

# 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-08-0017; FV08-920-2 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 who ship 100,000 or more trays per season to file weekly shipment and price information with the Committee. Shipments of organic kiwifruit would be exempt from this requirement. The Committee would use this information to prepare its marketing policy statements and annual reports and to provide timely information to the industry to assist them in making marketing decisions throughout the season. 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 August 3, 2009. 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 August 3, 2009.

**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:** Debbie Wray, 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: [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@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 Jay Guerber, 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: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@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. This proposal 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 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 a new reporting requirement and form to those currently specified in the order's administrative rules and regulations. This change would allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Under this proposed regulation, handlers would not be required to provide weekly shipment and price information on shipments of organic kiwifruit. The information collected would be used by the Committee to prepare its marketing policy statement as required under the order. The information would also be used to generate timely reports for the industry as a whole to use in making marketing decisions throughout the season. This proposal was recommended by the Committee at its meetings on September 6, 2007; January 30, 2008; and April 22, 2008.

Section 920.34 of the order requires the Committee to 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 920.50 of the order requires the Committee to prepare an annual marketing policy report 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. The provisions of § 920.60(c) require that handlers maintain copies of all kiwifruit receipts and disposals for at least two succeeding fiscal years to verify their shipping reports.

The Committee's current reporting requirements are specified in § 920.160 of the order's administrative rules and regulations. This section includes requirements that handlers submit shipment reports and the Kiwifruit Inventory Shipping System (KISS) form, which consists of three reports: KISS/Add Inventory, KISS/Deduct Inventory, and KISS/Shipment.

Handlers who ship fewer than 10,000 trays per season are only required to file the shipment report twice per year and are not required to file the KISS form. Handlers who ship 10,000 trays or more per season are required to file the shipment report monthly and all three sections of the KISS form monthly or semi-monthly during certain months. The Committee provides forms to assist handlers with supplying the required information.

Kiwifruit shipments generally begin in September and continue through July. The Committee requires handlers who ship 10,000 trays or more to file their initial shipment reports by the fifth day of the month following the month in which their first shipments are made. This report is used to track shipments by type, weight, and destination.

The Committee has established November 5 as the deadline for filing the initial KISS reports. Subsequent reports are to be filed on the fifth day of each month throughout the season, with biweekly reports required for the months of December, January, and February. The KISS/Shipment report is used to report shipments by fruit size and pack type. The KISS/Add Inventory and KISS/Deduct Inventory reports are used to report changes in inventory.

This proposed rule would revise § 920.160 by adding a new reporting requirement and form. Under the new regulation, handlers who ship 100,000 tray equivalents or more per season would be required to submit weekly shipment and price data on the new KISS Price/Shipment report form. The information collected on the KISS Price/Shipment report would include data on gross f.o.b. sales and the total number of

containers shipped by pack, fruit size, grade, and market destination. Handlers submitting the KISS Price/Shipment report would no longer be required to submit the existing shipment report or KISS/Shipment report as that information would be collected on the new KISS Price/Shipment report. However, handlers submitting the KISS Price/Shipment report would still be responsible for filing the KISS/Add Inventory and KISS/Deduct Inventory reports.

The Committee recommended the 100,000 tray threshold because handlers shipping 100,000 trays or more account for approximately 90% of the production area's total shipments in a season. Committee members believe that information on such shipments would provide a sufficiently broad picture of ongoing marketing conditions. Information about the volume of kiwifruit in the current channels of commerce would be compiled by the Committee and reported to the industry. The Committee believes that such information provided throughout the season would benefit the industry as a whole when making marketing decisions.

While information from handlers with total shipments of fewer than 100,000 trays each season might not be significant on a weekly basis, such information would continue to be collected from those handlers on the other existing shipment and KISS reports and would be used to generate the Committee's marketing policy statements and annual reports.

The current reporting requirements make no provisions for collecting information on kiwifruit prices. The Committee believes that the industry as a whole would benefit from receiving gross f.o.b. sales information that would be collected by the Committee each week and used to generate timely industry reports. In the past, the Committee has used information from other sources to prepare their mandatory reports and provide updates to the industry, but Committee members feel that information from such sources no longer meets their needs. For example, one voluntary industry organization collects and reports weekly price information from participating handlers. Some industry members have found this information helpful in making marketing decisions in the past. However, Committee members report that the number of participating handlers has declined and that the information collected from the remaining participants may not provide as complete a picture of ongoing marketing conditions as the Committee

would like. The Committee believes that compiling sales information from all large-volume kiwifruit handlers in the production area would be more reflective of—and would be of greater benefit to—the industry as a whole.

