

**PART 532—PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix B to Subpart B of Part 532 [Amended]**

2. In appendix B to subpart B, the listing for the State of California is amended by removing the entry for Marin-Sonoma.

3. Appendix D to subpart B is amended by removing the wage area list for Marin-Sonoma, California, and by revising the list for Solano, California, to read as follows:

**Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas**

\* \* \* \* \*

California

\* \* \* \* \*

Solano

*Survey Area*

California

Solano

Area of application. Survey area plus:

California

Marin (Effective date November 17, 1995)

Sonoma (Effective date November 17, 1995)

\* \* \* \* \*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 920**

[Docket No. FV95-920-3FR]

**Kiwifruit Grown in California; Revision of Inspection Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule extends the validation period for initial inspection certificates issued for California kiwifruit from December 15 to December 31 or 21 days from the date of inspection, whichever is later. The current period does not allow sufficient time between the initial inspection, which may occur between October and

December, and reinspection which must occur after December 15. This rule will reduce costs to the industry because of the increase in time between the initial inspection and reinspection.

**EFFECTIVE DATE:** November 29, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 690-3670; or Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487-5901.

**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 final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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 principle 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 California kiwifruit subject to regulation under the order and approximately 600 kiwifruit 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. A majority of handlers and producers of California kiwifruit may be classified as small entities.

This final rule is in accordance with § 920.55(b) of the order. This section authorizes the Kiwifruit Administrative Committee (KAC), the agency responsible for local administration of the marketing order, to establish a period prior to shipment, when inspections must be performed.

Currently, pursuant to § 920.155 of the marketing order, certification of any kiwifruit which is inspected and certified as meeting grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53 during each fiscal year shall be valid until December 15 of each year or 21 days from the date of inspection, whichever is later.

The KAC met on June 14, 1995, and unanimously recommended revising the current inspection requirements. The revision extends the validation period for the initial inspection certificate, from the current December 15 expiration date to December 31 of each year.

Kiwifruit grown in California is typically harvested in mid-October. The fruit is packed shortly after harvest and placed into storage until shipment. The shipping season generally extends throughout the year.

About 55 percent of the harvested fruit is inspected as it is being packed, prior to storage. While the majority of fruit is inspected prior to storage, some handlers have their fruit inspected after storage just prior to shipment.

When kiwifruit is stored, a black sooty mold sometimes appears on the

fruit's surface. This mold, caused by fruit juice on the surface of the fruit, usually begins to show after the kiwifruit has been in storage for over a month. In order to control this problem, a time limit on the validity of inspection certificates was established. The time limit initially established in 1985 was valid until January 15 or 21 days from the date of inspection, whichever was later.

In 1985, it appeared that kiwifruit harvested in October maintained its quality through the following mid-January. However, during the 1988/89 season, problems with black sooty mold once again resulted in the KAC reevaluating this position, and as a result the date was changed to December 1, to reduce the likelihood of moldy fruit entering commercial channels.

Again in 1991, the KAC changed the expiration date for initial inspection certificates from December 1 to the current expiration date of December 15. The KAC believed that the December 1 expiration date required shippers to have their fruit reinspected too soon after the initial inspection. For many shippers this was a financial burden.

The current period does not allow sufficient time to determine if damage from mold may develop. Sufficient time would need to elapse between the initial inspection, which may occur between October and December, and reinspection, which occurs after December 15. This revision would change the current December 15 inspection certificate expiration date. It would provide that a certificate remains valid until December 31 or 21 days from the date of inspection, whichever is later. Thus, the 21-day limitation would be in effect for all inspected kiwifruit regardless of the date on which it was inspected. This would mean that kiwifruit inspected and packed less than 21 days prior to December 31 would not have to be reinspected until 21 days later.

The KAC estimates that, annually, approximately 25 percent of the crop is reinspected. The reinspection rate is expected to be reduced slightly by making inspection certificates valid until December 31 or 21 days from the date of inspection. Extending the inspection certificate validation from December 15 to December 31 is not expected to have adverse effects on fruit quality.

Over the last five years, the harvest of California kiwifruit has begun later and later. In years past, the kiwifruit harvest began near the beginning of October, with a few starting dates recorded in late September. In recent years,

kiwifruit harvests have begun in mid-October due to natural conditions as well as increased grower consciousness about fruit maturity. Fruit that is mature tends to have higher sugar content and is of higher quality. Because of the later harvest dates, the time lapse from harvest to reinspection has decreased over the years.

This two-week change to the reinspection date is not expected to harm the industry's reputation for shipping quality California kiwifruit. Because of research done in the past five years, California growers understand the benefits of harvesting kiwifruit with a higher soluble solids content, which means harvesting at a later date. This, coupled with natural conditions that have also contributed to a delay in harvest, have reduced the number of days from harvest until reinspection.

The KAC also discussed the elimination of reinspection requirements as an alternative. There is however, strong support throughout the industry for maintaining reinspection as a means of assuring fruit quality. The KAC also discussed the use of a sliding reinspection date. This would allow fruit harvested later to be reinspected at a later date. However, it was determined that this would present enforcement problems as it would be difficult to track the harvest date of the entire California crop. The recommendation to establish the reinspection date at December 31 was a compromise agreed to unanimously by the KAC.

A proposed rule concerning this action was published in the August 25, 1995, Federal Register (60 FR 44282), with a 30-day comment period ending September 25, 1995.

One comment was received. The comment was submitted by the KAC and supported implementing the change set forth in the proposed rule. The comment stated that the reinspection requirement has always had a 21-day time period and noted that black sooty mold may develop as early as ten days after the fruit has been contaminated. The comment pointed out that the aggressive education of growers and packers as to why black sooty mold occurs and ways to prevent it has greatly reduced the occurrence of this condition over the last four years. The comment concluded by stating that the KAC believes that later reinspection is a natural and positive change for the industry.

Based on the above, 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 matter presented, including the information and recommendations submitted by the KAC, the comment received from KAC 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.

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

#### **§ 920.155 Inspection requirement.**

Certification of any kiwifruit which is inspected and certified as meeting grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53 during each fiscal year shall be valid until December 31 of such year or 21 days from the date of inspection, whichever is later.

Dated: October 23, 1995.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 95-26793 Filed 10-27-95; 8:45 am]

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#### **7 CFR Part 966**

[Docket No. FV95-966-1IFR]

#### **Tomatoes Grown in Florida; Expenses and Assessment Rate**

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

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

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 966 for the 1995-96 fiscal period. Authorization of this budget enables the Florida Tomato 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 August 1, 1995, through July 31, 1996. Comments received by November 29, 1995, will be considered prior to issuance of a final rule.