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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV06-920-1 FIR]

#### Kiwifruit Grown in California; Relaxation of Container Marking Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the container marking requirements for kiwifruit covered under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). Prior to implementation of the interim final rule, kiwifruit that had been inspected, met applicable grade and size requirements, and was subsequently placed into new containers, had to be positive lot identified, which required reinspection. This rule continues in effect the action that established procedures for handlers to ship such kiwifruit without positive lot identification (PLI). This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit.

**DATES:** *Effective Date:* March 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Shereen Marino, 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: [Shereen.Marino@usda.gov](mailto:Shereen.Marino@usda.gov), or [Kurt.Kimmel@usda.gov](mailto: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](mailto: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 USDA 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 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. A 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 continues in effect the action that relaxed the container marking requirements for kiwifruit covered under the order. Prior to implementation of the interim final rule, kiwifruit that had been inspected, met applicable grade and size requirements, and was subsequently placed into new containers, had to be positive lot

identified, which required reinspection. This rule continues to establish procedures for handlers to ship such kiwifruit without PLI. This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit. The Committee unanimously recommended this change at its April 6, 2006, meeting.

Section 920.52(a) of the order provides authority for grade, size, pack, container, and container marking requirements for shipments of fresh kiwifruit. Section 920.55 of the order requires inspection and certification of kiwifruit prior to shipment by the Federal or Federal-State Inspection Service (FSIS). Section 920.302 of the order's regulations specifies applicable grade, size, pack, and container requirements and § 920.303 specifies applicable container marking requirements.

Paragraph (d) of § 920.303 requires that containers of kiwifruit be positive lot identified prior to shipment. PLI helps to ensure that a specific load or lot of kiwifruit can be linked to an inspection certificate and provides verification that the fruit was inspected. No less than 75 percent of the containers of kiwifruit on a pallet must be marked with a lot stamp number corresponding to the lot inspection conducted by the FSIS. This lot stamp number is a PLI number that can be matched to an inspection certificate. Individual consumer packages within a master container, and containers being directly loaded into a vehicle for export under FSIS supervision are exempt from PLI. Individual consumer packages placed directly on a pallet, and plastic containers of kiwifruit must be positive lot identified.

Prior to implementation of the interim final rule, kiwifruit that had been inspected and certified, and was subsequently placed into new containers, had to be positive lot identified. When such kiwifruit is placed into new containers, the PLI mark on the container is lost and thus the lot is not easily identified. The new containers must be reinspected and marked with a new PLI number. Reinspection costs for such kiwifruit account for roughly 20 percent of annual inspection costs for handlers.

In an effort to reduce handler costs, the Committee recommended establishing procedures for handlers to

ship previously inspected kiwifruit placed in new containers without PLI. Handlers now have the option of having such kiwifruit reinspected and marked with a PLI number or requesting a verification number under a new verification process. Such kiwifruit must be of the same grade and size as originally inspected. The handler must contact the FSIS to obtain a verification number prior to shipment, and plainly mark one end of each container with the letter "R" and the verification number. The letter "R" and the verification number must not be less than one-half inch in height. The handler must submit a Kiwifruit Verification Form to the FSIS within 3 business days of such request, and provide the following information from the original inspection: (i) The positive lot identification numbers; (ii) the identity of the handler; (iii) the inspection certificate numbers; (iv) the grade and size of the kiwifruit; (v) the number and type of containers; and (v) the handler's brand; and the following information on the kiwifruit placed into new containers: (i) The number and type of containers; and (ii) the applicable brand. The verification number is linked to the PLI number, thus providing a method to trace the fruit back to the original inspection certificate. The FSIS maintains the Kiwifruit Verification Forms. The Committee will make use of completed forms to audit handlers as needed to ensure compliance, pursuant to authority provided in § 920.61.

Accordingly, a new paragraph (f) was added to § 920.303 that established the verification procedures described above. Additionally, a new sentence was added to the beginning of paragraph (d) in that section to clarify that except as provided in the new paragraph (f), containers of

kiwifruit must be positive lot identified prior to shipment in accordance with specified requirements. Paragraph (d) was modified further for clarification purposes to change the term "lot stamp number" to "positive lot identified," and to change the term "plastic container" to "reusable plastic container."

