exceptions noted below, the comments generally supported the proposed regulation.

One union was opposed to publication of the regulation to the extent that it applies to non-supervisors, because it believes it would be impossible for agency representatives to distinguish between the statutory duties the agency owes unions holding exclusive recognition regarding conditions of employment of unit employees and communications with non-labor organizations on other matters of interest to those organizations. OPM disagrees. The former FPM policies on relationships with non-labor organizations, which these regulations reinstate, were in effect for many years and OPM is unaware of any evidence that during that time agencies were unable to deal with non-labor organizations on matters of interest to them without compromising duties owed unions holding exclusive recognition.

Another union challenged OPM's authority to issue its proposed regulation, claiming that it went beyond the limitations of section 7 of Executive Order 11491 when it expressly referred to managerial employees in the discussion of the requirement that agencies establish consultative relationships with associations whose membership is primarily supervisory and/or managerial. OPM disagrees. It is clear from the Study Committee Report and Recommendations of August 1969 that former section 7(e) of Executive Order 11491, in requiring agencies to establish a system for intra-management communication and consultation with its supervisors or associations of supervisors in order to minimize the potential for friction and conflict within the ranks of management, was intended to encompass management officials as they, too, are part of the ranks of management. Moreover, the Study Committee also recommended that the Civil Service Commission authorize agencies to enter into dues withholding agreements with associations of managerial or supervisory employees, and this was reflected in former section 21(b) of Executive Order 11491 which referred to an ''association of *management officials or* supervisors'' (emphasis added). Finally, when sections 7(e) and 21(b) were subsequently deleted from Executive Order 11491, the basis for such a recommendation by the Federal Labor Relations Council (FLRC) in January 1975 was that the Civil Service Commission (CSC) had published guidance for establishing intramanagement communication and consultation systems required by section 7(e) of the Order and that FLRC believed it would be more appropriate that this requirement be dealt with outside the Order. The CSC guidance to which FLRC referred had been issued in 1971 and section 1–3.a of that guidance referred to ''[a]n association of supervisors (or other management officials, or both).''

Two agencies thought the proposed regulation too prescriptive in requiring agencies to establish communication systems with associations of management officials and/or supervisors and suggested the regulation be modified to give agencies discretion to establish and maintain such systems as they see fit. This suggestion is not being adopted. The requirement of section 251.201 that agencies establish and maintain a system for intra-management communication and consultation with their supervisors and managers and to establish consultative relationships with associations of management officials and/or supervisors do no more than reinstate the requirements of chapter 251 which, as noted above, were based on the requirements of section 7(e) of Executive Order 11491. Moreover, agencies have broad discretion in implementing these requirements. They can, for example, retain the systems they had in place while FPM chapter 251 was in effect, or they can modify aspects of those systems, such as membership requirements, in light of their experiences under the FPM program. Finally, it is to be emphasized that while agencies are required to communicate and consult with associations of supervisors and managers, dealings with other non-labor organizations representing Federal employees are discretionary. In order to highlight this distinction, we are adding a sentence to section 251.201(a) that states that dealings with non-labor organizations that are not associations of management officials and/or supervisors is discretionary.

The same agency recommended that the proposed regulations give agencies discretionary authority on the provision of the resources mentioned in section 251.202(b) This is unnecessary, as this section clearly states that agencies ''may'' provide such services to the extent consistent with GSA regulations. One non-labor organization suggested that the regulation prohibit agencies from refusing meeting space or any other support to an organization that is

provided to a comparable organization. OPM is not adopting this suggestion. The conditions under which various support services may be provided to various organizations are for the most part governed by laws and regulations that OPM does not administer. Apart from this, OPM stands by the view expressed in section 1–3.c(2) of former FPM chapter 252 that ''[t]here is no general requirement that agency-provided services, space, or other considerations be automatically given to an organization under this [regulation] simply because they have been given to a labor organization, or vice versa.''

One agency found insufficient the reminder, in section 251.101(d), that agency dealings with non-labor organizations may not take on the character of negotiations or consultations regarding the conditions of employment of unit employees exclusively represented by labor organizations. It expressed a concern that agencies, relying on the proposed regulation, may unintentionally violate the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994), by bypassing exclusive representatives and failing to afford them an opportunity to be present at formal discussions. It suggested that the intent of section 251.101(d) would be enhanced if OPM added the following statement to that section: ''These regulations do not authorize any actions inconsistent with Chapter 71 of title 5 of the U.S. Code.''

