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 Parts 920 and 944

[Docket No. FV00–920–2 PR]

Kiwifruit Grown in California and Imported Kiwifruit; Proposed Relaxation of the Minimum Maturity Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would relax the current minimum maturity requirements for fresh shipments of kiwifruit grown in California and for kiwifruit imported into the United States. The Kiwifruit Administrative Committee (Committee) which locally administers the marketing order for California kiwifruit unanimously recommended the change for California kiwifruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action would allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.2 percent soluble solids. This change is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

DATES: Comments must be received by August 30, 2000.

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, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed 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.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that such shipments be at least Size 45, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The order authorizes under § 920.52(a)(1) the establishment of minimum maturity requirements. Section 920.302(a)(3) of the rules and regulations outlines the minimum maturity requirements for fresh shipments of California kiwifruit and specifies that kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

Maturity is generally determined on the basis of total solids or soluble solids content. Kiwifruit can ripen on or off the vine and typically contains between 5 and 8 percent starch at harvest. This starch hydrolyzes into sugars during ripening. Kiwifruit continues to ripen while stored in refrigerated facilities and may reach 16.2 percent soluble solids when completely ripe.

In the 1980's, the minimum maturity requirements were established at 6.5 percent soluble solids for both the domestic and import regulations. This

minimum soluble solids level was established because research showed that the majority of fruit harvested at 6.5 percent soluble solids ripened to a 13.5–14 percent soluble solids level or higher, and stored well. Also, consumer taste tests showed that fruit containing at least 13.5 percent soluble solids were more acceptable than fruit containing lower levels of soluble solids. These regulations benefited growers, handlers, consumers, and importers as improvements were seen in the quality of fruit shipped to the market place, domestic and export sales, and grower returns.

Since that time a number of factors have changed: (1) Research conducted during the 1990's has shown that fruit harvested at 6.2 percent soluble solids and handled properly has the potential to ripen to 12.6 percent soluble solids or higher, (2) recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability, and (3) the majority of the kiwifruit producing countries are now utilizing 6.2 percent soluble solids as their guideline for minimum maturity.

The six countries exporting kiwifruit to the United States are New Zealand, Chile, Greece, France, Italy, and Canada. New Zealand has a mandatory maturity standard of 6.2 percent soluble solids. Chile, Greece, France, Italy, and Canada utilize a voluntary 6.2 percent soluble solids guideline for minimum maturity.

The Committee, at its May 2, 2000, meeting, unanimously recommended relaxing the minimum maturity requirements to 6.2 percent soluble solids because of the above-mentioned factors and because this relaxation is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would relax the minimum maturity requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade, size, quality, and maturity requirements for kiwifruit imported into the United States are currently in effect under § 944.550 (7 CFR 944.550). The minimum maturity requirement is covered in paragraph (a) of § 944.550. Paragraph (a) of § 944.550 states that the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) (Standards), except that the kiwifruit shall be ''not badly misshapen'', and an additional tolerance of 7 percent is provided for ''badly misshapen'' fruit. The Standards define ''Mature'' to mean that the fruit has reached the stage of development which will ensure the proper completion of the ripening process. The Standards further specify that the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent.

The relaxation in the minimum maturity requirement for importers of kiwifruit would also have a beneficial impact. This rule would relax the minimum maturity requirement for imported kiwifruit from 6.5 percent soluble solids to 6.2 percent soluble solids. The majority of the kiwifruit producing countries now are utilizing a 6.2 percent soluble solids level as their guideline for minimum maturity. Thus, importers would be able to utilize one minimum maturity standard for shipments of kiwifruit.

The metric equivalent of the minimum sizes currently specified is also added to paragraph (a) of § 944.550.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 56 handlers of California kiwifruit who are subject to regulation under the order and about 400 kiwifruit producers in the regulated area. There are approximately 50 importers of kiwifruit. Small agricultural service firms, which include kiwifruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. Fifty-six handlers and fifty importers have annual receipts of less than $5,000,000, excluding receipts from other sources. Three hundred ninety producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers, importers, and producers may be classified as small entities.

This rule would relax the minimum maturity requirements specified in § 920.302(a)(3) of the order's regulations and in § 944.550 (7 CFR 944.550) for imported kiwifruit. These sections, respectively, allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.5 percent soluble solids. Relaxation of the minimum maturity requirements to 6.2 percent soluble solids is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 (a)(1) of the order, section 8e of the Act.

Regarding the impact of this action on affected entities, relaxing the minimum maturity requirement to 6.2 percent soluble solids is expected to benefit handlers and importers. Handlers and importers would be able to utilize one minimum maturity standard for the majority of shipments of kiwifruit. The majority of the kiwifruit producing countries now utilize 6.2 percent soluble solids as their guideline for minimum maturity. Importers have not experienced problems meeting the minimum maturity requirement of 6.5 percent soluble solids. Therefore, it is expected that importers would not have any difficulty meeting the relaxed minimum maturity requirement of 6.2 percent soluble solids.

Imports account for 67 percent of domestic shipments and enter the United States between the months of March through August. Recent yearly data indicate that imports during the months of September through March are negligible. To date, New Zealand, Chile, and Italy have been the principal sources of imported fruit during the 1999–2000 (August 1–July 31) season, and accounted for 98 percent of the total import shipments, with the remaining imports being supplied by France, Greece, and Canada. Chile has been the largest exporter of kiwifruit to the United States since 1993. Chile shipped approximately 8 million tray equivalents (about 7 pounds of fruit per

tray) into the US market during the 1999–2000 season, representing over 56 percent of total market share. New Zealand shipped approximately 3 million tray equivalents; Italy shipped approximately 1 million tray equivalents; and Greece, France, and Canada had combined shipments of approximately 200,500 tray equivalents. The amount of imported kiwifruit is expected to increase during the 2000–2001 season. Italy is expected to have a bumper crop and the US tariff restrictions on imports from New Zealand were lifted in August 1999.

