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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV05-920-2 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate and changes 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. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 29, 2005.

**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 issued herein will 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 increases the assessment rate and changes 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 continued 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 assessment rate established in this rule 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 will be in effect 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 2005-06 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 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 increases the assessment rate and changes 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 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 will 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 will 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 will 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.

This final rule 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.

The proposed rule concerning this action was published in the **Federal Register** on August 16, 2005 (70 FR 48082). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period ending September 6, 2005, was provided to allow interested persons to respond to the proposal. 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 matter 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) 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. In addition, a 20-day comment period was provided for in the proposed rule.

#### 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 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: September 22, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–19309 Filed 9–27–05; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 201

#### [Regulation A]

#### Extensions of Credit by Federal Reserve Banks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

**DATES:** The amendments to part 201 (Regulation A) are effective September 28, 2005. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Johnson, Secretary of the Board ((202) 452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve

Banks, thereby increasing from 4.50 percent to 4.75 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 5.00 percent to 5.25 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 3.50 percent to 3.75 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

Output appeared poised to continue growing at a good pace before the tragic toll of Hurricane Katrina. The widespread devastation in the Gulf region, the associated dislocation of economic activity, and the boost to energy prices imply that spending, production, and employment will be set back in the near term. In addition to elevating premiums for some energy products, the disruption to the production and refining infrastructure may add to energy price volatility.

While these unfortunate developments have increased uncertainty about near-term economic performance, it is the Committee's view that they do not pose a more persistent threat. Rather, monetary policy accommodation, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Higher energy and other costs have the potential to add to inflation pressures. However, core inflation has been relatively low in recent months and longer-term inflation expectations remain contained.

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

#### Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.