on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of USDA as outlined in the proposal.

List of Subjects in 7 CFR Parts 15 and 15d

Nondiscrimination.

Accordingly, The Department of Agriculture proposes to amend Title 7 of the Code of Federal Regulations. Subtitle A, as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

2. Part 15, subpart B (§§ 15.50–15.52) and the appendix thereto is proposed to be removed.

3. Part 15, subpart C (§§ 15.60–15.143) is proposed to be redesignated as part 15, subpart B.

4. A new part 15d is proposed to be added to read as follows:

PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.
15d.1 Purpose.
15d.2 Discrimination prohibited.
15d.3 Compliance.
15d.4 Complaints.

Authority: 5 U.S.C. 301.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, national origin, marital status, familial status, public assistance status, sexual orientation, or disability under any program or activity conducted by such agency, officer or employee.

(b) No person shall be subjected to reprisal for opposing any practice prohibited by this part or for filing a complaint or participating in any other manner in a proceeding under this part.

§ 15d.3 Compliance.

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

§ 15d.4 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. The complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Director of the Office of Civil Rights or his designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, DC 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve the complaints. The complainant will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under Part 15e of this chapter.

Dated: October 20, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–28699 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[FV–96–705–APR]

Proposed Kiwifruit Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplementary Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would amend an October 17, 1997, proposed rule which described the proposed Kiwifruit Research, Promotion, and Consumer Information Order (Order). Under the proposed Order, producers and importers would pay an assessment not to exceed 10 cents per 7-pound tray of kiwifruit to the proposed National Kiwifruit Board (Board). The Board would conduct a generic program of research, promotion, and consumer information to maintain, expand, and develop markets for kiwifruit under the supervision of the Department of Agriculture (USDA). The amended proposed rule would revise the Order by eliminating the requirement that 51 percent of the members of the Board be domestic kiwifruit producers to reflect the June 23, 1998, amendments to the National Kiwifruit Research, Promotion, and Consumer Information Act.

DATES: Comments must be received by January 11, 1999. A referendum order establishing the voting period for the referendum and the representative period for voter eligibility will be published at a later date in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda__e__farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above. Comments concerning the information collection associated with this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and

Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244, fax (202) 205–2800, telephone (888) 720–9917, or e-mail at stacey__l__bryson@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, Subtitle V of the Federal Agricultural Improvement and Reform Act of 1996 [Pub. L. 104–127], enacted April 4, 1996, hereinafter referred to as the Act. The Act was amended on June 23, 1998 [Pub. L. 105–185]. Previous documents in connection with this proceeding: a proposed rule with a request for comments dated September 23, 1996 [61 FR 51378, October 2, 1996] (first proposed rule) and a proposed rule dated October 8, 1997 [62 FR 54314, October 17, 1997] (second proposed rule). In addition, a proposed rule was issued on September 23, 1996 [61 FR 51391, October 2, 1996], to establish procedures for conducting referenda on the proposed Order. The referendum procedures were made final on November 17, 1997 [61 FR 54310, October 17, 1997].

Executive Order 12988

This rule has been reviewed under Executive Order 12988, 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 § 558 of the Act as amended [7 U.S.C. 7467], after an Order is implemented, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act as amended provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866

This rule has been determined to be ''not significant'' for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of the previously published proposed rules on small entities.

The kiwifruit industry initiated this program by asking the U.S. Congress (Congress) to pass legislation to provide authority for a generic program of promotion and research for kiwifruit. Congress found that this program is vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit; strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and to treat domestically produced kiwifruit and imported kiwifruit equitably.

Industry support for the program will be determined during the referendum to be conducted by USDA. Dates for the referendum will be announced by the Secretary no later than 60 days before the referendum.