As is noted above, the proposed regulation does little more than reinstate an FPM program that has successfully coexisted with the labor-management relations program for several years. Moreover, in devising consultation systems and/or revising systems that were in place under the FPM program, and in dealing with non-labor organizations, agencies can of course seek the views of their labor relations officials in order to minimize the risk of violating 5 U.S.C. 7101–7135. Notwithstanding these observations, OPM is adopting this agency's suggestion and is amending section 251.101(d) to include the suggested statement.

One agency asked why special treatment is accorded associations of management officials and/or supervisors. Two non-labor organizations objected to the distinction in treatment between associations of management officials and/or supervisors and other non-labor organizations. One non-labor organization suggested that the regulations require agencies to consult with organizations other than associations of management officials and/or supervisors.

The regulations, in mandating consultation with associations of management officials and/or supervisors but leaving to agency discretion consultation with other non-labor organizations, merely reflect a distinction that was made in FPM chapters 251 and 252 which, in turn, reflected the differences between sections 7(d) and 7(e) of Executive Order 11491. Moreover, OPM does not think it advisable to mandate consultations with non-labor organizations that are not associations of management officials and/or supervisors, partly because of the concerns expressed by the two labor organizations that commented on these regulations and by some agencies. An agency should have discretion in determining whether, and to what extent and under what conditions, it will consult with non-supervisory, non-managerial associations because, among other things, of the far greater likelihood that members of such organizations will also be members of bargaining units for which labor organizations hold exclusive recognition regarding their conditions of employment. Supervisors and management officials, on the other hand, are excluded from bargaining units by 5 U.S.C. 7112(b)(1) and consequently labor organizations, with the exception of the few units preserved by 5 U.S.C. 7135, may not be their exclusive representative regarding their conditions of employment.

Several agencies and organizations commented on section 251.101(f), which advised agency officials, in dealing with representatives of non-labor organizations, to consult with their designated agency ethics official for guidance regarding any conflicts of interest that may arise under 18 U.S.C. 205. Most noted that H.R. 782, a bill to amend 18 U.S.C. 205, passed the House and suggested that the regulations be amended should the bill become law. One agency suggested that the regulation contain a provision authorizing employees to represent non-labor organizations as part of their official duties. One organization, which disagreed with the Department of Justice's interpretation of 18 U.S.C. 205, took issue with the inclusion of section 251.101(f).

OPM is bound by the Department of Justice's interpretation of 18 U.S.C. 205 and it would be improper for the regulation to authorize employees to represent non-labor organizations as part of their official duties. Indeed, it was out of concern that some officials might misconstrue these regulations as authorizing dealings with employee representatives of non-labor organizations without regard to 18 U.S.C. 205 as interpreted by the Department of Justice that OPM included the cautionary note of section 251.101(f). Should a law be passed making the cautionary note unnecessary, OPM will modify its regulations.

One agency, two organizations, and one individual suggested that section 251.102(b)—which excludes from the coverage of this regulation organizations that discriminate in terms of membership or treatment because of race, color, religion, sex, national origin, age, or handicapping condition—include a reference to sexual orientation. OPM has not adopted this suggestion because regulations which it publishes with respect to Federal employees should be consistent with Federal anti-discrimination laws and, therefore, should be limited to prohibiting discrimination against those individuals or groups of individuals currently protected under Federal law, i.e., Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*) and the Age Discrimination Act of 1973, as amended (29 U.S.C. 791 and 794a).

One agency suggested that the introductory clause of section 251.202(a) more closely track the language of the 4th sentence of section 1–4b of former FPM chapter 252 in the interest of greater clarity. We agree, and have modified the opening of section 251.201(a) accordingly. The same agency recommended that the reference to 5 CFR 410 be rewritten to refer to funding constraints. In a similar vein, another agency suggested we cite the exact provisions of title 41 of the Code of Federal Regulations bearing on the examples of support services mentioned in section 251.202(b) and suggested that the regulations provide agencies with full and unilateral discretionary authority on provision of such resources. Neither suggestion is being adopted because the revised introductory language of section 251.202(b) clearly states that the provision of various support services is at the discretion of the agency, which perforce must be exercised in accordance with applicable laws and regulations.

