

# 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

[Doc. No. AMS-FV-11-0041; FV11-920-1 PR]

#### Kiwifruit Grown in California; Change in Reporting Requirements and New Information Collection

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

**ACTION:** Proposed Rule.

**SUMMARY:** This rule invites comments on proposed changes to the reporting requirements currently prescribed under the marketing order that regulates the handling of kiwifruit grown in California. The order is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would require handlers to file two end-of-season reports with the Committee. One report would contain price and handler shipment information and the other report would contain grower shipment information. The Committee would use this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy, as required under the order. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) of a new information collection. **DATES:** Comments on the proposed rulemaking must be received by October 11, 2011. Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35), comments on the information collection burden that would result from this proposal must be received by October 11, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Fax:* (202) 720-8938; or *Internet:* <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Kathie M. Notoro, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (559) 487-5901, *Fax:* (559) 487-5906, or *e-mail:* [Kathie.Notoro@ams.usda.gov](mailto:Kathie.Notoro@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, 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@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

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

This proposal invites comments on changes to the reporting requirements authorized under the order. This rule would add two new reporting requirements and two new forms to those currently specified in the order's administrative rules and regulations. These changes would allow the Committee to collect annual, end-of-season price, shipment, and grower information (grower entity/farm name, mailing address, location of farm by county, shipments by pack style, and acreage) from all kiwifruit handlers. Under this proposed regulation, both reports would be due from each handler within 30 days after such handler has completed current season shipments. The Committee would use this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy, as required under the order. This proposal was unanimously recommended by the Committee at a meeting on March 17, 2011.

Section 920.12 of the order defines the Districts within the production area, and Section 920.20 provides, in part, that " \* \* \* 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."

Section 920.22 of the order defines the nomination procedures, allowing for nominations to be conducted via mail, and provides that growers are eligible to

participate in nominations in the district they produce kiwifruit.

Section 920.34 of the order requires that the Committee prepare an annual report for presentation to the Secretary and the industry." The annual report provides a cumulative review of industry statistics as well as information about program activities and expenditures.

Section 920.41 of the order provides authority to assess each person who first handles kiwifruit a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 920.50 of the order requires the Committee to prepare an annual marketing policy for submission to the Secretary. The marketing policy describes expected kiwifruit production, quality, and marketing conditions. Along with other pertinent information, the marketing policy provides the basis for the recommendation of appropriate kiwifruit handling regulations for the upcoming season.

Section 920.60 of the order authorizes the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform these duties.

Section 920.61 (Compliance) of the order provides that all handlers must conform to the provisions and regulations set forth in the order, and the Committee is to verify handler compliance with order provisions.

The Committee's current reporting requirements are specified in § 920.160 of the order's administrative rules and regulations. This section currently requires that handlers submit: (1) A report of shipment and inventory data which provides monthly data regarding the reporting period, name and identification of the shipper, and the number of containers by type and weight by shipment destination category of all kiwifruit; (2) a Kiwifruit Inventory Shipping System (KISS) form, which consists of three sections: KISS/Add Inventory, KISS/Deduct Inventory, and KISS/Shipment and which provides beginning inventory by size and container type, quantity of the fruit lost in repack or repacked into other container types, total domestic and export shipments by size and container type; and any other adjustments which increase or decrease handler inventory; (3) a Return Receipt of Kiwifruit to Grower Form which reports fruit returned by a handler to a grower(s); and (4) a KISS Price/Shipment report which contains handler information, reporting period, total fresh market shipments, and gross f.o.b. sales of non-organic kiwifruit by pack style and size.

Since 1984, the California Kiwifruit Commission (Commission) has collected end-of-season price, shipment, and grower information (grower entity/farm name, mailing address, location of farm by county, shipments by pack style, and acreage), on organic and non-organic kiwifruit via two Commission forms. The Commission has, through an agreement, shared this information with the Committee. The Committee previously used the majority of this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy under the order.

