

Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ Accordingly, 7 CFR part 371 is amended as follows:

PART 371—ORGANIZATIONS, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. In § 371.6, paragraph (b)(2) is revised to read as follows:

§ 371.6 Wildlife Services.

* * * * *

(b) * * *

(2) Providing direction and coordination for programs authorized by the Act of March 2, 1931 (7 U.S.C. 426 and 426b, as amended) and the Act of December 22, 1987 (7 U.S.C. 426c).

* * * * *

Done in Washington, DC, this 14th day of December, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04-27879 Filed 12-20-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV04-920-2 FIR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the

assessment rate established for the Kiwifruit Administrative Committee (committee) for the 2004-05 and subsequent fiscal periods from \$0.045 per 22-pound volume-fill container or container equivalent to \$0.002 per pound of kiwifruit. The committee locally administers 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.

DATES: Effective January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901; fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

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 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."

USDA 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 on August 1, 2004, and continue 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 USDA 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 USDA 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 USDA'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 action that decreased the assessment rate established for the committee for the 2004-05 and subsequent fiscal periods from \$0.045 per 22-pound, volume-fill container or container equivalent to \$0.002 per pound of kiwifruit. The California kiwifruit marketing order provides authority for the committee, with the approval of USDA, 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002-03 and subsequent fiscal periods, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on July 15, 2004, and unanimously recommended 2004-05 fiscal period expenditures of \$91,839 and an assessment rate of \$0.002 per pound of kiwifruit. In comparison, last fiscal period's budgeted expenditures were \$88,659. The assessment rate of \$0.002 per pound of kiwifruit is

\$0.000045 per pound lower than the rate previously in effect and is based upon a per-pound unit rather than upon a 22-pound, volume-fill container or container equivalent.

The committee unanimously recommended decreasing the assessment rate slightly because the 2004–05 fiscal period kiwifruit crop is expected to be 8,550,000 pounds larger than the 2003–04 crop of 41,850,000 pounds. Revenue from assessments, along with other revenue from interest income and reserve carryover funds, should allow the committee to meet its expenses. The reserve at the end of the fiscal period should be about \$30,686, which is within the maximum amount permitted under the marketing order.

The following table compares major budget expenditures recommended by the committee for the 2003–04 and 2004–05 fiscal periods:

Budget expense categories	2003–04	2004–05
Administrative Staff & Field Salaries	\$57,600	\$61,000
Travel	7,200	6,500
Office Costs/Annual Audit	14,075	14,555
Vehicle Expense Account	9,784	9,784

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses (\$91,839) minus the 2003–04 fiscal period carry forward (\$21,725), plus the 2005–06 fiscal period anticipated reserve (\$30,686), divided by the total estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of \$0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of \$91,839 and result in a reserve of \$30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period's expenses (\$ 920.41).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2004–05 fiscal period budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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 270 producers of kiwifruit in the production area and approximately 45 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000, and defines small agricultural service firms as those whose annual receipts are less than \$5,000,000.

None of the 45 handlers subject to regulation have annual kiwifruit sales of \$5,000,000. In addition, only six producers have annual sales of at least \$750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent fiscal periods from \$0.045 per 22-pound, volume-fill container or container equivalent to \$0.002 per pound of kiwifruit. The committee unanimously recommended 2004–05 fiscal period expenditures of \$91,839 and an assessment rate of \$0.002 per pound of kiwifruit. The assessment rate of \$0.002 per pound of kiwifruit is \$0.000045 lower than the rate during the 2003–04 fiscal period, and is based upon a per-pound

assessable unit rather than upon a 22-pound container or container equivalent. The quantity of assessable kiwifruit for the 2004–05 fiscal period is estimated to be 50,400,000 pounds of kiwifruit. Thus, the \$0.002 per-pound rate should provide \$100,800 in assessment income and be adequate to meet this fiscal period's expenses.

The following table compares major budget expenditures recommended by the committee for the 2003–04 and 2004–05 fiscal periods:

Budget expense categories	2003–04	2004–05
Administrative Staff & Field Salaries	\$57,600	\$61,000
Travel	7,200	6,500
Office Costs/Annual Audit	14,075	14,555
Vehicle Expense Account	9,784	9,784

The committee reviewed and unanimously recommended 2004–05 fiscal period expenditures of \$91,839, which included increases in salaries and office/annual audit costs, and a decrease in travel expenses. Prior to arriving at this budget, the committee considered alternative expenditure levels and varying crop sizes, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses (\$91,839) minus the 2003–04 fiscal period carry forward (\$21,725), plus the 2005–06 fiscal period anticipated reserve (\$30,686), divided by the total estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of \$0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of \$91,839 and result in a reserve of \$30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period's expenses (\$ 920.41).

A review of historical information and preliminary information pertaining to the 2004–05 fiscal period indicates that the grower price could range between \$9.50 and \$13.00 per pound of kiwifruit. Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total grower revenue could range between 0.015 and 0.021 percent.

This action continues in effect the action that decreased 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 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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.

USDA 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 September 16, 2004 (69 FR 55733). 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 USDA and 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 November 15, 2004, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920 which was published at 69 FR 55733 on September 16, 2004, is adopted as a final rule without change.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-27908 Filed 12-20-04; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 958 and 980

[Docket No. FV04-958-1 FIR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Relaxation of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onion varieties, and updates the regulatory text concerning certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in Idaho and Eastern Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule also continues in effect the action that relaxes the requirements for pearl and cipolline onions under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. Specifically, this rule continues in effect the action that changes the definition of pearl onions to mean onions 2 inches in diameter or less, establishes a relaxed minimum grade of U.S. No. 2 and relaxed minimum diameter of 1-1/2 inches for cipolline onions, and adds clarification and specificity to the reporting requirements for onions handled for peeling, chopping, or slicing. The changes will facilitate the marketing of onions handled under the marketing order, improve producer returns, and bring the section 8e import regulation

into conformity with the marketing order.

DATES: Effective Date: January 20, 2005.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The 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."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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