

# Rules and Regulations

Federal Register

Vol. 62, No. 166

Wednesday, August 27, 1997

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV97-920-1 FR]

#### Kiwifruit Grown in California; Revision of Administrative Rules Pertaining to Delinquent Assessments

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the time periods specified for timely payment of assessments owed by handlers under the Federal marketing order for kiwifruit grown in California. This rule reduces the time periods specified for timely payments of assessments from 60 days of invoice for in-line inspection and from 45 days of invoice for block inspection, to 30 days of invoice for both types of inspection. It also allows the Kiwifruit Administrative Committee (committee) to further revise this time period to a later time period, in the future, if deemed necessary and approved by the committee. This rule will contribute to the efficient operation of the program, and will reduce the administrative and accounting burden for handlers and the committee staff.

**EFFECTIVE DATE:** August 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey St., Suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906 or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, 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 Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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. A 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 date of the entry of the ruling.

This final rule revises the time periods specified for timely payment of assessments owed by handlers under the Federal marketing order for kiwifruit grown in California. Under § 920.41(a) of the order, each person who first handles kiwifruit is required to pay a pro-rata share of the costs of administering the program. This cost is in the form of a uniform assessment rate

applied to each handler's shipments. Section 920.41(a) also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both. Section 920.112 of the order's administrative rules specifies that a simple interest rate of 1.5 percent per month will be charged to assessments which are not received within 60 days of invoice for in-line inspected kiwifruit or within 45 days of invoice for block inspected kiwifruit. It further specifies that a 10 percent late charge will be assessed handlers when payment becomes 30 days late.

The committee, the agency responsible for local administration of the marketing order, met on April 16, 1997, and unanimously recommended revising the administrative rules in effect under the order pertaining to the time period specified for timely payment of assessments owed by handlers. The committee recommended reducing the time period for timely payment of assessments owed by handlers from 60 days of invoice for in-line inspection and from 45 days of invoice for block inspection, to 30 days of invoice for both types of inspection. The committee also requested that § 920.112 of the rules and regulations be revised to allow the committee to further revise this time period in the future, if deemed necessary.

Kiwifruit grown in California is harvested in late September or early October. The fruit is packed shortly after harvest and much of it is placed into storage until shipment. The primary shipping season extends through the following May, although some fruit is marketed during the summer months.

Whenever grade, size, quality, or maturity requirements are in effect for California kiwifruit, handlers are required to have their fruit inspected and certified as meeting those requirements. Handlers have a choice of two different inspection methods, referred to as "in-line" and "block" inspection. With in-line inspection, kiwifruit is inspected during the packing process, prior to storage. With block inspection, the kiwifruit is inspected after it has been packed. Block inspections are typically performed just prior to shipment.

Pursuant to § 920.160, each shipper who ships kiwifruit shall furnish a

report of shipment and inventory data to the committee not later than the fifth day of the month following such shipment. This Monthly Shipment Report is also required under the State kiwifruit program administered by the California Kiwifruit Commission (commission). The Federal and State programs are both administered by the same staff.

The committee staff calculates assessments from the Monthly Shipment Report for all inspected kiwifruit and bills handlers for committee and commission assessments. The billing period runs from the first to the last day of the month for all handlers. Invoices are typically prepared and mailed at the end of the month of receipt of the Monthly Shipment Report, with payment due 60 days from date of invoice for in-line inspected kiwifruit and 45 days from date of invoice for block inspected kiwifruit.

Approximately a month before the start of the 1996–1997 season, the commission reduced its time period to specify that assessments were considered late if not received within 30 days of invoice. The committee did not recommend a change in its requirements at that time because there was not adequate time to implement such a change for the 1996–1997 crop year. Operating under two different time periods for timely payment of assessments requires the committee staff to process and mail two invoices each month and requires the handlers to review two invoices and make two payments. Thus, this final rule will reduce costs for handlers and the committee by making the procedure under both programs the same.

The committee met on April 16, 1997, and recommended reducing the time periods for timely payment of assessments owed by handlers to 30 days of invoice so that the committee's time period will be consistent with the commission's time period and further recommended that this rule be effective in September for the 1997–1998 season.

The committee also recommended including authority to revise this time period in the future, if deemed necessary and approved by the committee. The committee wants to ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future. The Department believes the committee should be granted authority to increase the time period; however, a reduction in the time period should be subject to the informal rulemaking process. The committee's

recommendation is modified accordingly.

This action revises § 920.112 to provide that assessments on all kiwifruit be considered delinquent if not received within 30 days of invoice, or such other later time as specified by the committee.

There is unanimous committee support to reduce the time periods specified for timely payment of assessments owed by handlers to within 30 days of invoice for both types of inspections.

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, the 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 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 60 handlers of California kiwifruit subject to regulation under the marketing order and 450 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least \$5,000,000, and the remaining 59 handlers have sales less than \$5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least \$500,000, and the remaining 440 producers have sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of handlers and producers of California kiwifruit may be classified as small entities.

Under § 920.41(a) of the marketing order for kiwifruit grown in California, each person who first handles kiwifruit is required to pay a pro-rata share of the costs of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. Section 920.41(a) also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest

or late payment charge, or both. Section 920.112 of the order's administrative rules specifies that a simple interest rate of 1.5 percent per month will be charged to assessments which are not received within 60 days of invoice for in-line inspected kiwifruit or within 45 days of invoice for block inspected kiwifruit. It further specifies that a 10 percent late charge will be assessed handlers when payment becomes 30 days late.