This program was initiated by industry, industry must approve the program in a referendum in advance of its implementation, and industry members would serve on the Board that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. Exempt producers and importers would be required to file an exemption application. Producers, importers, and exporters (persons outside of the United Sates who export kiwifruit into the United States) would participate in the nomination process and be eligible to serve as members on the Board. While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act as amended. The estimated cost in providing information to the Board by the 760 respondents would be $7,842.50 or $10.32 per respondent per year.

USDA would oversee program operations and, if the program is implemented, every 6 years would conduct a referendum to determine whether the kiwifruit industry supports continuation of the program.

There are approximately 600 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. In addition, exporters would be eligible to serve on the Board.

Small agricultural service firms, which would include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million or more in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. Accordingly, the majority of handlers and producers may be classified as small entities. While USDA does not have specific information regarding the size of importers, it may be concluded that the majority of importers may be classified as small entities.

Exporters were not included in the initial Regulatory Flexibility Analysis regarding the impact of previously published proposed rule. In order to have all the data necessary for a more comprehensive analysis of the effects of the proposed Order, we are inviting comments concerning the potential effects on exporters. In particular, we are interested in determining the number and size of exporters that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

USDA is aware of producers in California, Oregon, Pennsylvania, and South Carolina, and importers that

import kiwifruit from Chile, New Zealand, and Italy. USDA believes that these individuals would include a majority of the producers and importers that would be covered under the program. USDA is also aware that some individuals may be producers of ''hardy kiwifruit,'' a different species of kiwifruit, known as *Actinidia arguta*, which would not be covered under the proposed program. However, USDA does not have specific information regarding how many individuals produce only the ''hardy kiwi'' versus the ''fuzzy'' most common kiwifruit species, known as *Actinidia deliciosa*.

Other names for the species *Actinidia arguta* (hardy kiwifruit) are baby kiwifruit, kiwifruit grape, and kiwiberry. There are no official statistics on this commodity because it is such a small and new crop. According to comments received on the first proposed rule, this species is grown in California, Oregon, Pennsylvania, Washington, and Virginia. The production in Virginia and Pennsylvania is not commercially marketed. Oregon production on 5 acres was a total of 216,000 pounds over the last 3 years. It takes 3 to 5 years to harvest the first crop. The hardy kiwifruit is hand-harvested and packed in 6-ounce berry baskets like raspberries. The harvesting, storage, handling, consumer recognition, and marketing of this species are completely different from the most common fuzzy kiwifruit or *Actinidia deliciosa*. All references to ''kiwifruit'' in this document, therefore, mean the *Actinidia deliciosa* species.

California is the source of practically all of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 94 percent between 1984 and 1997, increasing from 36 million pounds to 70 million pounds annually. In contrast, from 1984 through 1997, the value of production fell 7 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization almost tripled between 1984 and 1997, growing from 24 million pounds to 62.6 million pounds. The season average price from 1984 through 1997 fell 52 percent, declining from $0.54 per pound to $0.26 per pound. Exports accounted for about 19 percent of U.S. fresh utilization during that period.

In 1997, California production was 70.0 million pounds. The value of the 1997 crop was $16.5 million of which $16.2 million represented fresh utilization. In 1996, production was 63.0 million pounds with a crop value of $13.2 million. In 1997, 98 percent of production was utilized in fresh outlets.

U.S. exports of fresh kiwifruit totaled 13.1 million pounds in 1997. The value was $7.1 million. The major destinations included Canada (66 percent of the U.S. poundage exported), Republic of Korea (18 percent), and Mexico (7 percent).

In 1997, kiwifruit imports totaled 75.9 million pounds, with a value of $20.7 million. About 80 percent of imports came from Chile, 14 percent from Italy, and 4 percent from New Zealand. Fresh kiwifruit per capita consumption in 1996 was 0.55 pounds, down slightly from 0.56 pounds per capita during the 1995 season.

