

marketplace. Compliance with this rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive positions of small entities relative to the large entities and will no way affect normal competition in the marketplace.

In addition, under 5 U.S.C. 553, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the regulation be effective at the beginning of the marketing season which begins in November. Therefore, in order to treat all marketing areas on an equal basis, this final rule is made effective the day following the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for 7 CFR part 29, subpart C, continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

Subpart C—Standards

2. In § 29.3053, paragraph (b) is revised to read as follows:

§ 29.3053 Rework.

* * * * *

(b) Tobacco not properly tied in hands, not packed in bales approximately 1 x 2 x 3 feet, not oriented, not packed straight, bales not opened for inspection when chosen by a grader, or otherwise not properly prepared for market.

Dated: November 4, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97-29498 Filed 11-6-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV97-920-3 FIR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1997-98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997-98 fiscal period covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will 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 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate of \$0.0225 per tray or tray equivalents of assessable kiwifruit for the Committee for the 1997-98 and subsequent fiscal periods.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Section 920.41 authorizes the Committee to borrow funds. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended,

and the Department approved, an assessment rate that would continue in effect from season to season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 25, 1997, and unanimously recommended 1997–98 expenditures of \$161,286 and an assessment rate of \$0.0225 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$178,598. The assessment rate of \$0.0225 per tray or tray equivalent is \$0.0050 higher than last year's established rate. The 1996–97 kiwifruit crop was short 3.3 million trays or tray equivalents of the quantity projected in the crop estimate. The Committee met in February 1997 and approved the borrowing of funds to cover expenses for the remainder of the 1996–97 season. The Committee borrowed \$11,052 as of May 31, 1997, and estimated that an additional \$22,401 might be needed to cover expenses through the end of the fiscal period. Because the Committee's reserve has been depleted, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve. The order provides authority for a maximum reserve equal to approximately one fiscal period's expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of \$0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The major expenditure levels recommended by the Committee for the 1997–98 year include \$102,200 for administrative staff and field salaries, \$13,825 for travel, food, and lodging; and \$12,200 for accident and health insurance. Budgeted expenses for these items in 1996–97 were \$108,500, \$20,398, and \$13,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of California kiwifruit, and additional pertinent factors. Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents of kiwifruit which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses, reimbursement of borrowed

funds, and to fund an adequate reserve. Future reserve funds will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 18, 1997; and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of kiwifruit in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least \$5,000,000; and the remaining 59 handlers have

sales less than \$5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least \$500,000; and the remaining 440 producers have sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of California kiwifruit producers and handlers may be classified as small entities.

This rule continues the assessment rate of \$0.0225 per tray or tray equivalents of assessable kiwifruit for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of \$161,286 and an assessment rate of \$0.0225 per tray or tray equivalent of kiwifruit. The 1996–97 kiwifruit crop was short 3.3 million trays or tray equivalents of the estimated crop. The Committee met in February 1997 and approved borrowing funds to cover expenses for the remainder of the 1996–97 season. The Committee has borrowed \$11,052 as of May 31, 1997, and estimates that an additional \$22,401 may be needed to cover expenses through the end of the fiscal period. As the Committee's reserve is depleted and funds have been borrowed to meet the remaining 1996–97 expenses, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of \$0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The Committee also considered reducing the compliance staff by two personnel, but determined that one part-time position would be eliminated. The major expenditure levels recommended by the Committee for the 1997–98 year include \$102,200 for administrative staff and field salaries, \$13,825 for travel, food, and lodging; and \$12,200 for accident and health insurance. Budgeted expenses for these items in 1996–97 were \$108,500, \$20,398, and \$13,000, respectively.

Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover the budgeted expenses and the shortage of funds resulting from the 1996–97 crop shortage. As the Committee's reserve is depleted, the Committee voted to increase its

assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve. Reserve funds will be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the crop year indicates that the grower price for the 1997–98 season is estimated to be approximately \$1.62 per tray or tray equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1997–98 crop year as a percentage of total grower revenue will be approximately 1.4 percent.

This rule continues in effect the assessment obligation imposed on handlers. While the assessment rate this fiscal period is higher than that of last year, the additional costs upon handlers are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California 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 June 25, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California 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 sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 1997 (62 FR 45146). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 62 FR 45146 on August 26, 1997, is adopted as a final rule without change.

Dated: November 3, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29479 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV97–922–2 FIR]

Reduced Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rates established for the Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Committee (Committees) under Marketing Orders Nos. 922, 923, and 924 for the 1997–98, and subsequent fiscal periods. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal periods for these marketing orders began April 1 and end March 31. The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT:

Jadean L. Williams, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small

businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the “orders.” The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 1997, and continuing until amended, suspended, or terminated. This rule will 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 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the