One agency suggested that the reference to Chapter 71 of title 5 of the U.S. Code in sections 251.101(d), 251.103(b), and 251.103(c) be modified by adding ''or comparable provisions of other laws'' to accommodate Federal employees who are covered by other labor-management relations laws, such

as 22 U.S.C. 4101–4118. OPM agrees and is modifying those sections accordingly. The same agency caught a typographical error in the supplementary information section: the reference to section 251.203 at the end of the fourth paragraph should have been 251.202. The same agency also noted that the fourth paragraph in the supplementary information states that section 251.202 provides a framework for dealing with organizations that are ''not supervisory or managerial.'' However, the last sentence of that paragraph says that section 251.203 (which should have been 251.202) provides information on support that may be provided to organizations, thus suggesting that the support services alluded to in that paragraph do not apply to associations of management officials and/or supervisors. This was not, of course, the intent of that paragraph. The reference to ''organizations that are not supervisory or managerial'' in the third sentence of the fourth paragraph should have read ''non-labor organizations.'' This agency, noting that although section 251.103(d) defines ''association of management officials and/or supervisors,'' section 251.201 refers to ''associations of supervisors and management officials'' and ''association of supervisors or managers'' and suggested we use the expression ''association of management officials and/or supervisors'' throughout. OPM agrees and the regulation is being changed accordingly. OPM is also adopting this agency's suggestion that ''or attorneys'' be added after ''agents'' in the second sentence of section 251.101(f).

Two agencies suggested that the terms ''fiscal responsibility'' and ''democratic principles'' as used in section 251.102(a) be defined. This suggestion is not being adopted. The requirement that a non-labor organization subscribe to minimum standards of fiscal responsibility and employ democratic principles in the nomination and election of officers derives from section 1–5(4) or FPM chapter 252. These requirements have been in effect for several years and there is no evidence that agencies have had problems in applying these common sense notions. OPM also is not adopting one agency's suggestion that the parenthetical examples of organizations concerned with special social interest in section 251.103(a) also refer to credit unions, employee recreational and/or fitness associations, and child care associations. Given that it is in each agency's discretion to determine to what extent and under what conditions it will deal with organizations concerned with special social interests, we believe that the parenthetical examples are unnecessary and are therefore removing them from the final regulations.

One agency said that there are possible Federal Advisory Committee Act (FACA) concerns if discussions are held with non-labor organization members who are not Federal employees. FACA governs the relationship between agencies and Advisory Committees as defined under 5 U.S.C. app. 2, section 3(2)(C). OPM notes that under GSA regulations, 41 CFR Part 101–6, there are certain meetings and groups that include Federal and non-Federal members that are not subject to FACA requirements. Agencies are advised to consult with their Committee Management officers to determine whether FACA would apply in any given instance. OPM is adopting this agency's suggestion that the reference to ''strike'' at the end of the section 251.102 include reference to ''work stoppage or slowdown.'' We are also adopting this agency's suggestion that section 251.103(a) refer to groups representing minorities, women or persons with disabilities in connection with the agencies' EEO programs and action plans.

One non-labor organization suggested that section 251.201(a) drop the requirement that associations of management officials and/or supervisors have sufficient agency membership to assure a worthwhile dialogue with executive management. We are not adopting this suggestion because membership is a meaningful and objective indicator of employee interest in and support of an association. However, it is for each agency to determine what membership requirements it will establish as a condition for establishing consultative relationships.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees and non-labor organizations representing such employees.

List of Subjects in 5 CFR Part 251

Government employees.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is adding Part 251 as follows:

1. Part 251 is added to read as follows:

PART 251—AGENCY RELATIONSHIPS WITH ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES AND OTHER ORGANIZATIONS

Subpart A—General Provisions

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations

Subpart C—Dues Withholding

Authority: 5 U.S.C. 1104; 5 U.S.C. Chap 7; 5 U.S.C. 7135; 5 U.S.C. 7301; and E.O. 11491.