**Final 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 action on small entities.

Accordingly, AMS has prepared this final 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 37 handlers of 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 (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. None of the 37 handlers subject to regulation have annual kiwifruit sales of \$6,500,000. In addition, six growers subject to regulation have annual sales exceeding \$750,000. Therefore, all of the

kiwifruit handlers and a majority of the growers may be classified as small entities.

This rule continues in effect the action that relaxed the container marking requirements specified in § 920.303. Prior to implementation of the interim final rule, kiwifruit that had been inspected, met applicable grade and size requirements, and was subsequently placed into new containers had to be positive lot identified, which required reinspection. This rule continues to establish procedures for handlers to ship such kiwifruit without PLI. The verification procedures are specified in § 920.303(f). Handlers must obtain a verification number from the FSIS, mark their new containers with such number and the letter "R," and submit a Kiwifruit Verification Form to the FSIS. The verification number can be linked to the original PLI number, thereby providing a method to trace the fruit back to the original inspection certificate. This action is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit. This rule also continues in effect minor modifications to paragraph (d) of § 920.303 for clarification purposes. Authority for this action is provided in §§ 902.52(a)(3) and 920.55 of the order.

The impact of this change on handlers was discussed by the Committee. Reinspection costs due to PLI requirements account for roughly 20 percent of annual inspection costs for the industry. Additionally, an average of 20 percent of the crop is placed into new containers annually. The following table shows inspection costs for in-line inspection, lot inspection, and kiwifruit placed into new containers for 2001 to 2005.

Year	In-Line	Lot	New containers	Total cost
2001-02 .....	\$107,702	\$15,254	\$38,411	\$161,367
2002-03 .....	96,376	24,866	35,521	156,763
2003-04 .....	111,228	12,064	29,197	152,489
2004-05 .....	129,197	24,319	31,415	184,931

This change reduces inspection costs because handlers have the option of using the new verification process instead of having kiwifruit reinspected to conform to PLI requirements. Additionally, reinspection can delay shipments because kiwifruit cannot be shipped until reinspection has been completed by the FSIS.

The Committee considered the alternative of maintaining the status quo, but this was not viable. As an

option to reinspection, identity of the lot can be achieved through the verification number, which provides a trace back to the original inspection certificate. Additionally, such kiwifruit has already met the minimum requirements of the marketing order. It is anticipated that the rule provides a cost savings to 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The 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.

In addition, the Committee's meeting was widely publicized throughout 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 April 6, 2006, meeting was a public meeting and all entities, both large and small, were encouraged to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on October 3, 2006. Copies of the rule were mailed by the Committee's staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended December 4, 2006. No comments were received.

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

#### Paperwork Reduction Act

The interim final rule published on October 3, 2006, provided a 60-day period for comments on the reporting requirements in that rule. No comments were received. In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the information collection was approved by the Office of Management and Budget (OMB), under OMB No. 0581-0238, "Kiwifruit Grown in California."

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 58246, October 3, 2006) 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.

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920, which was published at 71 FR 58246 on October 3,

2006, is adopted as a final rule without change.

Dated: February 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-2732 Filed 2-15-07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 958

[Docket No. AMS-FV-06-0179; FV06-958-1 FIR]

#### Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Change in Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting requirements established under the Idaho-Eastern Oregon onion marketing order, which regulates the handling of onions grown in designated counties in Idaho and Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee. This rule continues in effect the action that: Established a credit application procedure for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changed the reporting requirements for fresh onions for peeling, chopping, or slicing, and for special purpose shipments; and added "disposal" as a special purpose shipment.

**DATES:** *Effective Date:* March 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Susan.Hiller@usda.gov](mailto:Susan.Hiller@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, 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."

USDA 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 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. A 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 continues in effect the action that established an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changed the reporting requirements for fresh onions for peeling, chopping, or slicing; changed the reporting requirements for special purpose shipments; and added "disposal" as a special purpose shipment. These actions were unanimously recommended by the Committee at a meeting on June 15, 2006.

Section 958.53 provides authority for the Committee, with the approval of USDA, to exempt special purpose