

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 920**

[Doc. No. AMS-FV-08-0085; FV08-920-3 IR]

Kiwifruit Grown in California; Changes to District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule removes the grower district boundaries contained in the administrative rules and regulations of the kiwifruit marketing orders (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (committee). This rule makes necessary changes to the order's administrative rules and regulations to make them consistent with the recently amended order.

DATES: Effective August 1, 2010; comments received by September 21, 2010 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. 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 document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at 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:

Laurel May or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (202) 720-2491, Fax: (202) 720-8938; or E-mail: Laurel.May@ams.usda.gov or Kathy.Finn@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule 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 rule 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 rule revises the administrative rules and regulations contained in the order. The change will bring the regulations into conformance with recent amendments to the order removing language that is inconsistent with the amended order. The amendments and this change to the order's administrative rules and regulations were recommended by the committee and were submitted to USDA on August 15, 2008.

Section 920.12 of the order defines the boundaries of the grower districts into which the production area is divided. Section 920.31(l) authorizes the committee to redefine the district boundaries, with the approval of the Secretary, as appropriate to reflect shifts of kiwifruit production within the production area. Section 920.131 was added to the order's rules and

regulations in 1995 (60 FR 7432; February 8, 1995) to specify updated district boundaries that reflected industry production trends at that time.

California kiwifruit growers recently voted to amend the order by redefining the districts into which the production area is divided. Section § 920.12, which previously provided for eight grower districts, will be amended effective August 1, 2010 (75 FR 37288; June 29, 2010). The amendment to § 920.12 provides that the California production area will be divided into three grower districts: District 1, to include Butte, Sutter, and Yuba Counties; District 2, to include Tulare County; and District 3, to include all other California counties not included in Districts 1 and 2. At that time, § 920.131, which specifies the boundaries for eight grower districts, will be inconsistent with the amended § 920.12. For this reason, this rule removes § 920.131 from the order's rules and regulations, effective August 1, 2010.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 so 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, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. Small agricultural growers have been defined as those with annual receipts of less than \$750,000.

There are approximately 30 handlers of kiwifruit subject to regulation under the order and approximately 220 growers of kiwifruit in the regulated area. Information provided by the committee indicates that the majority of California kiwifruit handlers and growers would be considered small entities according to the SBA's definition.

The order regulates the handling of kiwifruit grown in the state of California. At the time the order was promulgated, kiwifruit acreage was

more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

Planted acreage has been gradually concentrated into two main regions in recent years. That, and the decline in the number of growers over time, prompted consolidation of the districts and reallocation of grower member seats through the formal rulemaking process. Under the amended order, the production area will be divided into three grower districts, and committee membership will be allocated proportionately among the districts based upon the previous five years' average production for each district. These changes are expected to better reflect the current composition of the industry.

This rule removes § 920.131 from the order's administrative rules and regulations, effective August 1, 2010. The section specifies the boundaries for eight grower districts. As such, it will be inconsistent with the amended § 920.12, which provides the boundaries for three grower districts.

The changes in this interim rule are necessary to conform with amendments to the order, which will become effective on August 1, 2010. No alternatives to this action are deemed appropriate.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the change. The revision in this interim rule provides consistency between the amended marketing order and its administrative rules and regulations. The order amendment is expected to ensure that the interests of all large and small entities are represented appropriately during committee deliberations.

Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

At committee meetings held on January 30, 2008, April 22, 2008, and July 9, 2008, the committee voted unanimously to recommend amending

the order by revising the grower districts into which the production area is divided. The committee's recommendations were submitted to AMS on August 15, 2008. Growers approved the amendment to redefine district boundaries in a referendum held in March 2010. The amendment will become effective August 1, 2010.

This rule will not impose any additional reporting or recordkeeping requirements on large or small kiwifruit handlers. 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.

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.

Finally, interested persons are invited to submit comments on this interim rule, including 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 the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the administrative rules and regulations currently prescribed under the marketing order for California kiwifruit. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendations and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for effectuating this rule on August 1, 2010, because: (1) August 1, 2010 is the beginning of the fiscal period and amendments to the order's district boundary provision will become effective on that date; (2) this action is

necessary to make the order's administrative rules and regulations consistent with the amended order; and (3) this rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this rule.

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 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.

§ 920.131 [Removed]

■ 2. Section 920.131 is removed.

Dated: July 20, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–18087 Filed 7–22–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Doc. No. AMS–FV–10–0054; FV10–924–2 IR]

Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Suspension of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule suspends the reporting and assessment requirements prescribed under the Washington-Oregon fresh prune marketing order. The marketing order regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and is administered locally by the Washington-Oregon Fresh Prune Marketing Committee (Committee). On June 1, 2010, the Committee unanimously voted to terminate Marketing Order No. 924. Since the only regulatory actions currently in effect are the reporting and assessment requirements, the Committee included a recommendation