Subpart A—General Provisions

§ 251.101 Introduction.

(a) The regulations in this part apply to all Federal executive branch departments and agencies and their officers and employees.

(b) This part provides a framework for consulting and communicating with non-labor organizations representing Federal employees and with other organizations on matters related to agency operations and personnel management.

(c) The purposes of consultation and communication are: the improvement of agency operations, personnel management, and employee effectiveness; the exchange of information (e.g., ideas, opinions, and proposals); and the establishment of policies that best serve the public interest in accomplishing the mission of the agency.

(d) An agency's consultation and communication with organizations representing Federal employees and with other organizations under this part may not take on the character of negotiations or consultations regarding conditions of employment of bargaining unit employees, which is reserved exclusively to labor organizations as provided for in Chapter 71 of title 5 of the U.S. Code or comparable provisions of other laws. The regulations in this

part do not authorize any actions inconsistent with Chapter 71 of the U.S. Code or comparable provisions of other laws.

(e) The head of a Federal agency may determine that it is in the interest of the agency to consult, from time to time, with organizations other than labor organizations and associations of management officials and/or supervisors to the extent permitted by law. Under section 7(d)(2) and (3) of Executive Order 11491, as amended, recognition of a labor organization does not preclude an agency from consulting or dealing with a veterans organization, or with a religious, social, fraternal, professional, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the organization or association or are of particular applicability to it or its members.

(f) Federal employees, including management officials and supervisors, may communicate with any Federal agency, officer, or other Federal entity on the employee's own behalf. However, Federal employees should be aware that 18 U.S.C. 205, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. Agency officials and employees are therefore advised to consult with their designated agency ethics official for guidance regarding any conflicts of interest that may arise.

§ 251.102 Coverage.

To be covered by this part, an association or organization:

(a) Must be a lawful, nonprofit organization whose constitution and bylaws indicate that it subscribes to minimum standards of fiscal responsibility and employs democratic principles in the nomination and election of officers;

(b) Must not discriminate in terms of membership or treatment because of race, color, religion, sex, national origin, age, or handicapping condition;

(c) Must not assist or participate in a strike, work stoppage, or slowdown against the Government of the United States or any agency thereof or impose a duty or obligation to conduct, assist, or participate in such strike, work stoppage, or slowdown; and

(d) Must not advocate the overthrow of the constitutional form of Government of the United States.

§ 251.103 Definitions.

(a) *Organization representing Federal employees and other organizations* means an organization other than a labor organization that can provide information, views, and services which will contribute to improved agency operations, personnel management, and employee effectiveness. Such an organization may be an association of Federal management officials and/or supervisors, a group representing minorities, women or persons with disabilities in connection with the agencies' EEO programs and action plans, a professional association, a civic or consumer group, and organization concerned with special social interests, and the like.

(b) *Association of management officials and/or supervisors* means an association comprised primarily of Federal management officials and/or supervisors, which is not eligible for recognition under Chapter 71 of title 5 of the U.S. Code or comparable provisions of other laws, and which is not affiliated with a labor organization or federation of labor organizations.

(c) *Labor organization* means an organization as defined in 5 U.S.C. 7103(a)(4), which is in compliance with 5 U.S.C. 7120, or as defined in comparable provisions of other laws.

Subpart B—Relationships With Organizations Representing Federal Employees and Other Organizations

§ 251.201 Associations of management officials and/or supervisors.

(a) As part of agency management, supervisors and managers should be included in the decision-making process and notified of executive-level decisions on a timely basis. Each agency must establish and maintain a system for intra-management communication and consultation with its supervisors and managers. Agencies must also establish consultative relationships with associations whose membership is primarily composed of Federal supervisory and/or managerial personnel, provided that such associations are not affiliated with any labor organization and that they have sufficient agency membership to assure a worthwhile dialogue with executive management. Consultative relationships with other non-labor organizations representing Federal employees are discretionary.

(b) Consultations should have as their objectives the improvement of managerial effectiveness and the working conditions of supervisors and managers, as well as the identification and resolution of problems affecting agency operations and employees, including supervisors and managers.

(c) The system of communication and consultation should be designed so that individual supervisors and managers are able to participate if they are not affiliated with an association of management officials and/or supervisors. At the same time, the voluntary joining together of supervisory and management personnel in groups of associations shall not be precluded or discouraged.

