

Rules and Regulations

Federal Register

Vol. 73, No. 240

Friday, December 12, 2008

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2008-0080]

RIN 0579-AC81

Citrus Canker; Movement of Fruit From a Quarantined Area; Bag Markings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations governing the interstate movement of fruit from an area quarantined for citrus canker to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement "Limited Permit: USDA-APHIS-PPQ." The interim rule extended the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. The interim rule was necessary to provide for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of regulated fruit to commercial citrus-producing States.

DATES: Effective on December 12, 2008, we are adopting as a final rule the interim rule published at 73 FR 44615-44617 on July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1231; 301-734-8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas citri* subsp. *citri* that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75-1 through 301.75-14 of "Subpart—Citrus Canker" (7 CFR 301.75-1 through 301.75-17, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing.

In an interim rule¹ effective and published in the **Federal Register** on July 31, 2008 (73 FR 44615-44617, Docket No. APHIS-2008-0080), we amended the regulations to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement "Limited Permit: USDA-APHIS-PPQ." The interim rule extended the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. The interim rule was necessary to provide for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of

regulated fruit to commercial citrus-producing States.

Comments on the interim rule were required to be received on or before September 29, 2008. We received one comment by that date, from a State agricultural agency. The commenter supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 73 FR 44615-44617 on July 31, 2008.

Done in Washington, DC, this 8th day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-29458 Filed 12-11-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AMS-FV-08-0095; FV09-920-1 IFR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Kiwifruit Administrative Committee

¹ To view the interim rule and the comment we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0080>.

(Committee) for the 2008–09 and subsequent fiscal periods from \$0.045 to \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 15, 2008; comments received by February 10, 2009 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: Debbie.Wray@usda.gov, or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

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 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 (USDA) 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 on August 1, 2008, and continue 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 USDA 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, USDA 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 USDA’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 decreases the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from \$0.045 to \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee’s needs and 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 the 2005–06 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on October 14, 2008, and unanimously recommended 2008–09 expenditures of \$76,492 and an assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. In comparison, last year’s budgeted expenditures were \$99,302. The assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent is \$0.010 per 9-kilo volume-fill container or equivalent less than the rate currently in effect. The decreased assessment rate is primarily due to a decrease in management expenditures for the 2008–09 fiscal year.

The following table compares major budget expenditures recommended by the Committee for the 2007–08 and 2008–09 fiscal periods:

Budget expense categories	2007–08	2008–09
Staff Salaries/Management	\$65,150	\$56,700
Financial Management Services	12,000	1,000
Audit Expense	5,000	3,500
Vehicle Maintenance/Insurance	3,180
Travel	3,300	3,500
Office Expenses	2,830	4,500

The assessment rate recommended by the Committee was derived by using the following formula: Anticipated 2008–09 expenses (\$76,492), minus the difference between the 2008 beginning reserve (\$62,647) and the desired 2009 ending reserve (\$54,311), divided by the total estimated 2008–09 shipments (1,944,444 9-kilo volume-fill containers). This formula results in the assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent. As mentioned earlier, kiwifruit shipments for the year are estimated at 1,944,444 9-kilo volume-fill containers which should provide \$68,056 in assessment income. An additional \$100 in penalty and interest income is also anticipated, bringing the total projected 2008–09 revenue to \$68,156. Income generated through this rate, plus interest income and reserve funds, will provide sufficient funds to meet the anticipated expenses of \$76,492 and should result in a July 2009 ending reserve of \$54,311 which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2008–09 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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.

There are approximately 31 handlers of California kiwifruit subject to regulation under the marketing order and approximately 220 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts

of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. None of the 31 handlers subject to regulation have annual kiwifruit sales of \$7,000,000. Dividing average crop value for 2007–08 reported by the National Agricultural Statistics Service (NASS) of \$22,517,000 by the number of producers (220) yields an average annual producer revenue estimate of about \$102,350, which is well below the SBA threshold of \$750,000. Based on the foregoing, it may be concluded that all kiwifruit handlers and the majority of producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from \$0.045 to \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2008–09 expenditures of \$76,492 and an assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The assessment rate of \$0.035 is \$0.010 lower than the 2007–08 rate. The quantity of assessable kiwifruit for the 2008–09 fiscal period is estimated at 1,944,444 9-kilo volume-fill containers or equivalent of kiwifruit. Thus, the rate should provide \$68,056 in assessment income. Income derived from handler assessments, along with penalty and interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The following table compares major budget expenditures recommended by the Committee for the 2007–08 and 2008–09 fiscal years:

Budget expense categories	2007–08	2008–09
Staff Salaries/Management	\$65,150	\$56,700
Financial Management Services	12,000	1,000
Audit Expense	5,000	3,500
Vehicle Maintenance/Insurance	3,180
Travel	3,300	3,500
Office Expenses	2,830	4,500

The Committee reviewed and unanimously recommended 2008–09 expenditures of \$76,492 which included a reduction in management expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by using the following formula: Anticipated 2008–09 expenses (\$76,492), minus the difference between

the 2008 beginning reserve (\$62,647) and the desired 2009 ending reserve (\$54,311), divided by the total estimated 2008–09 shipments (1,944,444 9-kilo volume-fill containers). This formula results in the assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent. As mentioned earlier, kiwifruit shipments for the year are estimated at 1,944,444 9-kilo volume-fill containers which should provide \$68,056 in assessment income. An additional \$100 in penalty and interest income is also anticipated, bringing the

total projected 2008–09 revenue to \$68,156. Income generated through this rate, plus interest income and reserve funds, will provide sufficient funds to meet the anticipated expenses of \$76,492 and should result in a July 2009 ending reserve of \$54,311 which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

According to NASS, the season average grower price for years 2006 and 2007 were \$911 and \$950 per ton,

respectively. These prices provide a range within which the 2008–09 season average grower price could fall. Dividing these average grower prices by 2,000 pounds per ton provides a price per pound range of \$0.46 to \$0.48. Multiplying these per-pound prices by 19.8 pounds (the weight of a 9-kilo volume-fill container) yields a 2008–09 price range estimate of \$9.11 to \$9.50 per 9-kilo volume-fill container of assessable kiwifruit.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.035 per 9-kilo volume-fill container is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 fiscal year as a percentage of total grower revenue would thus likely range between 0.368 and 0.384 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California 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 October 14, 2008, 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 imposes no 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=Marketing>

OrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation and other available information, it is found that this interim 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 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) This rule should be in place as soon as possible because the 2008–09 fiscal year began on August 1, 2008, handlers began shipping kiwifruit in mid-September, and the order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during the period; (2) the Committee unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this rule relaxes requirements currently in effect and kiwifruit producers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2008, an assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: December 8, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29573 Filed 12–10–08; 4:15 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 245 and 299

[CIS No. 2134–01; DHS Docket No. USCIS–2006–0067]

RIN 1615–AA60

Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Homeland Security is amending its regulations to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to lawful permanent resident. T nonimmigrant status is available to aliens who are victims of a severe form of trafficking in persons and who are assisting law enforcement in the investigation or prosecution of the acts of trafficking. U nonimmigrant status is available to aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes. This rule provides that family members of a principal T or U nonimmigrant granted or seeking adjustment of status may also apply for adjustment of status to lawful permanent resident. This rule also provides for adjustment of status or approval of an immigrant petition for certain family members of U applicants who were never admitted to the United States in U nonimmigrant status.

DATES: *Effective date:* This interim rule is effective January 12, 2009.

Comment date: Written comments must be submitted on or before February 10, 2009 in order to be assured of consideration.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2006–0067, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department