There can be significant differences in the price of kiwifruit throughout the season, including great fluctuations in prices from week to week. The Committee believes that having accurate and timely sales information would help to reduce these price fluctuations and promote orderly marketing, resulting in increased grower returns.

Under the proposed change, handlers would not be required to report shipments of organically-produced (organic) kiwifruit on the new KISS Price/Shipment report. There are only a small number of handlers who handle organic kiwifruit, representing a small percentage of total shipments. Organic kiwifruit has its own unique marketing conditions with a pricing structure that differs from that of conventionally-produced (conventional) kiwifruit. Therefore, the Committee recommended that shipments of organic kiwifruit should be exempt from the new reporting requirements. However, organic kiwifruit shipments would continue to be reported as required on the appropriate existing Committee forms.

Kiwifruit handlers who ship between 10,000 and 100,000 trays or tray equivalents would continue to report by submitting monthly shipping reports and the existing KISS forms, including the KISS/Shipment reports. The reporting requirements for handlers shipping fewer than 10,000 tray equivalents would also remain the same. Also, the reporting exemption for minimum quantities of kiwifruit handled under certain conditions specified in § 920.110(b) would remain unchanged.

For the new KISS Price/Shipment report, the shipping week would be defined as Sunday through Saturday. Reports for each shipping week would be due no later than 5 p.m. (the close of business) on Tuesday of the following week to insure timely processing of current shipment and price information. Handlers would begin reporting following the first week of the season in which they have shipments. In weeks when no shipments are made, each handler would still be required to file a report indicating that no shipments were made during the reporting period. This would continue until the handler files a final report for the season. The new reporting form proposed by the Committee would have a space for handlers to indicate when they are filing

their final reports of the season. The price data and shipping information received from all affected handlers would be compiled by the Committee and presented to the industry throughout the season in the form of general reports. At the end of each year, the information collected would be summarized and used to prepare the Committee's annual reports and marketing policy statements.

This rule would also make a correction to § 920.160(b). A final rule published in the **Federal Register** on December 10, 1996 [61 FR 64959], made changes to § 920.160(b) and inadvertently removed part of the section. Specifically, the last sentence of § 920.160(b), which specifies the frequency with which the KISS reports shall be filed as well as what information shall be included, was removed. This rule would restore the language that was inadvertently removed.

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 30 handlers of kiwifruit subject to regulation under the marketing order and approximately 220

kiwifruit growers in the production area. According to information provided by the Committee, approximately three handlers handle only organic kiwifruit, and four handle both conventional and organic kiwifruit.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2006–07 season at 26,100 tons with an average price of \$911 per ton. Based on the average price and shipment 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 proposal would change the reporting requirements currently prescribed under the order. This rule would add a new reporting requirement and form to the reporting requirements, which would allow the Committee to collect weekly shipment and price information from kiwifruit handlers who ship 100,000 or more trays per season. Handlers would not be required to report information on shipments of organic kiwifruit on this new form, but would continue to report shipments of organic kiwifruit on existing Committee forms. This change would help the Committee develop its annual reports and marketing policy statements as required under the order and would enable the Committee to provide timely information to the industry as a whole to assist with marketing decisions. This rule would revise § 920.160, which specifies the reporting requirements. In addition to the new shipping and price information collection, this rule would restore a portion of § 920.160(b) that was inadvertently removed from the regulation during a previous rulemaking action. Authority for the collection of shipment and other information is provided in § 920.60 of the order.