§ 251.202 Agency support to organizations representing Federal employees and other organizations.

(a) An agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations. Examples of such support services are as follows:

(1) Permitting employees, in appropriate cases, to use agency equipment or administrative support services for preparing papers to be presented at conferences or symposia or published in journals;

(2) Using the authority under 5 U.S.C. 4109 and 4110, as implemented by 5 CFR part 410, to pay expenses of employees to attend professional organization meetings when such attendance is for the purpose of employee development or directly concerned with agency functions or activities and the agency can derive benefits from employee attendance at such meetings; and

(3) Following a liberal policy in authorizing excused absence for other employees who are willing to pay their own expenses to attend a meeting of a professional association or other organization from which an agency could derive some benefits.

(b) Agencies may provide Government resources support to organizations (such as space in Government facilities for meeting purposes and the use of agency bulletin boards, internal agency mail distribution systems, electronic bulletin boards and other means of informing agency employees about meetings and activities) in accordance with appropriate General Services Administration regulations contained in title 41 of the Code of Federal Regulations. The mere provision of such support to any organization is not to be construed as Federal sponsorship, sanction, or endorsement of the organization or its activities.

Subpart C—Dues Withholding

§ 251.301 Associations of management officials and/or supervisors.

Dues withholding for associations of management officials and/or supervisors is covered in 5 CFR 550.331.

§ 251.302 All other organizations.

Under 5 CFR 550.311(b), an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. Agencies may provide for the allotment of dues for organizations representing Federal employees under that section.

[FR Doc. 96–16215 Filed 6–25–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. A0–214–A7; FV–93–981–1]

Almonds Grown in California; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order (order) for California almonds. The amendments change order provisions regarding: five existing definitions in the order; Almond Board of California (Board) nomination procedures, terms of office, qualification procedures, eligibility requirements, voting and tenure requirements; modifying creditable advertising provisions; revising volume control procedures; requiring handlers to maintain records in the State of California; authorizing interest or late payment charges on assessments paid late; providing for periodic continuance referenda; and making necessary conforming changes. These changes were favored by California almond producers in a mail referendum. The amendments will improve the administration, operation and functioning of the California almond marketing order program.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456, telephone: (202) 720–1509 or Fax (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the Federal Register on August 17, 1993 (58 FR 43565). Recommended Decision and Opportunity to File Written Exceptions issued on March 22, 1995, and published in the Federal Register on April 6, 1995 (60 FR 17466). Secretary's Decision and Referendum Order issued October 23, 1995, and published in the Federal Register on October 30, 1995 [60 FR 55213].

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Modesto, California, on November 3, 4 and 5, 1993, to consider the proposed amendment of Marketing Order No. 981, regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' Notice of the Hearing was published in the August 17, 1993, issue of the Federal Register (58 FR 43565).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Board, which is responsible for local administration of the program, and by five additional persons.

The Board's proposals pertained to: (1) Increasing its membership by two positions and changing Board nomination, selection, and operation procedures; (2) changing the term of office of its members from one to three years, and limiting the tenure of Board members; (3) changing the definitions of ''cooperative handler,'' ''to handle,'' ''settlement weight,'' ''crop year'' and ''trade demand''; (4) requiring handlers of California almonds to maintain program records in the State of California; (5) changing the advertising assessment credit program to allow credit for certain promotion costs incurred by handlers not previously authorized; (6) authorizing handlers to pay interest and/or late payment charges for past due assessments; (7) providing for continuance referenda every five years; (8) requiring handlers to submit grower lists to the Board; and (9) allowing multi-year contracting.

Five persons submitted additional proposals related to continuance referenda, Board composition and nomination procedures, organic almonds, regulatory provisions, advertising and promotion, assessments, compliance audits, the definition of grower, and research and reserve operations.

The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), proposed making such changes as are necessary to the order so that all of its provisions conform with the proposed amendment. USDA also proposed that continuance referenda be conducted on a periodic basis consistent with USDA's policy guidelines.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 22, 1995, filed with the Hearing Clerk, Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 8, 1995. Four exceptions were filed.

A Secretary's Decision and Referendum Order was issued on