

§ 920.61

7 CFR Ch. IX (1-1-11 Edition)

MISCELLANEOUS PROVISIONS

§ 920.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 920.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 920.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee

Agricultural Marketing Service, USDA

§ 920.110

and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 920.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 920.66 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 920.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 920.68 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to

exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 920.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 920.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 920.110 Exemptions.

(a) *Waivers.* A handler may handle kiwifruit without inspection and certification, as prescribed under § 920.55, if all shipments made under such waivers comply with all regulations in effect, and all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 4 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing by the inspection service.

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. This advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Kiwifruit Administrative Committee.

(3) The Federal-State Inspection Service furnishes the handler with the