

additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. In fact, this proposed action would relax the current requirements under the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627) with regard to “fairly uniform in size”.

In addition, the Committee’s meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 2, 2005, meeting, was a public meeting and all entities, both large and small, were encouraged to express their views on

these issues. 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/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.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because this rule should be in place by September 10, 2005, which would be prior to the start of the 2005/2006 crop year. All written comments timely received would be considered before a final determination is made on this matter.

**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.

2. In § 920.302, paragraph (a)(4) is revised to read as follows:

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

(a) \* \* \*

(4) *Pack requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) (A) When kiwifruit is packed in any container, it would be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

SIZE DESIGNATION AND SIZE VARIATION CHART

Column 1—size designation	Column 2— maximum number of fruit per 8-pound sample	Column 3—fruit size variation tolerance (diameter)
18 or larger .....	25	½-inch (12.7 mm).
20 .....	27	½-inch (12.7 mm).
23 .....	30	½-inch (12.7 mm).
25 .....	32	½-inch (12.7 mm).
27/28 .....	35	½-inch (12.7 mm).
30 .....	39	½-inch (12.7 mm).
33 .....	43	⅜-inch (9.5 mm).
36 .....	46	⅜-inch (9.5 mm).
39 .....	49	⅜-inch (9.5 mm).
42 .....	53	⅜-inch (9.5 mm).
45 or smaller .....	55	¼-inch (6.4 mm).

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or

more than 35 pounds net weight of kiwifruit.

\* \* \* \* \*

Dated: June 16, 2005.

**Kenneth C. Clayton,**  
*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 991**

**[Docket No. AO–F&V–991–4; FV03–991–01]**

**Hops Produced in WA, OR, ID and CA; Proposed Marketing Agreement and Order No. 991; Termination of Proceeding on Proposed Marketing Agreement and Order**

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

**ACTION:** Termination of proceeding.

**SUMMARY:** This action terminates the proceeding to establish a marketing agreement and order for hops grown in Washington, Oregon, Idaho and

California. The U.S. Department of Agriculture (USDA) held a public hearing in October 2003 to receive evidence on a program proposed by the Hop Marketing Order Proponent Committee (Proponent Committee), a group of industry members in support of an order. The proposed program would have authorized volume control measures in the form of producer allotments to regulate the marketing of alpha acid in hops in the production area. In addition, the proposed order would have allowed for reserve pooling of excess production of alpha acid and would have provided for production research, marketing research and development projects to promote the marketing, distribution and consumption or efficient production of hops. After the hearing sessions, USDA received numerous comments, briefs and additional arguments expressing widely divergent views on the promulgation of a marketing order for hops. After careful consideration of the entire rulemaking record, USDA is unable to conclude that the proposal currently under consideration would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” Accordingly, USDA is hereby terminating the proceeding.

**DATE:** This termination is made on June 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW., Third Avenue, Suite 385, Portland, Oregon 97204; Telephone (503) 326–2724 or Fax (503) 326–7440; 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.

Small businesses may request information on this proceeding 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.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of hearing issued on July 23, 2003, and published in the July 28, 2003, issue of the **Federal Register** (68 FR 44244); notice of postponement of public hearing on proposed marketing

agreement and order issued on August 8, 2003, and published in the August 14, 2003, issue of the **Federal Register** (68 FR 48575); notice of rescheduling of public hearing on proposed marketing agreement and order issued on September 3, 2003, and published in the September 8, 2003, issue of the **Federal Register** (68 FR 52860); and opportunity to file additional argument on representative period for proposed marketing agreement and order issued on February 16, 2005, and published in the February 24, 2005, issue of the **Federal Register** (70 FR 9000).

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

This administrative action is issued pursuant to the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

#### **Preliminary Statement**

In October 2002, the Proponent Committee requested that USDA hold a public hearing to consider a proposed marketing agreement and order for hops grown in Washington, Oregon, Idaho and California. The proposed program would have authorized volume control measures in the form of producer allotments to regulate the marketing of alpha acids in hops in the production area. The proposed order would also have allowed for reserve pooling of excess production of alpha acid and would have provided for production research, and marketing research and development projects to promote the marketing, distribution and consumption or efficient production of hops.

A notice of hearing was published in the **Federal Register** on July 28, 2003. A notice of postponement of public hearing on proposed marketing agreement and order was published in the **Federal Register** on August 14, 2003. A notice of rescheduling of public hearing on proposed marketing agreement and order was published in the **Federal Register** on September 8, 2003.

A public hearing on the proposed marketing agreement and order for hops produced in Washington, Oregon, Idaho, and California was held October 15 through 17, 2003, in Portland, Oregon, and October 20 through 24, 2003, in Yakima, Washington. At the conclusion of the hearing, the Administrative Law Judge fixed January 30, 2004, as the final date for interested persons to file proposed findings and conclusions or written arguments and

briefs based on the evidence received at the hearing. The Administrative Law Judge issued an order extending this deadline through February 18, 2004. A total of five briefs were received—one in support of the proposal and four in opposition.

A notice of opportunity to file additional argument on the representative period for a proposed marketing agreement and order was published in the **Federal Register** on February 24, 2005. Interested persons were to provide additional argument on two alternative representative base periods. Fourteen arguments were filed expressing widely divergent views.

#### **Termination of Proceeding**

USDA has carefully considered the entire rulemaking record, including the testimony and evidence presented at the hearing, the briefs filed following the hearing, and additional post hearing arguments. The record fails to demonstrate that there is a need for a hop marketing order, that such marketing order would have a positive economic impact on the industry, and that the benefits and costs associated with such marketing order could be allocated equitably.

After careful consideration of the entire rulemaking record, USDA is unable to conclude that the proposal currently under consideration would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” Accordingly, USDA is hereby terminating the proceeding.

#### **List of Subjects in 7 CFR Part 991**

Hops, Marketing agreements, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601–674.

Dated: June 16, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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