Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–SC–22–0058]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Kiwifruit Administrative Committee (Committee) to increase the assessment rate established for the 2022–23 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 2, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted to the Docket Clerk electronically by email: *MarketingOrderComment@usda.gov* or via the internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: *https://www.regulations.gov.* Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Gary D. Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5903, or email: *Kathie.Notoro@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California. Part 920 (referred to as ''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 Committee locally administers the Order and is comprised of growers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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, 2022, and continue until amended, suspended, or terminated.

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 Department of Agriculture (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 no later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs for goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate established for the 2022–23 and subsequent fiscal periods from $0.025 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit handled. The proposed higher rate is the result of the significantly smaller expected 2022 kiwifruit crop. The higher rate would allow the Committee to fund 2022–23 fiscal

period budgeted expenditures without depleting its financial reserve.

For the 2018–19 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on July 26, 2022, and unanimously recommended 2022–23 fiscal period expenditures of $132,200 and an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit handled to fund Committee expenses. In comparison, last year's budgeted expenditures were $101,200. The proposed assessment rate of $0.035 is $0.010 more than the rate currently in effect. The Committee recommended increasing the assessment rate due to a much lower expected volume of kiwifruit produced as a result of strong north winds and late spring frosts during the growing season. The abnormal weather impacted the crop in varying degrees throughout the state, from an estimated 100 percent crop loss of some blocks in the north to lesser effect in the south. In addition, the Committee's budget increased $31,000 over the previous year to cover increased management costs and the cost of the Committee hosting the International Kiwifruit Organization this year in Sacramento.

The Committee's crop estimate for the 2022–23 fiscal period of 3,181,818 9-kilo volume-fill containers or equivalent, multiplied by the current assessment rate of $0.025 per container, would not generate sufficient assessment income to fund anticipated expenses. The proposed assessment rate of $0.035 per 9-kilo volume-fill container or equivalent would generate assessment income of approximately $111,364. Assessment income at the proposed rate, combined with $20,816 in financial reserve funds and interest income, should provide sufficient funds for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the Order (§ 920.42).

Major expenditures recommended by the Committee for the 2022–23 fiscal period include: $90,000 for management expenses; $25,000 for the International Kiwifruit Organization (IKO) membership and hosting, planning, and staffing of the IKO conference to be held in Sacramento; and $9,700 for administrative expenses. Major budgeted expenses for the 2021–22 fiscal period were $80,000 for management expenses, $8,700 for administrative expenses, and $7,500 for financial audits.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of California kiwifruit, and the level of funds in reserve. Kiwifruit shipments for the year are estimated at 3,181,818 9-kilo volume-fill containers, which should provide $111,364 in assessment income at the $0.035 rate. Anticipated income derived from handler assessments, along with $20 in interest income and $20,816 from the Committee's authorized financial reserve, should provide sufficient funding to cover budgeted expenses. The Committee anticipates that $53,749 would remain in the financial reserve at the end of 2022–23 fiscal period on July 31, 2023, which would be within the maximum amount permitted by the Order of approximately one fiscal period's expenses (§ 920.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS 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. Dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS evaluates 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 2022–23 budget, and those for subsequent fiscal periods, are reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed 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 businesses 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.

There are 124 kiwifruit growers in the production area and 20 handlers subject to regulation under the Order. Small agricultural growers are defined by the Small Business Administration (SBA) as those having annual receipts less than $3,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), total California kiwifruit production reported for the 2022 season was 39,940 tons, with an average price of $2,440 per ton, or $1.22 per pound ($2,440 per ton divided by 2,000 pounds per ton). Based on the kiwifruit production and price information from NASS, as well as the total number of California kiwifruit growers, average annual grower revenue is approximately $785,916 (39,940 tons multiplied by $2,440 per ton divided by 124 growers), which is less than the $3,000,000 SBA threshold. Thus, the majority of California kiwifruit growers may be classified as small businesses.

In addition, according to AMS Market News data, the reported average terminal market price for California kiwifruit for 2021 was $24.23 per 9-kilo container. After converting the NASS 2021 California kiwifruit production estimate of 39,940 tons to 9-kilo containers (39,940 tons times 2,000 pounds divided by 19.8 pounds per 9-kilo container yields 4,034,343 containers) and multiplying that quantity by $24.23, the total value of the 2021 California kiwifruit shipments is estimated to be $97,752,141. Dividing this figure by the 20 regulated handlers yields estimated average annual handler receipts of $4,887,607, well below the $30 million SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of handlers of California kiwifruit may be classified as small businesses.

This proposal would increase the assessment rate collected from handlers for the 2022–23 and subsequent fiscal periods from $0.025 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2022–23 expenditures of $132,200 and an assessment rate of $0.035 per 9-kilo volume-fill container. The proposed assessment rate of $0.035 is $0.010 higher than the 2021–22 fiscal period rate. The quantity of assessable kiwifruit for the 2022–23 fiscal period is estimated at 3,181,818 9-kilo volume-fill containers. Thus, the $0.035 rate should

provide $111,364 in assessment income (3,181,818 9-kilo volume-fill containers multiplied by $0.035). Income derived from handler assessments, along with the Committee's financial reserve funds and interest income, would be adequate to cover budgeted expenses, while maintaining its financial reserve within the maximum amount permitted by the Order of approximately one fiscal period's expenses (§ 920.42).

Major expenditures recommended by the Committee for the 2022–23 fiscal period include: $90,000 for management expenses; $25,000 for the International Kiwifruit Organization (IKO) membership and hosting, planning, and staffing of the IKO conference to be held in Sacramento; and $9,700 for administrative expenses. Budgeted expenses for the 2021–22 fiscal period were $80,000 for management expenses, $8,700 for administrative expenses, and $7,500 for financial audits.

Prior to arriving at the recommended assessment rate, the Committee considered alternative levels of assessment, including maintaining the current assessment rate, but ultimately determined that such alternative rates would not generate sufficient revenue to meet budgeted expenses. The recommended assessment rate of $0.035 per 9-kilo container or equivalent of assessable kiwifruit was derived by considering anticipated expenses, the projected volume of assessable kiwifruit, the Committee's financial reserve, and additional pertinent factors.

According to NASS data, the 2021 season average grower price was $2,440 per ton, or $24.16 per 9-kilo container ($2,440 divided by 2,000 pounds times 19.8 pounds (9 kilograms equals approximately 19.8 pounds)). At the proposed assessment rate of $0.035 per 9-kilo container, assessments as a percentage of revenue would be approximately 0.145 percent ($0.035 divided by $24.16).

This action would increase the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

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 26, 2022, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 920 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, 2022, an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Melissa R. Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–28369 Filed 12–30–22; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–22–0070]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2023–2024 Marketing Year

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2023–2024 marketing year.

DATES: Comments must be received by February 2, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted by mail to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938 or electronically by Email: *MarketingOrderComment@usda.gov* or internet: *https://www.regulations.gov.* Comments should reference the