The Commission will cease to exist as of September 30, 2011. Thus, the Committee would no longer have access to this previously shared information. As the current reporting requirements, under the order, make no provisions for collecting end-of-season information previously provided by the Commission, and as the Committee would need this information from all handlers, to include organic handlers, the Committee unanimously recommended adding these new reporting requirements and two new forms, the End-of-Season F.O.B. Sales Report and the Final Packout Report, to § 920.160 of the order's administrative rules and regulations.

Under the proposed change, § 920.160 would be revised by adding two new reporting requirements and two new forms, due by each handler (organic and non-organic) within 30 days after such handler has completed current season shipments. Kiwifruit shipments generally begin in September and continue through July. The information collected on the End-of-Season F.O.B. Sales Report would include data on gross f.o.b. sales value and number of containers for fresh market shipments by fruit size and pack style for the season. The information collected on the Final Packout Report would include containers shipped by pack style for fresh market shipments, for each grower entity during the season. The report would also include the grower entity and farm name, mailing address, the county where the farm is located, and total acreage. Both reports would also show the company name, contact person, and phone number of the handler. The information obtained from both of the two new reports would provide data to determine appropriate representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections,

and to prepare the annual report and annual marketing policy.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule would only change the reporting requirements under the domestic handling regulations. No changes to the import regulations would be made.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on Committee data, there are approximately 27 handlers of kiwifruit subject to regulation under the marketing order and approximately 176 kiwifruit growers in the production area.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2009–10 season at 26,000 tons with an average price of \$1,470 per ton. Based on the average price, shipment, and grower information provided by the CASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This proposed rule would revise § 920.160 by adding two new reporting requirements and two new forms, due

by handlers within 30 days after such handler has completed current season shipments. The information collected on the End-of-Season F.O.B. Sales Report would include data on gross f.o.b. sales value and number of containers for fresh market shipments by fruit size and pack style for the season. The information collected on the Final Packout Report would include containers shipped by pack style for fresh market shipments, for each grower entity during the season. The report would also include the grower entity and farm name, mailing address, the county where the farm is located, and total acreage. Both reports would also show the company name, contact person, and phone number of the handler. The information obtained from both of the two new reports would provide data to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and annual marketing policy. This rule would revise § 920.160, which specifies the reporting requirements.

Requiring the price, shipment, and grower information at the end of the season would impose a minor increase in the reporting burden on all kiwifruit handlers. As this data was previously provided to the Commission and shared with the Committee, these two annual end-of-season reports would not significantly increase the handlers' record keeping burden because the primary source of data is already being recorded and maintained by handlers as a routine part of their daily business. The majority of handlers use computers to record their data, and this information can readily be accessed and summarized for these reports. Consequently, any additional costs associated with these changes are expected to be minimal. Also, the benefits of having consolidated end-of-season price, shipping, and grower data are expected to outweigh any costs associated with the increase in reporting burden. Further, the benefits of this rule are expected to be equally available to all industry members, regardless of their size. It is anticipated that the transmission of these reports from handlers to the Committee would be done by either e-mail or facsimile (Fax) machines.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements, but determined that in order to carry out the objectives of the marketing order, the information collected contained within these two new reports would be

necessary. Therefore, this alternative was rejected.

This proposal would establish two new reporting requirements and would also require two new Committee forms: the End-of-Season F.O.B. Sales Report and the Final Packout Report. Therefore, this proposed rule would impose a minor increase in the reporting burden equally on all handlers, which is discussed in the Paperwork Reduction Act section of this document.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the March 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided for interested persons to comment on this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is requesting approval from the Office of Management and Budget (OMB) for a new information collection request, under OMB No. 0581-NEW. Upon approval of this new collection by OMB, it will be merged with the forms

currently approved for use under OMB No. 0581-0189, Generic OMB Fruit Crops.

*Title:* Kiwifruit Grown in California; Marketing Order No. 920.

*OMB Number:* 0581-New.

*Type of Request:* New collection.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California kiwifruit marketing order program, which has been operating since 1984.

On March 17, 2011, the Committee unanimously recommended an End-of-Season F.O.B. Sales Report and a Final Packout Report for all handlers to report end-of-season prices, shipment, and grower information. Information for these reports was previously collected by the Commission. This action concerns these reports, which would require the reports to be submitted to the Committee by handlers. Pursuant to § 920.60(c), handlers would maintain records for at least two succeeding fiscal years to verify the data reported to the Committee on these reports.

