

(8) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(9) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(10) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary, and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(c) *Specific systems of records exempted under (k)(2) and (k)(5)*. The Board exempts the RATB Fraud Hotline Program Files (RATB-12) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(2) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(3) From subsection (e)(1) because the nature of the investigatory function

creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close working relationships with other Federal, state and local law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(4)(G)–(H) because this system of records is exempt from the access provisions of subsection (d).

(5) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

**Ivan J. Flores,**

*Paralegal Specialist, Recovery Accountability and Transparency Board.*

[FR Doc. 2010-15691 Filed 6-28-10; 8:45 am]

**BILLING CODE 6820-GA-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

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

#### Kiwifruit Grown in California; Order Amending Marketing Order No. 920

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. The amendments are based on proposals by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. The amendments will redefine the grower districts into which the production area

is divided and reallocate committee membership among the districts, revise the deadline for committee nominations, and revise committee meeting and voting procedures. The amendments were approved by kiwifruit growers in a referendum conducted from March 12 through March 26, 2010. The amendments are intended to improve the operation and administration of the California kiwifruit marketing order program. Proposed amendments that failed in referendum and are not effectuated in this final order include revising committee member terms of office, authorizing the Secretary to fill committee vacancies based upon committee recommendations, authorizing research and promotion programs and accepting voluntary contributions for such programs, and allowing substitute alternates to represent absent members at committee meetings.

**DATES:** This rule is effective July 29, 2010, except for §§ 920.12 and 920.20, which are effective August 1, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Laurel 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, E-mail: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov) or [Kathy.Finn@ams.usda.gov](mailto:Kathy.Finn@ams.usda.gov).

Small businesses may request information on this proceeding 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, E-mail: [Anotoinette.Carter@ams.usda.gov](mailto:Anotoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include a Notice of Hearing issued on November 13, 2008, and published in the November 19, 2008, issue of the **Federal Register** (73 FR 69588); a Recommended Decision issued on November 5, 2009, and published in the November 12, 2009, issue of the **Federal Register** (74 FR 58216); and a Secretary's Decision and Referendum Order issued on February 17, 2010, and published in the February 23, 2010, issue of the **Federal Register** (75 FR 7981).

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

### Preliminary Statement

This final rule was formulated on the record of a public hearing held on December 9, 2008, in Modesto, California. Notice of this hearing was issued on November 13, 2008, and published in the **Federal Register** on November 19, 2008 (73 FR 69588). The hearing was held to consider the proposed amendment of Marketing Order No. 920, regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Notice of Hearing described several amendment proposals submitted by the committee. Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 5, 2009, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 14, 2009. No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on February 17, 2010, directing that a referendum be conducted during the period March 12 through March 26, 2010, among California kiwifruit growers to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting or by voters representing at least two-thirds of the volume of kiwifruit represented by voters voting in the referendum. Voters voting in the referendum favored three of the seven proposed amendments.

The amendments favored by voters and included in this order will:

1. Redefine the grower districts into which the production area is divided and reallocate committee membership among the districts;
2. Require that committee member nomination meetings be held by June 1 of each year in which nominations are to be made; and
3. Authorize the committee to conduct business meetings by telephone or other means of communication, specify that votes cast during telephone meetings shall be taken by roll call, and specify that videoconferences shall be considered assembled meetings.

Four amendments pertaining to: Revision of the beginning and ending

dates of all committee member terms of office, the filling of mid-term committee vacancies, authority for research and marketing programs, and allowing substitute alternates to represent absent members at committee meetings failed to obtain the requisite level of support needed to pass in referendum.

The Agricultural Marketing Service (AMS) also proposed to make such changes as may be necessary to the order so that all of the orders' provisions conform to the effectuated amendments. AMS is making a clarifying conforming change to the order language in § 920.20 that cross references § 920.31(l).

A marketing agreement reflecting amendments to the order was subsequently mailed to all kiwifruit handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of kiwifruit handled by all handlers during the representative period of August 1, 2008, through July 31, 2009.

### Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final 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. 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 at the hearing indicates that the majority of the handlers would be considered small agricultural service firms. Hearing testimony also suggests that the majority of 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. Total bearing kiwifruit acreage has declined from a peak of approximately 7,300 acres in 1992–93 to about 4,000 acres in 2007–08. Approximately 24,500 tons of kiwifruit were produced in California during the

2007–08 season—a decline of approximately 27,800 tons compared to the 1992–93 season. According to evidence provided at the hearing, approximately 30 percent of the 2007–08 California kiwifruit crop was shipped to export markets, including Canada, Mexico, Central American, and Asian destinations.

