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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-97-05]

Tobacco Inspection: Subpart C—Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is revising the regulations under the Official Standard Grades for Burley Tobacco to remove from the definition of "Rework" the reference to a lot of tobacco exceeding an average bale weight of 100 pounds. This action is being taken because average bale weight is not a significant factor for determining the quality of tobacco, and classifying tobacco as "No Grade" solely because the average bale weight exceeds 100 pounds precludes producers from receiving an accurate description of their product at the marketplace.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, (202) 205-0567.

SUPPLEMENTARY INFORMATION: Notice was given (62 FR 35452, Tuesday, July 1, 1997) that the Department proposed to revise the Official Standard Grades for Burley Tobacco, U.S. Type 31 and Foreign Type 93, to delete the reference to a lot of tobacco exceeding an average bale weight of 100 pounds from the definition of "Rework." That provision had been added to the regulations in 1995 in response to a request from the tobacco industry. The basis of that request was that those bales within a lot exceeding 100 pounds had a higher potential for deterioration affecting the quality and value of the tobacco.

During the grading process, the USDA inspector looks at the total weight of the

lot listed on the inspection certificate and divides by the number of bales to ascertain the average bale weight. When a lot is identified as exceeding the average bale weight, it is classified as needing to be reworked and given the grademark "NO-G" meaning No Grade. The No Grade designation is also used to classify lots that are nested, offtype, semicured, damaged 20 percent or more, abnormally dirty, extremely wet or watered, contain foreign matter, or have an odor foreign to the type. A lot of tobacco that otherwise meets the specifications of a standard grade, but exceeds the 100 pound average bale weight criterion, is classified in a category of less desirable tobacco. This one factor precludes the producer from receiving an accurate description of their product at the marketplace.

After reviewing the average bale weight provision for two marketing seasons, the agency believes that it reduces the accuracy of applying the grade standards.

Interested parties were given an opportunity to comment on the proposed rule. A total of 16 separate comments were received. Those comments in favor of the proposal consisted of six separate comments and seven other comments signed by more than one individual (344 individuals signed these comments). The favorable comments stated that they were either opposed to AMS enforcing the 100 pound average bale weight provision or that they did not believe that the grading service should be involved in restrictions of weight of an individual bale of burley tobacco.

Three responses were in opposition to the proposal and stated they were in favor of AMS continuing to regulate bale weight, citing the desirability of uniform packaging and expressing concerns that bales of excessive weight increase the risk of damage to the tobacco, injuries to workers, and shipping problems. With regard to uniform packaging, the existing regulation provided for an average bale weight and did not assure uniformity between and among individual bales. With regard to the other concerns raised by the three commenters, the provisions for rework made final in this rule are the same as those provisions that originally existed for rework prior to the last two seasons. Again, the 100 pound average bale provision did not assure uniformity nor

did it necessarily eliminate any of the concerns raised by the comments. After consideration of all available information, we are eliminating the 100 pound average bale weight provisions and making this rule final as proposed.

After consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

This final rule has been determined not significant for the purpose of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this final rule.

Additionally, in conformance with the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are approximately 160 tobacco warehouses and approximately 250,000 producers.

The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision will amend the regulations to delete from the definition of "Rework" the reference to a lot of tobacco exceeding an average bale weight of 100 pounds. This action is being taken because average bale weight is not a significant factor for determining the quality of tobacco. Classifying tobacco as "No Grade" solely because the average bale weight exceeds 100 pounds precludes producers from receiving an accurate description of their product at the marketplace. This final rule will not substantially affect the normal movement of the commodity in the

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]

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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,