These forms would facilitate the collection of price, shipment, and grower information from all kiwifruit handlers and are titled End-of-Season F.O.B. Sales Report and Final Packout Report. The forms covered under this collection require the minimum information necessary to carry out the requirements of the order. The information collected would only be used by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees would be the primary users of the information, and AMS would be the secondary user. The Committee's staff would compile the information collected from handlers and use it to determine grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare its annual report and annual marketing policy, as required under the order. All proprietary handler information would be kept confidential in accordance with the Act and order.

The proposed request for a new information collection under the order is as follows:

#### **End-of-Season F.O.B. Sales Report**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to be no more than an average of 0.75 hours per response.

*Respondents:* Persons who handle California kiwifruit.

*Estimated Number of Respondents:* 27.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 20.25 hours.

#### Final Packout Report

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to be an average of 0.75 hours per response.

*Respondents:* Persons who handle California kiwifruit.

*Estimated Number of Respondents:* 27.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 20.25 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–New and the Marketing Order for Kiwifruit Grown in California, and should be sent to the USDA in care of the Docket Clerk at the previously-mentioned address or at <http://www.regulations.gov>.

All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the address of the Docket Clerk or at <http://www.regulations.gov>.

Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0189 “Generic OMB Fruit Crops.”

#### 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.

#### § 920.160 [Amended]

2. § 920.160 is amended by adding paragraphs (f) and (g) to read as follows:

#### § 920.160 Reports.

\* \* \* \* \*

(f) Each handler shall file annually with the Committee an End-of-Season F.O.B. Sales Report, due within 30 days after such handler has completed current season shipments, reporting gross f.o.b. sales value and number of containers by pack style and size for fresh market shipments for the season. The report shall also show the company name, contact person, and phone number of the handler.

(g) Each handler shall file annually with the Committee a Final Packout Report, due within 30 days after such handler has completed current season shipments, reporting total containers shipped, by pack style for fresh market shipments, for each grower entity during the season. The report shall also include the grower entity and farm name, mailing address, the county in which the farm is located, and total acreage for each reported grower entity. Also, the report shall show the company name, contact person, and phone number of the handler.

Dated: August 3, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–20116 Filed 8–8–11; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF ENERGY

#### 10 CFR Parts 429 and 431

[Docket No. EERE–2011–BT–CE–0050]

RIN 1904–AC58

#### Energy Conservation Program: Compliance Date Regarding the Test Procedures for Walk-In Coolers and Freezers and the Certification for Metal Halide Lamp Ballasts and Fixtures

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Proposed Rulemaking (NOPR).

**SUMMARY:** This document clarifies the compliance date by which manufacturers must begin to use

portions of a recently promulgated test procedure (i.e., the April 15, 2011 final rule) when certifying walk-in coolers and walk-in freezers. This document also proposes regulatory text changes to reflect U.S. Department of Energy's (DOE) intent that only manufacturers of components of walk-in coolers and walk-in freezers are required to submit certification reports. Additionally, the NOPR proposes clarifications as to the types of test data needed to support the certification of compliance per DOE's existing test procedures for walk-in coolers and walk-in freezers and the recently promulgated test procedure for this equipment. Finally, this document proposes to extend the compliance date for certification of metal halide lamp ballasts and fixtures.

**DATES:** DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) postmarked no later than August 30, 2011. See section III, “Public Participation,” for details.

**ADDRESSES:** Any comments submitted must identify the NOPR for walk-in coolers and walk-in freezers and metal halide lamp ballasts and fixtures by providing the docket number EERE–2011–BT–CE–0050 and/or RIN number 1904–AC58. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [WICF-MHL-2011-CE-0050@ee.doe.gov](mailto:WICF-MHL-2011-CE-0050@ee.doe.gov). Include docket number EERE–2011–BT–CE–0050 and/or RIN 1904–AC58 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2], 1000 Independence Avenue, SW., Washington, DC 20585–0121.

*Telephone:* (202) 586–2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday