

§ 1210.606

with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1210.606 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1210.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

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

Subparts A–B [Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

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Subparts A–B [Reserved]

7 CFR Ch. XI (1–1–05 Edition)

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

§ 1214.200 General.

A referendum to determine whether eligible producers and importers favor the issuance of a proposed Kiwifruit Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1214.201 Definitions.

Unless otherwise defined in this section, the definition of terms used in this subpart shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Kiwifruit Research, Promotion, and Consumer Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, kiwifruit production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or

importation of kiwifruit and the authority to transfer title to the kiwifruit so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produced 500 pounds or more of kiwifruit during the representative period and who:

(1) Owns or shares in the ownership of kiwifruit production facilities and equipment resulting in the ownership of the kiwifruit produced;

(2) Rents kiwifruit production facilities and equipment resulting in the ownership of all or a portion of the kiwifruit produced;

(3) Owns kiwifruit production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the kiwifruit produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit who share the risk of loss and receive a share of the kiwifruit produced. No other acquisition of legal title to kiwifruit shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imported 10,000 pounds or more during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced kiwifruit immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of kiwifruit from the U.S. Customs Service when such kiwifruit are entered or withdrawn for consumption in the United States.

(h) *Kiwifruit* means all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*, whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States.

§ 1214.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;