

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

[Docket No. FV96-920-1]

Kiwifruit Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California kiwifruit to determine whether they favor continuance of the marketing order regulating the handling of kiwifruit grown in the production area.

DATES: The referendum will be conducted from June 3 through June 21, 1996. To vote in this referendum, growers must have been producing California kiwifruit during the period August 1, 1995, through May 31, 1996.

ADDRESSES: Copies of the text of the aforesaid marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agriculture Marketing Service, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487-5901; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, room 2536-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-5127.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 920 (7 CFR Part 920), hereinafter referred to as the

“order” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act,” it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period June 3 through June 21, 1996, among California kiwifruit growers in the production area. Only growers who were engaged in the production of California kiwifruit during the period of August 1, 1995, through May 31, 1996, may participate in the continuance referendum.

The Secretary of Agriculture (Secretary) has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of California kiwifruit represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0149 for California kiwifruit. It has been estimated that it will take an average of 20 minutes for each of the approximately 500 growers of California kiwifruit to cast a ballot. Participation is voluntary. Ballots postmarked after June

21, 1996 will not be included in the vote tabulation.

Rose M. Aguayo and Kurt J. Kimmel of the California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), are hereby designated as the referendum agents of the Secretary to conduct such referendum. The procedure applicable to the referendum shall be the “Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended” (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

Authority: 7 U.S.C. 601-674.

Dated: March 20, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-7443 Filed 3-26-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1240

[AMS-FV-96-701.PR]

Honey Research, Promotion, and Consumer Information Order—Amendment of the Rules and Regulations To Add HTS Code for Flavored Honey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Harmonized Tariff Schedule (HTS) code number for imported flavored honey to the rules and regulations issued under the Honey Research, Promotion, and Consumer Information Order to provide authority for the U.S. Customs Service to collect an assessment on all imported, flavored honey.

DATES: Comments must be received by April 26, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit

and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456; fax (202) 205-2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-So., Washington, D.C. 20090-6456; telephone (202) 720-9915.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Honey Research, Promotion, and Consumer Information Act, as amended [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

This proposed rule has been issued in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This 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 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order.

The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small service firms are defined as those having annual receipts of less than \$5 million.

The Administrator of the AMS has determined that this rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act [44 U.S.C. Chapter 35], and OMB regulations [5 CFR Part 1320], the information collection and recordkeeping requirements contained in this action have been previously approved under OMB control number 0581-0093.

Background

The Honey Research, Promotion, and Consumer Information Order (Order) provides that each producer and importer shall pay to the Board a one cent per pound assessment rate on honey and honey products produced in or imported into the United States. Section 1240.5 of the Order defines honey products as products wherein honey is a principal ingredient.

In order for the U.S. Customs Service (Customs) to collect the assessments on imported honey and honey products, each product needs to be identified by an HTS Code. Since the Board inception, honey has been assessed by Customs under HTS code number 0409.00.00. However, there were no HTS codes for honey products.

The Board has identified flavored honey as a product containing approximately 99 percent honey. The Board estimates that 500,000 pounds of flavored honey are imported into the United States annually without the importer paying the required assessment. Therefore, at the recommendation of the Board, the Department requested the Committee for Statistical Annotation of Tariff Schedules (Committee) on the International Trade Commission to establish an HTS code for flavored honey. The Committee notified the Department on February 13, 1996, that a code has been established for flavored honey. The purpose of this rule is to add the new HTS code for flavored honey to the rules and regulations under the Order to provide authority for Customs to collect the assessment on all imported, flavored honey.

This proposed rule would add the new 2106.90.9988 HTS code for flavored honey to section 1240.115(e) of

the rules and regulations issued under the Order. Flavored honey would be assessed at the one-cent-per-pound rate. A conversion factor is not necessary because the amount of honey in flavored honey is estimated at 99 percent of the total product. Customs will notify importers 60 to 90 days before it begins collecting the assessment on flavored honey. The notification will be made only after a final rule, if any, is issued on this action.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1240 is proposed to be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601-4612

2. In § 1240.115, paragraph (e) is revised to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading numbers 0409.00.00 and 2106.90.9988) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessment paid.

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Dated: March 21, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96-7441 Filed 3-26-96; 8:45 am]

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