The proposed kiwifruit Order would authorize assessments on producers (to be collected by first handlers) and on importers (collected by Customs) of up to 10 cents per 7-pound tray. The Board, which would be composed of kiwifruit producers, importers, and exporters, must recommend the assessment rate, which is subject to oversight by the Secretary, as are the other rules and regulations. At the maximum rate of assessment, the Board would collect $1.97 million to administer the program. Assessments on domestic fresh-market production (62.6 million pounds) are expected to represent 45 percent of the income under the program.

The effect of the assessments will depend on the actual rate recommended by the Board. At the maximum rate, it is expected that the effect on producers would be approximately 5 percent of their average return. However, the Order would exempt producers of less than 500 pounds of kiwifruit a year, importers of less than 10,000 pounds a year, and kiwifruit sold for processing and sold directly to consumers. Furthermore, under the proposed program, the Board could authorize different reporting schedules based on different marketing practices. This could be of benefit specially to small businesses for whom a less frequent reporting period would diminish the reporting burden.

USDA will keep all of these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the implementation process. In addition, trade associations and related industry media will receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information will be available electronically.

If the program is implemented, the Board would develop guidelines for compliance with the program.

In addition, the kiwifruit industry would nominate individuals to serve as members of the Board. These individuals would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the kiwifruit industry as specified in the Act as amended.

There is a federal marketing order program for kiwifruit in California which is administered by the Kiwifruit Administrative Committee (KAC), also under USDA supervision. KAC is composed of California producers. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers of consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. Under the marketing order, handlers are required to submit information pertaining to and pay assessments on kiwifruit shipments. The assessment rate recommended by the KAC is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the KAC's expected expenses. On August 21, 1998, the assessment rate and assessable unit were decreased from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Each handler pays an average of $2,000 per year in assessments. Under the marketing order, the estimated reporting burden per year for individual handlers is estimated at 4.2 hours or $42.00 per handler.

The California Kiwifruit Commission (CKC) administers a California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers. In 1996–97 producers paid $1.4 million in assessments at a rate of $0.17 per tray or tray equivalent. The CKC has set an assessment rate of $0.17 per 22-pound volume fill container for the 1998–99 season.

The collection of information required under the proposed order for the research and promotion program would be similar to the marketing order program. However, the KAC and the

Board would keep their information separate to comply with confidentiality requirements under the programs. Furthermore, using the same source of information would reduce the burden on producers and handlers of all sizes.

In the past, the CKC participated in a voluntary promotional program with Chilean kiwifruit growers to jointly advertise kiwifruit in the United States. This program, however, does not provide enough resources to be as effective as a national generic program could be. In addition, other importing countries and private companies spend considerable amounts of resources in kiwifruit advertising. The purpose of the program is not to restrict individual promotions but to add a generic promotion program for kiwifruit where industry segments pull together resources for the benefit of the whole industry.

The absence of a generic program for kiwifruit may have a negative impact on the industry because other commodity groups, specifically for competing fruits, conduct promotion activities to maintain and expand their markets. The kiwifruit industry would be at a disadvantage because individual producers, handlers, and importers would not be able to implement and finance such a program without cooperative action. In addition, Agricultural Issues Forum, a group of 15 California commodity organizations, conducted a study in mid-1995 and reported in early 1996 that consumers strongly support the concept of farmers working together to promote their products, conduct product research, engage in consumer education programs, and set quality standards and inspect products. Consumers said that they benefitted from these activities and were more inclined to buy those products. Eighty-one percent of the farmers surveyed said that mandated programs were either very important or important in promoting products. The survey was conducted among farmers, public policy leaders, consumers, retailers, and allied industries.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of the proposed Order on small entities, the first proposed rule invited comments concerning the potential effects of the proposed Order. No comments were received concerning the impact of the proposed Order on small entities. However, as explained earlier in this rule and in the second proposed rule, ''hardy kiwifruit'' producers would not be covered under the program because the species *Actinidia arguta* is considerably different from the most common ''fuzzy kiwifruit'' species *Actinidia deliciosa*. This would have a positive impact on small businesses since most of the producers of ''hardy kiwifruit'' are considered small businesses.