Requiring shipment and price reports on a weekly basis would impose an additional reporting burden on handlers who handle 100,000 or more tray equivalents of kiwifruit. However, this data is already being recorded and maintained by most handlers as a routine part of their business. Consequently, any additional costs associated with this change are expected to be minimal. Also, the benefits of having timely information regarding shipments and price are expected to outweigh any costs associated with the

increase in reporting burden. While this change would impose an additional reporting burden on those handlers required to submit the KISS Price/Shipment report, those handlers would no longer be required to submit the shipment report or the KISS/Shipment report, which would offset somewhat the increase in burden. Further, the benefits of this rule are expected to be equally available to all industry members, regardless of their size.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements. However, the Committee believes that collecting weekly shipment and price data would provide valuable information to the industry. The Committee also considered using weekly sales information collected by other entities. However, the Committee believes including the proposed information collection under the order's rules and regulations would make the reports they generate more accurate, and more reflective of the marketing conditions throughout the industry. Therefore, both alternatives were rejected.

This proposal would establish a new reporting requirement. This action would also require a new Committee form, the KISS Price/Shipment report. Therefore, this proposed rule would impose an additional reporting burden on handlers who handle 100,000 tray equivalents or more of kiwifruit, 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 September 6, 2007; January 30, 2008; and April 22, 2008; meetings were public meetings 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/AMSV1/ams.fetchTemplateData.do?template=Template>

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*SmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber 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 April 22, 2008, the Committee unanimously recommended a new KISS Price/Shipment report for handlers who handle 100,000 tray equivalents or more of kiwifruit to report to the Committee weekly shipment and price information. This action concerns this report, in addition to the accompanying regulation previously discussed, 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 this report.

This form would allow the Committee to collect weekly shipment and price information from handlers who handle 100,000 tray equivalents or more of kiwifruit each season. The Committee would use this information in preparing the marketing policy statement and annual report each year. Also, weekly

industry reports generated from this data would provide handlers with more timely information on which to base their marketing decisions.

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 prepare its annual report and marketing policy statement as required under the order. The Committee's staff would also use the data collected to provide general market information to the industry throughout the season. 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:

#### **KISS Price/Shipment Report**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to be no more than one hour per response.

*Respondents:* Persons who handle California kiwifruit.

*Estimated Number of Respondents:* 15.

*Estimated Number of Responses per Respondent:* 28.

*Estimated Total Annual Burden on Respondents:* 420 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 revising the first sentence of paragraph (a), revising paragraph (b), and adding paragraphs (d) and (e) to read as follows:

#### **§ 920.160 Reports.**

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, except as provided in paragraph (e) of this section, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other later time established by the committee: *Provided*, That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year.

\* \* \*

(b) *Kiwifruit Inventory Shipping System (KISS) form*. Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections "KISS/Add Inventory," "KISS/Deduct Inventory," and "KISS/Shipment," on or before November 5th, or such other later time as the committee may establish. Subsequent KISS forms, including all three sections, shall be filed with the committee by the fifth day and again by the twentieth day of each calendar month, or such other

later time as the committee may establish, and will contain the following information:

(1) The beginning inventory of the handler by size and container type;

(2) The quantity of fruit the handler lost in repack and repacked into other container types;

(3) The total domestic and export shipments of the handler by size and container type; and

(4) Any other adjustments which increase or decrease posted handler inventory.

(c) \* \* \*

(d) *KISS Price/Shipment report.* Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping week is defined as Sunday through Saturday. The report shall show:

(1) The company name, contact person, and phone number of the handler;

(2) Weekly period covered by the report;

(3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and

(4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

Dated: May 29, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9-12995 Filed 6-3-09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1205

[Docket No. AMS-CN-09-0027; CN-08-003]

#### Cotton Research and Promotion Program: Referendum Procedures

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would establish procedures which the Department of Agriculture (USDA) will use in conducting a referenda considering amendments to the Cotton Research and Promotion Order (7 CFR part 1205) (Order) implementing section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), hereinafter the "2008 Farm Bill." USDA is considering amendments to the Order, in a separate action, and referendum procedures would need to be in place prior for the industry to vote and consider these amendments. Referenda among cotton producers and cotton importers are required by the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) to implement, amend, continue, or when appropriate to suspend, or to terminate the Order or any of its provisions. The provisions of this rule would be used for these referenda.

**DATES:** Comments must be received on or before June 15, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through <http://www.regulations.gov>. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224 during regular business hours. A copy of this notice may be found at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-

1718, or e-mail at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

##### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than \$7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

This proposed rule would establish the procedures under which cotton producers and importers vote on