The Committee believes that lowering the minimum maturity requirements to 6.2 percent soluble solids would benefit large and small entities equally. Handlers and importers would be able to maximize shipments of early-season kiwifruit. The shipment of early-season kiwifruit is expected to result in increased grower returns, as such fruit normally commands a higher price than fruit harvested later in the season.

The amount of fruit harvested for the early market is dependent upon market conditions, the storability of fruit, and the overall size and quality of the crop. Since such information is not yet available, the Committee was not able to estimate the amount of fruit that would be shipped during the early season, nor estimate the amount of increased grower returns.

Additionally, recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability. Research conducted during the 1990's also has shown that fruit with 6.2 percent soluble solids and that is handled properly has the potential to ripen to 12.6 percent soluble solids. Relaxing the minimum maturity requirement should make more kiwifruit available to consumers early in the season.

In the past, some early season fruit failed to meet minimum maturity requirements at the time of inspection. Handlers had the option of re-conditioning the fruit or placing it into cold storage to ripen. After the soluble solids content was high enough to meet the minimum maturity requirements, the fruit was reinspected and the handler was billed for the original inspection and the reinspection. Relaxing the minimum maturity requirement to a 6.2 percent soluble solids level is expected to provide incentives for proper harvesting and handling of early fruit and to result in lower inspection costs. Thus, both large and small handlers should be able to benefit in the marketplace.

The Committee expressed concern that lowering the minimum maturity requirements to 6.2 percent soluble solids might result in a larger quantity of undersized fruit. However, the Committee expects growers to voluntarily test for minimum maturity and size before harvesting a field to limit harvesting unacceptable fruit.

Other alternatives have been suggested regarding the minimum maturity requirements, but would not adequately address the problem. The first alternative was to leave the regulation unchanged. However, this alternative would not address the changes in marketing conditions and in consumer acceptance of fruit with a lower level of soluble solids.

Another alternative considered was to regulate the current minimum maturity at the time of harvest. The Committee also considered utilizing the New Zealand ''Kiwi Start'' program which also tests for minimum maturity in the field at the time of harvest. These alternatives were not considered viable. The regulation of growers is not authorized under the Act.

Consideration was given to removing the 6.5 percent soluble solids minimum maturity requirement from the order and adding it to the California State Code of Regulations. This option was not acceptable to the Committee because of concerns regarding layers of regulation implementation, time, expenses, imports, and enforcement.

Another alternative discussed was to eliminate the minimum maturity requirement from the order. It was determined that there is still a need to have a maturity testing system in place to prevent the immature fruit from entering the market. Thus, this alternative was not adopted.

Utilizing a different testing method was also considered. Utilization of a dry weight test (total solids test) versus the currently used refractometer to measure maturity was discussed. This suggestion was not adopted because the test would be hard to implement, burdensome, and costly to the industry.

Finally, another alternative presented in the meeting was to increase the minimum maturity requirement. This alternative was not acceptable because it fails to recognize the recent findings that consumers find fruit with lower soluble solids acceptable.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers and importers. 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. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Further, the Committees' meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express their 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 the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule is a relaxation and would need to be in place as soon as possible to allow handlers time to make operational decisions for the 2000–2001 season. The 2000–2001 season begins September 10, 2000. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 920 and 944 are proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 920 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(3) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *
(1) * * *
(2) * * *
(3) *Maturity Requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.
* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.550, paragraph (a) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit and the average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).
* * * * *

Dated: July 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19342 Filed 7–27–00; 1:45 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or ''Commission'') is denying a petition for rulemaking submitted by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (PRM–50–64). The petitioners requested that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.[1] The Commission is denying the petition because the NRC's intent is not to impose responsibilities for operating or decommissioning costs pursuant to NRC regulatory requirements on co-owners in a manner inconsistent with contractual ownership agreements, except, and only as a last resort, when highly unusual circumstances relating to the protection of the public's health and safety require it. Also, the petition would not improve the NRC's regulatory process and maintain the same level of protection of the public health and safety provided under current Commission regulations, legal precedent, and policies.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. These documents are also available at the NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, *e-mail-bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1999 (64 FR 432), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. The petitioners requested that the NRC amend the enforcement provisions of NRC regulations to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

The petitioners are concerned that the NRC's ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small share of a nuclear power plant. In the Policy Statement, the Commission indicated that it ''reserves the right, in highly unusual situations where adequate protection of the public health and safety would be compromised, if such action were not taken, to *consider* imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted.'' (This is as opposed to dividing costs by using a pro rata share approach.) The petitioners believe that a joint owner could incur the burden of all, or an excessive portion, of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC has changed its policy so that it would now ignore existing pro rata cost sharing arrangements that it had previously sanctioned. The petitioners stated that the NRC has published no information regarding what would constitute a *de minimis* share and that the particular circumstances under which the NRC might find the imposition of joint and several liability necessary to protect the public health and safety are not defined.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring.

The petitioners requested that the issue of potential liability among joint owners be resolved by amending the regulations concerning enforcement in 10 CFR part 50. The petitioners proposed that the NRC's regulations be amended to provide that if the NRC

[1] In the ''Final Policy Statement on the Restructuring and Deregulation of the Electric Utility Industry,'' published on August 19, 1997 (62 FR 44071), the NRC referred to ''joint and several liability.'' As discussed subsequently in this notice, the NRC believes that ''joint and several regulatory responsibility'' more accurately reflects the concept intended in the final policy statement.