In addition, it is expected that the previously published proposed Order would be very beneficial to the kiwifruit industry, especially small businesses who would not be able to afford a nationwide comprehensive program individually.

It is estimated that there are approximately 645 kiwifruit producers and importers who would be eligible to vote in the referendum. It would take an average 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 29 hours.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR Part 1320] which implement the PRA [44 U.S.C. Chapter 35], and as stated in the previous proposed rules, the information collection and recordkeeping requirements that would be imposed by the proposed Order were approved by OMB on December 16, 1996.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093, except for the background questionnaire (no. 2 below) which is assigned OMB number 0505–0001.

Expiration Date of Approval: November 30, 2000, for 0581–0093 and November 30, 1998, for 0505–0001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act as amended.

While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The provisions of the proposed Order have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers under the federal marketing order program in California and the CKC. The information needed would be taken from financial reports or sales receipts already maintained.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act as amended. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The most recent information indicates that there would be 647 respondents affected by the nomination of Board members provisions of the proposed Order, which is related to this amended proposed rule: 600 producers, 45 importers or exporters, and 2 public member nominees. The estimated cost in providing information related to the nomination of Board members by the 647 respondents would be $1,200 or $1.86 per respondent. This total has been estimated by multiplying 120 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The information collection requirements that are related to the nomination sections of the proposed Order which are affected by this amended proposed rule are:

(1) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: Producers, importers, and exporters.

Estimated Number of Respondents: 647.

Estimated Number of Responses per Respondent: 1 every 3 years (0.33).

Estimated Total Annual Burden on Respondents: 108 hours.

(2) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer, importer, exporter, and public member nominated to the Board.

Respondents: Producers, importers or exporters, and public member

Estimated Number of Respondents: 22 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22 hours for the initial nominations to the Board and 12 hours annually thereafter.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Comments concerning the burden for the nomination process should reference OMB No. 0581–0093. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and by the deadline listed above.

Background

The Act became effective on April 4, 1996. It authorizes the Secretary to implement a promotion program for kiwifruit, which would be administered by an 11-member industry board appointed by the Secretary.

Under the program, producers of 500 or more pounds of kiwifruit per year and importers of 10,000 pounds or more of kiwifruit per year would be assessed at a rate not to exceed 10 cents per 7-pound tray of kiwifruit. There are approximately 600 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. In addition to the *de minimis* exemptions for producers and importers, U.S. kiwifruit for processing would be exempt from assessment. The maximum assessment rate would generate about $2 million annually. Assessments would be used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The first handler would be responsible for the collection of assessments from the producer and payment to the Board. Handlers would be required to maintain records for each producer for whom kiwifruit is handled, including kiwifruit produced by the handler. In addition, handlers would be required to file reports regarding the collection, payment, or remittance of the assessments. All information obtained through handler reports would be kept confidential.

Customs would collect assessments on imported kiwifruit and would remit those assessments to the Board for a fee.

The Act requires the Secretary to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum, and producers and importers favoring approval must produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum. Subsequent referenda would be conducted every 6 years after the program is in effect or when requested by 30 percent of kiwifruit producers and importers covered by the Order. The Secretary would give serious consideration to requests for referendum when requested by a group representing a considerable amount of the volume covered by the program.

The Act provides for the submission of proposals for a kiwifruit research, promotion, and consumer information Order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed Order provide for the establishment of a promotion Board. The promotion Board would be composed of 11 voting members, who would be producers, importers or exporters, and a public member. Each member would have an alternate. Members would serve a three-year term of office. No member may serve more than two consecutive three-year terms.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order or any of its provisions is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The individual would be given the opportunity to a hearing on the petition.

The Secretary issued a news release on May 6, 1996, requesting proposals for an initial Order or portions of an initial Order by May 17, 1996. A second news release, extending the deadline for submission of proposals to June 3, 1996, was issued on May 24, 1996.

