

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO-FV-08-0174; AMS-FV-08-0085; FV08-920-3]

Kiwifruit Grown in California; Hearing on Proposed Amendment of Marketing Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. The amendments are proposed by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. The proposed amendments would redefine the districts into which the production area is divided, and provide for reallocation of committee membership; revise the committee selection and nomination processes; add authority for the committee to recommend and conduct research and market development programs; and revise committee meeting and voting procedures. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. The proposals are intended to provide additional flexibility in administration of the order and provide the industry with additional tools to aid in the marketing of kiwifruit.

DATES: The hearing date is: December 9, 2008, beginning at 9 a.m.; and continuing on December 10, 2008, beginning at 9 a.m., if necessary, in Modesto, California.

ADDRESSES: The hearing location is: Stanislaus County Farm Bureau, 1201 L Street, Modesto, California 95353.

FOR FURTHER INFORMATION CONTACT: Laurel L. May or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@usda.gov or Kathy.Finn@usda.gov.

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

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This 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. The Regulatory Flexibility Act (5 U.S.C. 601-612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with

the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. 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 USDA'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 hearing is called pursuant to the provisions of the Act and the applicable rules and supplemental rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the committee and submitted to USDA on August 15, 2008. After reviewing the proposals and other information submitted by the committee, USDA made a determination to schedule this matter for hearing.

The proposed amendments to the order recommended by the committee are summarized as follows:

1. Amend the order by redefining the districts into which the production area is divided and providing for reallocation of committee membership. The California production area is currently divided into eight districts, and the order specifies that one grower member and one alternate shall represent each district, while additional member and alternate seats are allocated to the three districts with the highest production. This proposal would revise § 920.12 by consolidating the existing districts into three new districts. This proposal would also require corresponding changes to § 920.20, and a method for calculating membership allocation would be added to the section. Corresponding changes would also be made to § 920.21, and the process for transition to biannual committee selections would be added to the section.

2. Amend the order by revising the committee membership nomination process and the procedure for filling vacancies on the committee. Currently, nomination meetings must be held prior to July 15 of each year. Vacancies that occur mid-term must be filled following the same procedure as for committee nominations and selections. This proposal would revise § 920.22 to

specify that nomination meetings must be held prior to June 1, to allow more time to complete the committee selection process before the August 1 term commencement. This proposal would also amend § 920.26 by specifying that mid-term committee vacancies could be filled by the Secretary based upon recommendations from the committee rather than following the nomination and selection process as currently required.

3. Amend the order to add a new § 920.47, "Production Research, Marketing Research and Development," that would authorize the committee to engage in research and marketing projects with the approval of USDA. This proposal would also add a new § 920.45, "Contributions," which would authorize the committee to accept voluntary contributions to help pay for the expenses of such projects. This proposal would also result in corresponding changes to § 920.32(a) to specify that committee actions with respect to research and marketing activities would require eight concurring votes.

4. This proposal would amend the order by revising some of the committee's administrative procedures. Section 920.27 would be revised to allow substitute alternates to represent absent members and alternates at committee meetings. Section 920.32(b) would be revised to authorize the committee to meet by telephone or other means of communication and to specify the voting requirements for various meeting formats.

In addition to the proposed amendments to the order, AMS proposes to make any such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions that relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act. Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also

be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Kiwifruit Administrative Committee:

Proposal Number 1

3. Revise § 920.12 to read as follows:

§ 920.12 District.

District means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) District 1 shall include Butte, Sutter, and Yuba Counties.

(b) District 2 shall include Tulare County.

(c) District 3 shall include all counties within the production area not included in Districts 1 and 2.

4. Revise § 920.20 to read as follows:

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate), and eleven members (and alternates). With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers. Except as provided for redistricting and membership allocation in § 920.31(l), district representation on the Committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts. The committee may, with the approval of the Secretary, provide such other allocation of membership as may be necessary to assure equitable representation.

5. Revise § 920.21 to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. *Provided*, That the terms of office of all members and alternates currently serving will end on the last day of the fiscal period in which this amended provision becomes effective, with nominations for new terms of office to be conducted as soon as practicable after the effective date of the amendment. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members. *Provided*, That any term of office less than two years as a result of the amendment will not count toward tenure.

Proposal Number 2

6. Revise the first sentence of § 920.22(a) to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than June 1 of each year in which nominations are made, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose

of designating nominees to serve as grower members and alternates on the committee.

* * * * *

7. Revise § 920.26 to read as follows:

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be selected by the Secretary after consideration of recommendations which may be submitted by the Committee, unless such selection is deemed unnecessary by the Secretary. The selection shall be made on the basis of representation provided for in § 920.20.

Proposal Number 3

8. Revise paragraph (a) of § 920.32 to read as follows:

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, research and promotion activities, or recommendations for regulations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

* * * * *

9. Add a new § 920.45 to read as follows:

§ 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

10. Add a new § 920.47 to read as follows:

§ 920.47 Production research, marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of kiwifruit. The expense of such projects

shall be paid from funds collected pursuant to § 920.41 and § 920.45.

Proposal Number 4

11. Revise § 920.27 to read as follows:

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead if necessary to secure a quorum. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

12. Revise § 920.32(b) to read as follows:

§ 920.32 Procedure.

* * * * *

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided*, That a video conference shall be considered an assembled meeting, and votes by those participating through video conference shall be considered as cast in person.

Proposal submitted by USDA:

Proposal Number 5

Make such changes as may be necessary to the order or its administrative rules and regulations to conform with any amendment that may result from the hearing.

Dated: November 13, 2008.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E8-27392 Filed 11-18-08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

RIN 3150-A112

[NRC-2008-0120]

Physical Protection of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary draft rule language.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available preliminary draft proposed rule language to amend its regulations to add a new part 37 to Title 10 of the Code of Federal Regulations. This new Part 37 will contain the security (physical protection) requirements that are designed to provide reasonable assurance of preventing the theft or diversion of Category 1 and Category 2 quantities of radioactive material as designated by the International Atomic Energy Agency (IAEA). The new provisions will address background checks, fingerprinting, access control, physical security during use, and physical security during any transport of category 1 and category 2 quantities of material. At this time, the staff is only posting the preliminary draft language for the physical protection of the material while it is being transported. These requirements will be contained in subpart D of the new part 37. Draft preliminary language for other aspects of the proposed new part 37 will be posted and noticed in the future. The availability of the preliminary draft rule language is intended to inform stakeholders of the current status of the NRC's activities and solicit public comments on the information at this time. Comments may be provided as indicated under the **ADDRESSES** heading. The NRC may post updates periodically under Docket # NRC-2008-0120 on the Federal eRulemaking Portal at <http://www.regulations.gov> that may be of interest to stakeholders.

DATES: Submit comment by January 5, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RIN 3150-A112 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the