

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 920**

[Docket No. FV05-920-2 PR]

**Kiwifruit Grown in California; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate and change the assessable unit established for the Kiwifruit Administrative Committee (Committee) for the 2005-06 and subsequent fiscal periods from \$0.002 per pound of kiwifruit to \$0.045 per 9-kilo 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 6, 2005.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, 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:** Shereen Marino, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; 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](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 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 (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 proposed herein would be applicable to all assessable kiwifruit beginning on August 1, 2005, 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 would increase the assessment rate and change the assessable unit established for the Committee for the 2005-06 and subsequent fiscal periods from \$0.002 per pound of kiwifruit to \$0.045 per 9-kilo volume-fill container or equivalent 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 2004-05 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 June 28, 2005, and unanimously recommended 2005-06 expenditures of \$91,989 and an assessment rate of \$0.045 per 9-kilo volume-fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$91,839. The assessment rate of \$0.045 per 9-kilo volume-fill container or equivalent is about \$0.0003 per pound higher than the rate currently in effect. The higher assessment rate is needed because the 2004-2005 crop was smaller than expected and assessment income fell short of expenses. Reserve funds were used to meet the shortfall. The higher assessment rate should generate sufficient income to cover anticipated 2005-06 expenses and maintain an adequate reserve.

The following table compares major budget expenditures recommended by the Committee for the 2004-05 and 2005-06 fiscal periods:

Budget expense categories	2004-05	2005-06
Administrative Staff & Field Salaries .....	\$61,000	\$61,000
Travel .....	6,500	6,500
Office Costs/Annual Audit .....	14,555	14,705

Budget expense categories	2004-05	2005-06
Vehicle Expense Account .....	9,784	9,784

The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses (\$91,989), plus the desired 2006 ending reserve (\$35,010), minus the 2005 beginning reserve (\$15,524), divided by the total estimated 2005-06 shipments (2,475,000 9-kilo volume-fill containers). An additional \$100 in interest income is also anticipated, bringing the total projected 2005-06 revenue to \$111,475. This calculation requires the \$0.045 per 9-kilo volume-fill container assessment rate. This rate should provide sufficient funds to meet the anticipated expenses of \$91,839 and result in a July 2006 ending reserve of \$35,010, which is within the authorized reserve permitted by the order. The authorized reserve is approximately one fiscal period's expenses (\$ 920.41).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2005-06 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Initial 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 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 45 handlers of California kiwifruit subject to regulation under the marketing order and approximately 275 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR

121.201) as those whose annual receipts are less than \$6,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

None of the 45 handlers subject to regulation have annual kiwifruit sales of at least \$6,000,000. In addition, six growers subject to regulation have annual sales exceeding \$750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule would increase the assessment rate and change the assessable unit established for the Committee and collected from handlers for the 2005-06 and subsequent fiscal periods from \$0.002 per pound of kiwifruit to \$0.045 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2005-06 expenditures of \$91,989 and an assessment rate of \$0.045 per 9-kilo volume-fill container or equivalent of kiwifruit. The proposed assessment rate of \$0.045 is \$0.0003 higher than the 2004-05 rate. The quantity of assessable kiwifruit for the 2005-06 fiscal period is estimated at 2,475,000 9-kilo volume-fill containers or equivalent of kiwifruit. Thus, the \$0.045 rate should provide \$111,375 in assessment income and be adequate to meet this year's expenses.

The following table compares major budget expenditures recommended by the Committee for the 2004-05 and 2005-06 fiscal years:

Budget expense categories	2004-05	2005-06
Administrative Staff & Field Salaries .....	\$61,000	\$61,000
Travel .....	6,500	6,500
Office Costs/Annual Audit .....	14,555	14,705
Vehicle Expense Account .....	9,784	9,784

The Committee reviewed and unanimously recommended 2005-06 expenditures of \$91,989, which included an increase in audit expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, 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: Anticipated expenses (\$91,989), plus the desired 2006 ending reserve (\$35,010), minus the 2005 beginning

reserve (\$15,524), divided by the total estimated 2005-06 shipments (2,475,000 9-kilo volume-fill containers). This calculation resulted in the \$0.045 per 9-kilo volume-fill container assessment rate. This rate would provide sufficient funds to meet the anticipated expenses of \$91,989 and result in a July 2006 ending reserve of \$35,010, which is within the authorized reserve permitted by the order. The authorized reserve is approximately one fiscal period's expenses (\$ 920.41). An additional \$100 in interest income is

also anticipated, bringing the total projected 2005-06 revenue to \$111,475.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2005-06 season could be about \$8.09 per 9-kilo volume-fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2005-06 fiscal period as a percentage of total grower revenue is estimated at about 0.56 percent.

This action would increase the assessment obligation imposed on

handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would 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 28, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 2005-06 fiscal period began on August 1, 2005, 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) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be 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, 2005, an assessment rate of \$0.045 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: August 11, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-16207 Filed 8-15-05; 8:45 am]

**BILLING CODE 3410-02-P**

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#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NE-31-AD]

#### **Airworthiness Directives: Rolls-Royce plc RB211-535 Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The FAA is withdrawing a notice of proposed rulemaking (NPRM). That NPRM proposed a new airworthiness directive (AD) that applies to certain Rolls-Royce plc (RR) models RB211-535C-37, RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 turbofan engines. The NPRM had applied to those engines with radial drive steady bearing part number (P/N) LK76084 installed, with fewer than 3,000 engine operating hours on the bearing. That proposed action would have required initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure. If after finding evidence, the proposed action would have required a visual inspection of the radial drive steady bearing for damage and evidence of bearing debris. Since we issued that NPRM, RR notified us that all at-risk radial drive steady bearings are removed from service. RR also notified us that remaining bearings in service are now well over the 3,000-engine-operating-hour threshold and are no longer at risk. Accordingly, we withdraw the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7178; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Rolls-Royce plc (RR) models RB211-535C-37, RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 turbofan engines. The proposed AD would have applied to those engines with radial drive steady bearing, P/N LK76084 installed, with fewer than 3,000 engine-operating-hours on the bearing. We published the proposed AD in the **Federal Register** on October 9, 2003, (68 FR 58291). That proposed action would have required initial and repetitive visual inspections of the engine oil scavenge filter for evidence of radial drive steady bearing failure. If evidence was found, that proposed action would have required a visual inspection of the radial drive steady bearing for damage and evidence of bearing debris. That proposed action was prompted by notification from the Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K. The CAA notified us that an unsafe condition may exist on RR models RB211-535C-37, RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 turbofan engines. The unsafe condition had applied to those engines with radial drive steady bearing P/N LK76084 installed with fewer than 3,000 engine operating hours on the bearing. The CAA received reports of seven low time failures of radial drive steady bearings within a four-month period. These failures were not detected through routine magnetic chip detector monitoring because the failed bronze bearing cages are nonmagnetic, and the cage failure mode is rapid. The proposed actions intended to prevent a possible dual-engine in-flight shutdown caused by radial drive steady bearing failure.

Since the issuance of that NPRM, RR notified us that all at-risk radial drive steady bearings are removed from service. RR also notified us that the remaining bearings in service are now well over the 3,000-engine-operating-hour threshold and are no longer at risk.

Upon further consideration, we hereby withdraw the proposed rule for the following reasons:

- After RR notifying us of the removal from service and bearing threshold information, stated previously.