An entire proposed Order was submitted by the CKC. In addition, a partial proposal was submitted by the New Zealand Kiwifruit Marketing Board (NZKMB). The NZKMB represents all New Zealand exporters of kiwifruit into the United States.

In addition to minor editorial changes, USDA modified the CKC's proposed text to conform with provisions of the Act and to clarify certain other provisions of the proposed order. USDA published the CKC's and the NSKMB's proposals for public comment in the **Federal Register** on October 2, 1996 [61 FR 51378]. The deadline for comments was December 2, 1996. Seventy-five comments were received. Comments were received from eight Chilean kiwifruit growers or grower associations, 31 Chilean kiwifruit exporters or exporter associations, one international exporter association, 26 importers of Chilean kiwifruit, two U.S. growers, the CKC, four universities, and the embassies of Australia and New Zealand. Seventy-three of the comments opposed implementation of the Order as proposed on October 2, 1996.

USDA analyzed the comments and made several changes to the proposed Order to address commenters' concerns. One of the commenters' issues, however, was not addressed because the provisions at issue were consistent with the then relevant provisions of the Act. This issue related to the composition of the initial Board and the requirement that 51 percent of the members of the Board be domestic producers, regardless of the percentage of assessments paid by importers. These provisions are contained in § 1214.30 of the proposed Order.

A revised proposed Order was published in the **Federal Register** on October 17, 1997 [62 FR 54314]. At the same time, USDA announced that a referendum on the proposed Order, as revised by that proposed rule, would be conducted.

After the publication of that proposed rule, the CKC requested the Secretary to delay the referendum until the Act could be amended to remove the requirement that 51 percent of the Board members be domestic producers. Subsequently, on June 23, 1998, the Act was amended [Pub. L. 105–185] to remove the 51 percent requirement as well as to provide that future

amendments of the Order could become effective without an industry referendum. The first amendment requires changes in § 1214.30 of the proposed Order. In addition, a conforming change is needed in § 1214.76 to indicate that the Act has been amended.

Therefore, this action would revise §§ 1214.30 and 1214.76 to reflect the amendments to the Act.

In the earlier proposed rules, § 1214.30(a) provided that the initial Board would be composed of six producers, four importers and/or exporters, and one public member. This section would be revised by this proposed rule to state that, for the initial Board, the number of producer and importers or exporters on the Board would be apportioned, by the Secretary, on the basis of the average annual kiwifruit production and imports over the preceding four years.

To determine the four-year average, we have calculated domestic production and imports for the last four seasons (1994–95 through 1997–98) as shown in the accompanying chart.

U.S. PRODUCTION AND IMPORTS OF KIWIFRUIT

Year [1]	Domestic production [2] (million pounds)	Imports (million pounds)	Total (million pounds)	Percent domestic	Percent imports
1997–98	62.6	[3] 79.3	[3] 141.9	[3] 44.1	[3] 55.9
1996–97	52.2	83.2	135.4	38.6	61.4
1995–96	65.0	81.1	146.1	44.5	55.5
1994–95	75.0	79.4	154.4	48.6	51.4
4-year average	.....	.....	.....	43.9	56.1

[1] September 1 through August 31.
[2] Fresh utilization because the proposed program would not cover kiwifruit for processing.
[3] Projected; includes imports through July 1998.

Based on this analysis, the four-year average for domestic production in the U.S. fresh market is 43.9 percent, and the four-year average of imports in the U.S. fresh market is 56.1. Therefore, if the initial Board seats were allocated as of the date of this rule, the Secretary would appoint four producers, six importers or exporters, and one public member to the Board. However, if the proposed promotion program is implemented, the Secretary will use the most current information available at the time of implementation in determining the allocation of seats on the initial Board.

Section 1214.30(a) (1) and (2) stated that the Kiwifruit Board would be composed of six producers and four importers. This section has been revised to state that the Kiwifruit Board would be composed of ten producers and importers or exporters (or their representatives) based on the proportional representation of the level of domestic production and imports of kiwifruit, as determined by the Secretary.

