

Reporting and recordkeeping requirements, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, with the following change, the interim rule that amended 7 CFR part 301 and that was published at 59 FR 25789-25791 on May 18, 1994.

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

### § 301.78-10 [Amended]

2. In § 301.78-10, paragraph (c) is amended by revising the last sentence to read: "The malathion bait spray treatment must be applied at a rate of 1.2 fluid ounces of technical grade malathion (1.4 ounces by weight) and 10.8 fluid ounces of protein hydrolysate (13.2 ounces by weight) per acre, for a total of 12 fluid ounces per acre."

Done in Washington, DC, this 4th day of October 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-25167 Filed 10-10-95; 8:45 am]

**BILLING CODE 3410-34-P**

## Agricultural Marketing Service

### 7 CFR Part 920

[Docket No. FV95-920-2FIR]

### Expenses and Assessment Rate for Marketing Order Covering Kiwifruit Grown in California

**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 authorizing expenditures and establishing an assessment rate under Marketing Order No. 920 for the 1995-96 fiscal year. Authorization of this budget enables the Kiwifruit Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective beginning August 1, 1995, through July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Rose M. 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 Charles Rush, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456; telephone (202) 690-3670, 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 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California kiwifruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable California kiwifruit during the 1995-96 fiscal year beginning August 1, 1995, through July 31, 1996. 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 grown in California who are subject to regulation under the kiwifruit marketing order and approximately 600 producers of kiwifruit in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of kiwifruit producers and handlers may be classified as small entities.

The kiwifruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. The budget of expenses for the 1995-96 fiscal year was prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 14, 1995, and unanimously recommended 1995-96 marketing order expenditures of \$172,683 and an assessment rate of 1.5 cents per tray or tray equivalent of

kiwifruit. In comparison, 1994–95 marketing year budgeted expenditures were \$169,157, which is \$3,526 less than the \$172,683 recommended for this fiscal year. The assessment rate of 1.5 cents per tray or tray equivalent is .5 cents more than last year's assessment rate of 1.0 cents. The major budget category for 1995–96 is \$102,850 for administrative, staff and field salaries.

Assessment income for 1995–96 is estimated to total \$135,000 based on anticipated fresh domestic shipments of 9 million trays or tray equivalents of kiwifruit. The assessment income will have to be augmented by \$37,683 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year are estimated to be \$40,245. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule regarding this action was published in the July 13, 1995, issue of the **Federal Register** (60 FR 36032). That rule provided for a 30-day comment period. No comments were received.

While this action will impose some additional costs on handlers, the costs are 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 from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this final 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 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 1995–96 fiscal year began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable kiwifruit handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 60 FR 36032 on July 13, 1995, is adopted as a final rule without change.

Dated: September 27, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–25131 Filed 10–10–95; 8:45 am]

**BILLING CODE 3410–02–P**

#### 7 CFR Part 1212

[FV–95–701]

#### Lime Research, Promotion, and Consumer Information Order; Referendum Order and Procedures

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

**ACTION:** Interim final rule with request for comments; referendum order.

**SUMMARY:** The purpose of this rulemaking action is to give notice of a referendum and to provide procedures for which the Department of Agriculture will use in conducting the referendum to determine whether the issuance of the Lime Research, Promotion, and Consumer Information Order is favored by a majority of the producers, producer-handlers, and importers voting in the referendum. The Lime Board at its August 7, 1995, meeting requested that a referendum be held as soon as possible. The referendum order establishes the voting period, representative period, method of voting, and agents.

**DATES:** This rule is effective October 11, 1995 through December 31, 1995.

Comments must be received by October 26, 1995. The representative period for establishing voter eligibility shall be the period from September 1, 1994, through August 31, 1995. A referendum shall be conducted by mail ballot from November 1, 1995, through November 15, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the

Office of the Docket Clerk during regular working hours. All comments should reference the docket number of this issue of the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, room 2535–S, PO Box 96456, Washington, DC 20090–6456. Telephone (202) 720–5976.

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible lime producers, producer-handlers, and importers to determine whether the issuance of the Lime Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1212) is favored by a majority of persons voting in the referendum. The Order is authorized under the Lime Research, Promotion, and Consumer Information Act of 1990, as amended (Act).

The representative period for establishing voter eligibility for the referendum shall be the period from September 1, 1994, through August 31, 1995. Persons who have produced or imported 200,000 or more pounds of limes for the fresh market during the representative period are eligible to vote. The referendum shall be conducted by mail ballot from November 1, 1995, through November 15, 1995.

Section 1960 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum not later than 30 months after the date on which the collection of assessments begins to determine whether the issuance of the Order is favored by a majority of the producers, producer-handlers, and importers voting in the referendum. Paragraph (b) of section 1960 of the Act requires that the Order continue in effect only if favored by such majority.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It 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 1957 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order