

Rules and Regulations

Federal Register

Vol. 61, No. 238

Tuesday, December 10, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV96-920-3 FIR]

Kiwifruit Grown in California; Reduction of Reporting Requirements

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 reducing the reporting requirements for California kiwifruit handlers who ship less than 10,000 trays or tray equivalents per fiscal year. The changes in reporting requirements were unanimously recommended by the Kiwifruit Administrative Committee (Committee), the agency responsible for the local administration of the Federal marketing order for kiwifruit grown in California. This final rule decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax # (209) 487-5906; or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127, 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 2523-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." This 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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 65 handlers of kiwifruit who are subject to regulation under the marketing order and approximately 500 producers of kiwifruit in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of kiwifruit handlers and producers may be classified as small entities.

This rule finalizes a reduction in the number of reports required to be filed by small kiwifruit handlers (those who handle less than 10,000 tray equivalents per year). The decrease in the number of reports required to be filed should not inhibit the effective operation of the order. It is estimated that less than 100,000 tray equivalents will be shipped by those eligible for the reduced reporting requirement, or approximately one percent of California kiwifruit production. A majority of these small volume handlers, eligible for the reduced reporting requirement, sell fruit for two to five growers. Generally, kiwifruit shipments are small and may consist of less than 50 trays at a time. Shipment information from these small volume handlers will be added into the total shipments at the end of each fiscal year. The lack of shipment information that will be provided by these handlers on a monthly basis is insignificant. The Committee is still able to levy assessments on those handlers eligible for the reduced reporting requirement based on the information in the shipment reports that is still required twice per season.

This rule directly benefits small kiwifruit handlers. It is anticipated that approximately 20 of the 65 handlers are eligible for the reduced reporting burden authorized by this rule. These handlers will not be required to file biweekly inventory reports and will be required to file shipment reports less frequently. It is estimated that the reporting burden for each of these 20 handlers will decrease by an average of 12 hours per year, for a total reduction of 240 hours.

The range of volume of kiwifruit handled by kiwifruit handlers is extremely broad with some handlers handling as few as 50 tray equivalents and others over 1 million tray equivalents. The majority of handlers fall in the middle and on average ship between 100,000 and 800,000 tray equivalents.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was issued on September 27, 1996, and published in the Federal Register (61 FR 51575, October 3, 1996), with an effective date of October 4, 1996. That rule amended § 920.160 (a) and (b), of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended November 4, 1996. No comments were received.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. In addition, the order authorizes the Committee to collect information from kiwifruit handlers in order to efficiently operate the program.

The Committee met on June 12, 1996, and unanimously recommended reducing the reporting burden for handlers who ship less than 10,000 tray equivalents per season. Such handlers, if they qualified with the Committee, will no longer be required to complete biweekly inventory reports and will only be required to fill out a monthly shipment report twice per year.

Section 920.60 of the order authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Prior to the effective date of the interim final rule, section 920.160(a) of the order's rules and regulations required a report of shipments to be filed with the Committee by the fifth day of the month following such shipment, or such other later time established by the Committee. This report is used to compile statistical information on shipments and to calculate assessments owed under the marketing order. Pursuant to § 920.160(b) each handler had to file a Kiwifruit Inventory Shipment System (KISS) report on the fifth and twentieth day of each month. The information collected in the KISS report is used to track inventories of California kiwifruit and provide inventory statistics, in aggregate, to the industry. Both of these reports are also required under the authority of the California Kiwifruit

Commission (State Commission), which administers a State program.

Prior to the 1995–96 season, the State Commission determined that the reporting burden of the KISS report and the shipment report was disproportionately impacting small volume handlers. As a result, the State Commission created an alternate reporting system, known as "Reporting EZ." It allows handlers who ship less than 10,000 tray equivalents per season to file the shipment report twice per season instead of monthly and exempts handlers from filing the KISS report.

Similarly, this rule reduces the frequency that the shipment report is filed and eliminates the filing of a KISS report for those handlers that ship less than 10,000 trays or tray equivalents per fiscal year so that the "Reporting EZ" program is authorized under both the State program and the Federal order. Handlers shipping under 10,000 trays or tray equivalents per season only have to fill out the shipment report twice per year. The first report is due January 5 or such other later time established by the Committee and includes information on fresh shipments from the beginning of the fiscal year (August 1 through December 31). The second shipment report is due the fifth day of the month following each handler's last shipment for the season and includes shipments from January 1 until the end of shipping season.

In order for a handler to qualify for the "Reporting EZ" program, the Committee must make a determination prior to October 31 (near the beginning of the shipping season). The information that the Committee will use to determine whether a handler is qualified is available from the State Commission. The State Commission already requires handlers to submit information in order to determine whether a handler intends to ship under 10,000 tray equivalents per year. Thus, the Committee does not need to place any additional reporting burden on kiwifruit handlers in order to determine handler eligibility for the "Reporting EZ" program. The State Commission and the Committee have a written memorandum of understanding that provides for the sharing of information while keeping proprietary information confidential. Once the handler has qualified, the Committee will then notify handlers that they are eligible for the "Reporting EZ" program.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork

Reduction Act (Pub. L. 104–13) and have been assigned OMB number 0581–0149.

This final rule reduces the reporting burden on approximately 20 handlers of kiwifruit who have been spending approximately 240 hours completing the shipment reports and the KISS reports.

After consideration of all relevant material presented, the information and recommendation submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 51575, October 3, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 61 FR 51575 on October 3, 1996, is adopted as a final rule without change.

Dated: December 4, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31350 Filed 12–9–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its assessment regulations by adopting interpretive rules pertaining to transactions in which an institution belonging to one insurance fund acquires deposits that are treated as insured by the other insurance fund (Oakar transactions). The FDIC is codifying and refining its procedures for determining the amount of the deposits so acquired and for attributing the deposits to the two insurance funds. In addition, recent merger and branch-sale cases have revealed certain weaknesses in the FDIC's procedures for computing the growth of the amounts so attributed.