Sections 1214.30(b) (1) and (2) stated that membership of the Board could be adjusted to accommodate changes in production and import levels of kiwifruit as long as producers comprise not less than 51 percent of the membership of the Board. These sections are revised to remove the 51 percent requirement.

In addition, this rule would revise § 1214.76 to add ''as amended,'' after the word ''Act''.

This action makes no other changes to the text of the Order provisions as they appeared in the October 1997 proposed rule.

For the Order to become effective, the Order must be approved by a majority of kiwifruit producers and importers voting in a referendum, with such majority producing or importing more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

The previously published proposed Order is summarized as follows:

Sections 1214.1 through 1214.19 of the proposed Order define certain terms, such as kiwifruit, handler, producer, and importer, which are used in the proposed Order.

Sections 1214.30 through 1214.39 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about kiwifruit, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1214.40 and 1214.50 provide information on these activities.

Sections 1214.51 through 1214.53 would authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. In addition, it would prohibit use of funds to influence government policy or action.

The assessment rate may not exceed 10 cents per 7-pound tray of kiwifruit. The actual rate would be recommended by the Board and approved by the Secretary through regulation. Direct sales to consumers by a producer and kiwifruit for processing are exempt from assessments.

The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; establish a 1.5 percent per month interest charge for unpaid or late assessments; and provide for refunds of assessments paid by importers who import less than 10,000 pounds of kiwifruit a year.

Sections 1214.60 through 1214.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1214.70 through 1214.73 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1214.74 through 1214.77 are miscellaneous provisions including the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to

the Order; and separability of Order provisions.

USDA will analyze all comments received in response to this proposed rule and make any necessary changes to the proposed Order. Then, as appropriate, the Secretary will issue a referendum order, which will establish the voting period, representative period, and method of voting and designate the referendum agents.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that the proposed rule establishing Title 7 of Chapter XI of the Code of Federal Regulations and published at 62 FR 54314 on October 17, 1997, be further amended as follows:

1. In § 1214.30, paragraphs (a), (b) (1) and (2) are revised to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order

* * * * *

National Kiwifruit Board

§ 1214.30 Establishment, adjustment, and membership.

(a) Establishment of National Kiwifruit Board. There is hereby established a National Kiwifruit Board of 11 members. Ten members shall be producers (or their representatives) who are not exempt from assessment, exporters (or their representatives), or importers (or their representatives) who are not exempt from assessment. One member shall be appointed from the general public. The number of members allocated to domestic producers, exporters, and importers shall be based on a proportional representation of the level of domestic production and imports of kiwifruit, as determined by the Secretary. The Secretary shall consider average annual domestic production and imports during the four years which immediately precede the effective date of the Order.

(b) Adjustment of Membership. (1) Subject to the 11-member limit, the Secretary may adjust membership on the Promotion Board to accommodate changes in domestic production and import levels of kiwifruit.

(2) At least every five years, and not more than every three years, the Promotion Board shall review changes in the volume of domestic and imported kiwifruit covered by this part. If annual kiwifruit production and imports over the preceding four years indicate that such changes in production and import levels have occurred warranting reapportionment, the Promotion Board shall recommend reapportionment of Board membership, for approval of the Secretary.

* * * * *

§ 1214.76 [Amended]

2. Section 1214.76 is amended by adding the phrase ''as amended,'' after the word ''Act''.

Dated: November 4, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–30119 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, that currently requires a one-time inspection for heat damage of the fuselage skin and stubwing structure; either repetitive tests of certain seals or repair of heat damage, as necessary; and eventual replacement of corrujoint seals with new, improved seals. This action would add a requirement for repetitive inspections for heat damage of the subject area, and would provide for a new optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent leakage of hot air from the corrujoint seals of certain valves in the stubwings, and subsequent heat damage of the fuselage skin and stubwing structure, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to