

# Rules and Regulations

Federal Register

Vol. 65, No. 157

Monday, August 14, 2000

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 371

[Docket No. 00-063-1]

#### Plant Protection Act; Delegation of Authority

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document delegates the authority given to the Secretary of Agriculture under the Agricultural Risk Protection Act of 2000 to administer the Plant Protection Act. Authority is delegated from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (whose title has been changed to the Under Secretary for Marketing and Regulatory Programs); from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine.

**EFFECTIVE DATE:** August 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Howard, Chief, Regulatory Analysis and Development, PPD, APHIS, suite 3C63, 4700 River Road Unit 118, Riverdale, MD 20737-1238; (301) 734-5957.

**SUPPLEMENTARY INFORMATION:** Title IV of the Agricultural Risk Protection Act of 2000 (Pub. L. 106-224), known as the Plant Protection Act, incorporates nine preexisting pest quarantine and exclusion statutes into a comprehensive law aimed at, among other things, augmenting the Secretary's authority to

detect, control, and eradicate plant pests and noxious weeds. Section 434 of the Plant Protection Act authorizes the Secretary to issue such regulations and orders as he considers necessary to carry out this title. This rule delegates that authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (as noted previously, now entitled the Under Secretary for Marketing and Regulatory Programs); from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine. We will further amend title 7 and amend title 9 of the *Code of Federal Regulations* in a future rulemaking action to add the Plant Protection Act to our lists of legal authorities and to make any other changes deemed necessary as a result of the enactment of this law.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### List of Subjects

##### 7 CFR Part 2

Authority delegations (Government agencies).

##### 7 CFR Part 371

Organization and functions (Government agencies).

Accordingly, 7 CFR parts 2 and 371 are amended as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

**Authority:** Sec. 212(a), Pub. L. 103-354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.22 is amended by adding a new paragraph (a)(2)(xlvi) to read as follows:

#### § 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) \* \* \*

(2) \* \* \*

(xlvi) Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772).

\* \* \* \* \*

### Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

3. Section 2.80 is amended by adding a new paragraph (a)(51) to read as follows:

#### § 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) \* \* \*

(51) Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772).

\* \* \* \* \*

## PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

4. The authority citation for part 371 continues to read as follows:

**Authority:** 5 U.S.C. 301.

5. Section 371.3 is amended by adding a new paragraph (b)(2)(xv) to read as follows:

#### § 371.3 Plant Protection and Quarantine.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(xv) Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772).

\* \* \* \* \*

For Part 2, Subpart C:

Dated: August 8, 2000.

**Dan Glickman,**

*Secretary of Agriculture.*

P For Part 2, Subpart N:

Dated: July 20, 2000.

**Michael V. Dunn,**

*Under Secretary for Marketing and Regulatory Programs.*

For Part 371:

Dated: July 17, 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00-20611 Filed 8-11-00; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV00-920-3 IFR]

#### **Kiwifruit Grown in California; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.05 to \$0.03 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 15, 2000. Comments received by October 13, 2000, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-5698, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

Diane Purvis, Marketing Assistant or Rose M. 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@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 marketing 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 2000, and continue until amended, suspended, or terminated. This rule will 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. Such

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.

This rule decreases the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.05 to \$0.03 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate.

The assessment is normally formulated and discussed in a public meeting. A public meeting was held on July 11, 2000. Because a Committee quorum (eight Committee representatives) was not present at the meeting, the Committee voted on the budget and assessment rate by telephone on July 13, 2000. Thus, all directly affected persons were provided an opportunity to participate and provide input.

For the 1998-1999 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In the telephone conference call on July 13, 2000, the Committee unanimously recommended 2000-2001 expenditures of \$81,575 and an assessment rate of \$0.03 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$83,800. The assessment rate of \$0.03 is \$0.02 lower than the rate currently in effect.

The Committee voted to reduce 2000-2001 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.