Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
*	* * * * *	* *	
Seedless, red	11/9/98–11/7/99	U.S. No. 1	3 5/16
	On and after 11/8/99	U.S. No. 1	3 9/16
*	* * * * *	* *	

* * * * *

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30115 Filed 11–6–98; 9:44 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV98–920–3 FIR]

Kiwifruit Grown in California; Decreased 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 decreased the assessment rate from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent of kiwifruit established for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1998–99 and subsequent fiscal periods. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container is less than the 1997–98 assessment rate. 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 fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant or Rose M. 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, Technical Advisor, 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) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

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 rule has been 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, 1998, 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 a decrease in the assessment rate and continues a change in the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods 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. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is less than the 1997–98 assessment rate.

The California 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. The members of the Committee are producers of California kiwifruit. 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 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period 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 July 8, 1998, and unanimously recommended 1998–99 expenditures of $135,250 and an assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $161,286, and the assessment rate was $0.0225 per tray equivalent, which approximates $0.0675 per 22-pound volume fill container. The assessment rate of $0.05 per 22-pound volume fill container is $0.0175 or 26 percent lower than the 1997–98 equivalent rate. The Committee voted to reduce 1998–99 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominant container being used by handlers within the industry. Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote kiwifruit grown in California. The Committee and Commission share staff and expenses pursuant to an agreement.

During the 1997–98 fiscal period, the Committee borrowed $32,577 from the Commission pursuant to § 920.41 of the order to cover a funding deficit. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or tray equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would total $225,000 for the 1997–98 fiscal period, and that shipments for the period would total 10 million trays or tray equivalents.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal periods:

Budget expense categories	1998–99	1997–98
Administrative Staff and Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food and Lodging	5.0	13.8
Accident and Health Insurance	3.8	12.2

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 2,705,000 22-pound volume fill containers or equivalents of kiwifruit, which should provide $135,250 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses, to reimburse the borrowed funds, and to fund an adequate reserve. It is anticipated that the assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit handled will provide a reserve of $29,200 at the end of the fiscal year. Currently, there are no funds in the reserve. Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The assessment rate 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 1998–99 budget 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. The majority of California kiwifruit producers and handlers may be classified as small entities.

This rule continues a decrease in the assessment rate and continues a change in the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods 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. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is $0.0175 less than the 1997–98 assessment rate. The Committee unanimously recommended 1998–99 expenditures of $135,250. The quantity of assessable kiwifruit for the 1998–99 fiscal period is estimated at 2,705,000, 22-pound volume fill containers. Thus, the $0.05 rate should provide $135,250 in assessment income and be adequate to meet this year's expenses.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominant container being used by handlers within the industry.

Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal years:

Budget expense categories	1998–99	1997–98
Administrative Staff and Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food and Lodging	5.0	13.8
Accident and Health Insurance	3.8	12.2

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote California kiwifruit. The Committee and Commission share staff and expenses through an agency agreement.

The Committee borrowed the money from the Commission pursuant to § 920.41 of the order to cover a fund shortage during the 1997–98 fiscal period. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would be $225,000 for the 1997–98 fiscal period and that kiwifruit shipments would be 10 million trays or equivalents.

To lessen the financial burden on handlers, the Committee voted to reduce 1998–99 expenditures and the assessment rate. The reduced rate allows the Committee to meet its expenses, to reimburse the borrowed funds, and to establish an adequate reserve (estimated to be $29,200 at the end of the 1998–99 fiscal period). Currently, there are no funds in the reserve. Section 920.42 of the order provides for a maximum reserve equal to approximately 1 fiscal period's expenses.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. Alternative expense levels and assessment rates were considered at several industry strategic planning meetings. The assessment rate of $0.05 per 22-pound volume fill container or equivalent of assessable kiwifruit was determined by dividing the total recommended budget for 1998–99 by the quantity of assessable kiwifruit, estimated at 2,705,000 22-pound volume fill containers or equivalents.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicated that the grower price for the 1998–99 season would be approximately $7.59 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue is estimated at 0.7 percent.

This action continues a decrease in the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 July 8, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no 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 rule.

An interim final rule concerning this action was published in the **Federal Register** on August 20, 1998 (63 FR 44541). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 19, 1998, and 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.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 63 FR 44541 on August 20, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30121 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 11

[Docket No. 98–024–1]

Reorganization; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare and horse protection regulations by removing all references to ''Regulatory Enforcement and Animal Care'' and ''APHIS, REAC Sector Supervisor'' and replacing them with ''Animal Care'' and ''AC Regional Director,'' respectively. This final rule is necessary for the regulations to accurately reflect the current organizational structure of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20788–1231, (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

In 1996, the Regulatory Enforcement and Animal Care (REAC) program area of the Animal and Plant Health Inspection Service (APHIS) was reorganized and divided into the Investigative and Enforcement Services