

Dated: July 20, 2000.

**Michael V. Dunn,**

*Under Secretary for Marketing and Regulatory Programs.*

For Part 371:

Dated: July 17, 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV00-920-3 IFR]

#### **Kiwifruit Grown in California; Decreased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.05 to \$0.03 per 22-pound volume fill container or equivalent 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 begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 15, 2000. Comments received by October 13, 2000, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-5698, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

Diane Purvis, Marketing Assistant or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, 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 complying 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, or E-mail: [Jay.Guerber@usda.gov](mailto: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 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 of Agriculture (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, 2000, 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 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 decreases the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.05 to \$0.03 per 22-pound volume fill container or equivalent of kiwifruit.

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 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 is normally formulated and discussed in a public meeting. A public meeting was held on July 11, 2000. Because a Committee quorum (eight Committee representatives) was not present at the meeting, the Committee voted on the budget and assessment rate by telephone on July 13, 2000. Thus, all directly affected persons were provided an opportunity to participate and provide input.

For the 1998-1999 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.

In the telephone conference call on July 13, 2000, the Committee unanimously recommended 2000-2001 expenditures of \$81,575 and an assessment rate of \$0.03 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$83,800. The assessment rate of \$0.03 is \$0.02 lower than the rate currently in effect.

The Committee voted to reduce 2000-2001 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal periods:

Budget expense categories	2000–2001	1999–2000
Administrative Staff & Field Salaries .....	52,000	56,000
Travel, Food & Lodging .....	9,500	7,500
Office Costs .....	12,000	14,000
Vehicle Expense Account .....	4,000	2,300
Annual Audit .....	4,075	4,000

The assessment rate recommended by the Committee was derived by considering the amount of funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide \$81,136 in assessment income at an assessment rate of \$.03 per container, \$439 less than the estimated expenses. Income derived from handler assessments, along with \$24,000 from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be \$23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of 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 2000–2001 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 initial 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 400 producers of kiwifruit in the production area and approximately 56 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) 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.

None of the 56 handlers subject to regulation have annual kiwifruit sales of at least \$5,000,000, excluding receipts from any other sources. Ten of the 400 producers subject to regulation have annual sales of at least \$500,000; and the remaining 390 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 decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.05 to \$0.03 per 22-pound volume fill container or equivalent. The Committee unanimously recommended 2000–2001 expenditures of \$81,575 and an assessment rate of \$0.03 per 22-pound volume fill container or equivalent. The assessment rate of \$0.03 is \$0.02 lower than the current rate. The quantity of assessable kiwifruit for the 2000–2001 fiscal period is estimated at 2,704,545 22-pound volume fill containers or equivalents. Thus, the \$0.03 rate should provide \$81,136 in assessment income, \$439 less than the estimated expenses.

The estimated assessments of \$81,136, combined with the \$24,000 from the Committee's operating reserve will allow the Committee to meet its expenses and to establish an adequate reserve (estimated to be \$23,561 at the

end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal years:

Budget expense categories	2000–2001	1999–2000
Administrative Staff & Field Salaries .....	52,000	56,000
Travel, Food & Lodging .....	9,500	7,500
Office Costs .....	12,000	14,000
Vehicle Expense Account .....	4,000	2,300
Annual Audit .....	4,075	4,000

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$81,575 which includes decreases in Administrative Staff and Field Salaries, and office costs. The Committee also unanimously recommended lowering the assessment rate from \$0.05 to \$0.03 to lessen the financial burden on handlers.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. These groups discussed alternate expenditure levels. The subcommittee looked at maintaining the assessment rate at its current level, but determined that handler financial burden should be lessened. The assessment rate of \$0.03 per 22-pound volume fill container or equivalent of assessable kiwifruit was recommended by the Committee and was derived by considering the funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit.

Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide \$81,136 in assessment income, \$439 less than the estimated expenses. Income derived from handler assessments, along with the \$24,000 from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be \$23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2000–2001 season will be approximately \$12.32 per 22-pound volume fill container or

equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue is estimated at 0.2 percent.

This action decreases 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 July 11, 2000, 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 11, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Additionally, all attendees were advised of the telephone conference call to be conducted on July 13, 2000. Finally, interested persons are 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.

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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after

publication in the **Federal Register** because: (1) The 2000–2001 fiscal period begins on August 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable kiwifruit beginning with the 2000–2001 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee during a telephone conference meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

##### § 920.213 Assessment rate.

On and after August 1, 2000, an assessment rate of \$0.03 per 22-pound volume fill container or equivalent is established for kiwifruit grown in California.

Dated: August 8, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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#### DEPARTMENT OF AGRICULTURE

#### 7 CFR Parts 3015, 3016 and 3019

**RIN 0503–AA16**

#### Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

**AGENCY:** Department of Agriculture

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA) is revising its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs and to identify exceptions to these general rules that apply only to entitlement programs

**DATES:** This rule is effective August 14, 2000. Implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year.

#### FOR FURTHER INFORMATION CONTACT:

Gerald Miske, Supervisory Management Analyst, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, Room 5411 South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250; FAX (202) 690–1529; telephone (202) 720–1553.

#### SUPPLEMENTARY INFORMATION:

##### Background

The administrative requirements for awards and subawards under all USDA entitlement programs are currently in 7 CFR part 3015, “Uniform Federal Assistance Regulations.” The corresponding requirements for awards and subawards to State and local governmental organizations under USDA nonentitlement programs are in subparts A through D of 7 CFR part 3016, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” The administrative requirements for awards and subawards to nongovernmental, non-profit organizations are in 7 CFR part 3019, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.” This final rule expands the scope of parts 3016 and 3019 to include entitlement programs, and deletes administrative requirements for awards and subawards under such programs from the scope of part 3015. It also establishes, in subpart E to part 3016, certain exceptions to the general administrative requirements that will apply only to the entitlement programs. The following text outlines the evolution of these changes.

On March 11, 1988, USDA joined other Federal agencies in publishing a final grants management common rule applicable to assistance relationships established by grants and cooperative agreements, and by subawards thereunder, to State and local governments (53 FR 8044). Prior to that date, administrative requirements for awards and subawards under all USDA