Pursuant to § 920.160, each shipper who ships kiwifruit shall furnish a report of shipment and inventory data to the committee not later than the fifth day of the month following such shipment. This Monthly Shipment Report is also required under the State kiwifruit program administered by the California Kiwifruit Commission. The Federal and State programs are both administered by the same staff.

The committee staff calculates assessments from the Monthly Shipment Report for all inspected kiwifruit and bills handlers for committee and commission assessments. The billing period runs from the first to the last day of the month for all handlers. Invoices are typically prepared and mailed at the end of the month of receipt of the Monthly Shipping Report, with payment due 60 days from date of invoice for in-line inspected kiwifruit and 45 days from date of invoice for block inspected kiwifruit.

Approximately a month before the start of the 1996–1997 season, the commission reduced its time period to specify that assessments will be considered late if not received within 30 days of invoice. The committee did not recommend a change in its requirements at that time because there was not adequate time to implement such a change for the 1996–1997 crop year. Two different time periods for timely payment of assessments requires the committee staff to process and mail two invoices each month and require the handlers to review two invoices and make two payments. Thus, this final rule will reduce costs for handlers and the committee by making the procedures under both programs the same.

The committee met on April 16, 1997, and recommended revising § 920.112 to provide that the time periods for timely payment of assessments owed by handlers be reduced to 30 days of invoice so that the committee's time period will be consistent with the commission's time period and further recommended that this rule be effective in September for the 1997–1998 season. The committee also recommended including authority to revise this time

period in the future, if deemed necessary. The committee wants to ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future.

There is unanimous committee support to reduce the time periods specified for timely payment of assessments owed by handlers to 30 days of invoice for both types of inspections.

Currently, the time lapse between the date the fruit is shipped and the date assessments are due is between 60–90 days. Handlers normally receive payment for shipments within 30 days of shipment. Therefore, the impact of this action will not be significant as payments for shipments are normally received 30–60 days before assessments are due.

For the 1997–98 season, handlers will pay assessments of \$.0225 per tray or tray equivalent and have 60 days from date of invoice for in-line inspected kiwifruit and have 45 days from date of invoice for block inspected kiwifruit to pay their assessments before their assessments are considered delinquent. If handlers pay their assessments in a timely manner, they are not charged the simple interest rate of 1.5 percent per month nor the 10 percent late charge.

Under this rule, handlers will have 30 days from the invoice date before their assessments will be considered delinquent. This 30-day reduction in the time period for handlers receiving in-line inspection and 15-day reduction in the time period for handlers receiving block inspection will have no impact on handlers who pay their assessments in a timely manner. Even for those who do not pay in a timely manner, the impact will not be significant. For example, if a handler is delinquent in paying assessments, a simple interest rate of 1.5 percent interest per month and an assessment of \$.0225 per tray or tray equivalent will apply. During the peak month of March 1996, less than 1.6 million trays or tray equivalents were shipped. This equates to an approximate average of 26,667 trays for each of the 60 handlers, which when assessed at \$.0225 per tray generates a \$600 assessment per handler. If an account is 30 days delinquent, the handler is charged a 1.5 percent interest charge in the amount of \$9.00 and a 10 percent late charge in the amount of \$60.00 over the assessment. This action does not change the interest rate nor the late charge percentage, but reduces the time period specified for timely payment to 30 days. If amounts are paid in a timely manner, no additional charges are incurred. The majority of assessments

owed by handlers are paid within the specified time periods.

This change will reduce the administrative and accounting burden for handlers and for the committee staff by making the committee's and the commission's time periods consistent. While no specific alternatives were suggested during the public meeting, the committee's recommendation and the rule finalized herein do provide for built-in alternatives and flexibility. Allowing the committee to further revise this time period to a later time period in the future, if deemed necessary, will ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future. This rule will be applied uniformly to all handlers and was viewed by the committee as the best solution.

This action will not impose any additional reporting or recordkeeping requirements on either small or large 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 final rule.

In addition, the committee's meeting was widely publicized throughout the 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 April 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was issued by the Department on June 30, 1997, and published in the **Federal Register** on Monday, July 7, 1997 (62 FR 36231). Copies of the rule were mailed to all Committee members and kiwifruit handlers. The rule was also made available through the Internet by the Office of the Federal Register. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations 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 this change should apply to all kiwifruit shipped during the

season. Such shipments can begin as early as September. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

#### 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 920.112 is revised to read as follows:

##### § 920.112 Late payments.

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit shall be deemed late if not received within 30 days of invoice, or such other later time period as specified by the committee. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

Dated: August 21, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–22710 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–02–P

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#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 225

[Regulation Y; Docket No. R–0958]

#### Bank Holding Companies and Change in Bank Control (Regulation Y); Amendments to Restrictions in the Board's Section 20 Orders

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

**ACTION:** Final Conditions to Board Orders.

**SUMMARY:** The Board is modifying the prudential limitations established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is eliminating those restrictions that have proven to be unduly burdensome or unnecessary in light of other laws or regulations, and