

**PART 911—LIMES GROWN IN FLORIDA****PART 944—FRUITS, IMPORT REGULATIONS**

Accordingly, the interim final rule amending 7 CFR parts 911 and 944 which was published at 62 FR 30429 on June 4, 1997, is adopted as a final rule without change.

Dated: August 18, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-22580 Filed 8-25-97; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 920**

[Docket No. FV97-920-3 IFR]

**Kiwifruit Grown in California; Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate established for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1997-98 and subsequent fiscal periods. The Committee is responsible for local administration of 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 assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** August 27, 1997. Comments received by September 25, 1997, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California

Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

**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 marketing 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. 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 August 1, 1997, and continuing 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 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate for the Committee for the 1997-98 and subsequent fiscal periods from \$0.0175 to \$0.0225 per tray or tray equivalent.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Section 920.41 also authorizes the Committee to borrow funds. The members of the Committee consist of producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with 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 in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For 1996-1997 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from season to season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information available to the Secretary.

The Committee met on June 25, 1997, and unanimously recommended 1997-98 expenditures of \$161,286 and an assessment rate of \$0.0225 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$178,598. The assessment rate of \$0.0225 cents per tray or tray equivalent is \$0.0050 cents higher than the rate currently in effect. The 1996-97 kiwifruit crop was short 3.3 million trays or tray equivalents of the projected crop estimate. The Committee met in February, 1997, and approved the borrowing of funds to cover expenses for the remainder of the 1996-97 season. The Committee has borrowed \$11,052 as of May 31, 1997, and estimates that an additional \$22,401 may be needed to cover expenses through the end of the fiscal period. As the Committee's reserve is depleted, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to begin to establish an adequate reserve. The order provides for a maximum reserve equal to

approximately one fiscal period's expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of \$0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended that the major expenditures for the 1997-98 year should include \$102,200 for administrative staff and field salaries, \$13,825 for travel, food, and lodging; and \$12,200 for accident and health insurance. Budgeted expenses for these items in 1996-97 were \$108,500, \$20,398, and \$13,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of California kiwifruit, and additional pertinent factors. Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents of kiwifruit which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income will be adequate to cover budgeted expenses, reimbursement of borrowed funds, and to fund an adequate reserve. Future reserve funds will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1997-98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 450 producers of kiwifruit in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. 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.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent fiscal periods from \$0.0175 to \$0.0225 per tray or tray equivalent. The Committee unanimously recommended 1997-98 expenditures of \$161,286 and an assessment rate of \$0.0225 per tray or tray equivalent of kiwifruit. The assessment rate of \$0.0225 is \$0.0050 more than the rate currently in effect. The 1996-97 kiwifruit crop was short 3.3 million trays or tray equivalents of the estimated crop. The Committee met in February, 1997, and approved borrowing funds to cover expenses for the remainder of the 1996-97 season. The Committee has borrowed \$11,052 as of May 31, 1997, and estimates that an additional \$22,401 may be needed to cover expenses through the end of the fiscal period. As the Committee's reserve is depleted and funds have been borrowed to meet the remaining 1996-97 expenses, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the

borrowed funds, and to establish an adequate reserve.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of \$0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The Committee also considered reducing the compliance staff by two personnel, but determined that one part-time position would be eliminated. The Committee recommended that the major expenditures for the 1997-98 fiscal period should include \$102,200 for administrative staff and field salaries, \$13,825 for travel, food, and lodging; and \$12,200 for accident and health insurance. Budgeted expenses for these items in 1996-97 were \$108,500, \$20,398, and \$13,000, respectively.

Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses and the shortage of funds resulting from the 1996-97 crop shortage. As the Committee's reserve is depleted, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve. Funds in the reserve will be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1997-98 season is estimated to be approximately \$1.62 per tray or tray equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1997-98 crop year period as a percentage of total grower revenue would be approximately 1.4 percent.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments 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 California and 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 June 25, 1997, 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 action will 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.

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

After consideration of all relevant material 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997-98 fiscal period begins on August 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (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; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### **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.

#### **§ 920.213 [Amended]**

2. Section 920.213 is amended by removing "August 1, 1996," and adding in its place "August 1, 1997," and by removing "\$0.0175 and adding in its place "\$0.0225."

Dated: August 18, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-22579 Filed 8-25-97; 8:45 am]

BILLING CODE 3410-02-P

### **DEPARTMENT OF JUSTICE**

#### **Immigration and Naturalization Service**

#### **8 CFR Parts 3, 103, and 240**

[EOIR No. 114F; A.G. Order No. 2106-97]

RIN 1125-AA15

#### **Fees for Motions to Reopen or Reconsider**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies when and how fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for which a fee is chargeable. This final rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Immigration and Naturalization Service (the "Service") and the Board of Immigration Appeals (the "Board") have appellate jurisdiction, respectively.

**DATES:** This final rule is effective September 25, 1997.

#### **FOR FURTHER INFORMATION CONTACT:**

Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305-0470, or Ernest B. Duarte, Branch Chief, Immigration and Naturalization Service, Office of Examinations, Benefits Division, 425 I Street NW., Suite 3214, Washington, DC 20536, telephone (202) 307-3587.

**SUPPLEMENTARY INFORMATION:** On September 3, 1996, the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (the Service) published an interim rule with request for comments in the **Federal Register** (61 FR 46373) amending 8 CFR parts 3, 103, and 242. The amendments clarified when the required fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for

which a fee is chargeable. This final rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Service and the Board of Immigration Appeals have appellate jurisdiction. This rule is necessary to eliminate questions that have arisen regarding the payment of fees for applications for relief that require their own separate fees when filed concurrently with motions to reopen or reconsider.

Neither the Service nor EOIR received any public comments to the September 3, 1996 interim rule. However, upon further review by both agencies, the following changes have been made to the interim rule.

In § 103.7(b)(1), language has been added to reflect two additional situations in which an individual filing a motion to reopen or reconsider need not pay the required fee for the motion. The first situation involves an individual who is filing a motion to reopen or reconsider concurrently with an *initial* application for relief under the immigration laws for which no fee is chargeable. Without this change, the language in the interim rule only covers a situation in which an individual is filing a motion to reopen or reconsider a decision on a previous application for relief for which no fee is chargeable. The second situation involves an individual who is filing a motion to reopen pursuant to 8 U.S.C. 1252b(c)(3)(B) as it existed prior to April 1, 1997, or section 240b(5)(C)(ii) of the Immigration and Nationality Act, as amended. These sections pertain to aliens who demonstrate that they did not receive notice of their immigration proceedings, or aliens who demonstrate that they were in Federal or State custody and did not appear through no fault of their own. This second situation is limited to motions to reopen or reconsider immigration proceedings over which the Immigration Court has jurisdiction.

EOIR and the Service have concluded that individuals in these situations should not be required to pay a fee for the motion to reopen or reconsider. As an example in the first instance, an alien filing a motion to reopen to initially apply for asylum for which no fee is chargeable should not be in a different position than an alien who is filing a motion to reopen a previously adjudicated asylum application. As an example in the second instance, an alien should not be required to pay a fee to reopen a proceeding for which he or she never received notice.

This rule provides a fair and equitable fee structure for motions to reopen or