Under the order, outgoing grade, size, pack, and container regulations are established for kiwifruit shipments; and shipping and inventory information is collected. Program activities administered by the committee are designed to support large and small kiwifruit growers and handlers. The 12-member committee is comprised of eleven grower representatives from the production area, as well as a public member. 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.

The committee appointed an amendment subcommittee to consider possible order revisions. The subcommittee developed a list of proposed amendments to the order, which was then presented to the committee. The committee met to review and discuss the subcommittee's proposals at its meetings on January 30, 2008, April 22, 2008, and July 9, 2008. At those meetings, the committee voted unanimously to support the proposed amendments that were forwarded to AMS and subsequently considered at the hearing. The hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The amendments are intended to provide the committee and the industry with additional flexibility in administering the order and producing and marketing California kiwifruit. Record evidence indicates that the proposals are intended to benefit all growers and handlers under the order, regardless of size.

### *Amendment 1—Districts and Representation*

The amendment to redefine the districts into which the production area is divided and provide for the allocation of committee membership positions between the districts will not have a differential impact upon small and large entities. Such allocation will be based upon five-year production averages, or

upon another basis approved by the Secretary.

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 seats to better reflect the current composition of the industry. 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. The committee may recommend membership allocation on an alternative basis with the Secretary's approval. The revisions will ensure that the interests of all large and small entities are represented appropriately during committee deliberations.

#### *Amendment 2—Nominations*

The amendment specifying that grower nomination meetings be held by June 1 of each nomination year will have no economic impact upon growers or handlers of any size. Historically, the order required that nomination meetings be held by July 15 of each year, but that deadline did not allow for timely processing of the nominations and selections of new members prior to the August 1 beginning of the terms of office. In recent years, the committee has been conducting nomination meetings earlier than prescribed by the order. This amendment codifies what has become normal practice.

#### *Amendment 3—Meeting and Voting Procedures*

The amendment authorizing the committee to meet by telephone or other means of communication is expected to benefit growers and handlers of all sizes by improving committee efficiencies and encouraging greater participation in industry deliberations. The amendment is not expected to result in any significant increased costs to producers or handlers.

Under this amendment, video conference meetings will be considered assembled meetings and votes taken at such meetings will be considered in-person. Votes by telephone or other types of non-assembled meetings will be by roll call.

This amendment will provide the committee with greater flexibility in scheduling meetings and will be consistent with current practices in other kiwi industry settings. The use of telephone and other means of communication will allow greater access to committee meetings for members as well as other interested persons. Additionally, administration of the order will be improved as urgent committee business can be addressed in a timely manner.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size. Furthermore, the record shows that any costs associated with implementing regulations will be outweighed by the benefits expected to accrue to the California kiwifruit industry.

#### **Paperwork Reduction Act**

Current information collection requirements for Part 920 are currently approved by the Office of Management and Budget (OMB) under OMB number 0581-0189, "Generic OMB Fruit Crops." No changes in those requirements as a result of this proceeding are needed. Should any changes become necessary, they will be submitted to OMB for approval.

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.

#### **Civil Justice Reform**

The amendments to Marketing Order 920 stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are 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 no later than 20 days after the date of the entry of the ruling.

#### **Order Amending the Order Regulating Kiwifruit Grown in California**

##### *Findings and Determinations*

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

##### (a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of, commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is

practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations

It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping kiwifruit covered by the order as hereby amended) who, during the period August 1, 2008, through July 31, 2009, handled 50 percent or more of the volume of such kiwifruit covered by the order, as hereby amended, have not signed an amended marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the growers who participated in a referendum and who, during the period August 1, 2008, through July 31, 2009 (which has been determined to be a representative period), have been engaged within the production area in the production of kiwifruit for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of kiwifruit growers in the production area.

**Order Relative to Handling of Kiwifruit Grown in California**

*It is therefore ordered,* That on and after the effective date hereof, all handling of kiwifruit grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

Certain provisions of proposals contained in Material Issue numbers 1, 2, and 4 of the proposed order amending

the order contained in the Recommended Decision issued by the Administrator on November 5, 2009, and published in the **Federal Register** on November 12, 2009, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

**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.

■ 2. 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.

■ 3. 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. In accordance with § 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.

■ 4. In § 920.22, revise the first sentence of paragraph (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. \* \* \*

\* \* \* \* \*

■ 5. Revise paragraph (b) of § 920.32 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.

Dated: June 24, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–15744 Filed 6–28–10; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA–2009–1183; Airspace Docket No. 09–ASW–38]

**Amendment of Class E Airspace; Osceola, AR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Osceola, AR. Decommissioning of the Osceola non-directional beacon (NDB) at Osceola Municipal Airport has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this