

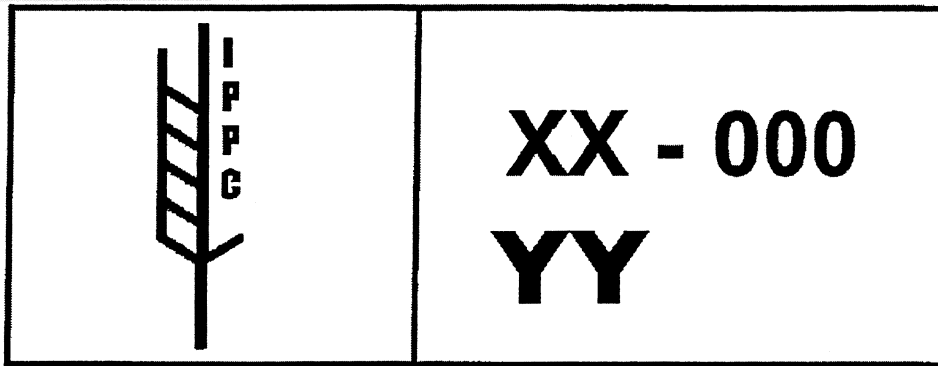
(ii) Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter or pounds per 1,000 cubic feet of the enclosure being fumigated. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency:

Temperature (°C/°F)	Initial dose g/m <sup>3</sup> and lbs./ 1,000 c.f.)	Minimum required concentration g/m <sup>3</sup> and lbs./1,000 c.f.) after:			
		0.5 hrs	2 hrs.	4 hrs.	16 hrs.
21/70 or above .....	48/3.0	36/2.25	24/1.5	17/1.06	14/0.875
16/61 or above .....	56/3.5	42/2.63	28/1.75	20/1.25	17/1.06
11/52 or above .....	64/4.0	48/3.0	32/2.0	22/1.38	19/1.19

(2) *Marking.* The wood packaging material must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the requirements of this paragraph. The mark must be approved by the International Plant Protection Convention in its International

Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the wood packaging material, a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging

material, and an abbreviation disclosing the type of treatment (e.g., HT for heat treatment or MB for methyl bromide fumigation). The currently approved format for the mark is as follows, where XX would be replaced by the country code, 000 by the producer number, and YY by the treatment type (HT or MB):



(3) *Immediate reexport of regulated wood packaging material without required mark.* An inspector at the port of first arrival may order the immediate reexport of regulated wood packaging material that is imported without the mark required by paragraph (b)(2) of this section, in addition to or in lieu of any port of first arrival procedures required by § 319.40–9 of this part.

(4) *Exception for Department of Defense.* Regulated wood packaging material used by the Department of Defense (DOD) of the U.S. Government to package nonregulated articles, including commercial shipments pursuant to a DOD contract, may be imported into the United States without the mark required by paragraph (b)(2) of this section.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0225.)

**§ 319.40–5 [Amended]**

■ 3. In § 319.40–5, paragraphs (b)(1)(i)(C), (b)(2), and (b)(2)(i), the words “solid wood packing materials” are removed each time they occur and the words “regulated wood packaging material” are added in their place, and paragraphs (g) through (k) are removed.

**§ 319.40–10 [Amended]**

■ 4. In § 319.40–10, footnote 6, the words “without a complete certificate or exporter statement” are removed and the words “without meeting the requirements of this subpart” are added in their place.

Done in Washington, DC, this 9th day of September 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–20763 Filed 9–15–04; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 920**

[Docket No. FV04–920–2 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 and changes the assessable unit from \$0.045 per 22-pound, volume-fill container or container equivalent to \$0.002 per pound of kiwifruit established for the Kiwifruit Administrative Committee (committee) for the 2004–05 and subsequent fiscal periods. The assessment rate of \$0.002 per pound of kiwifruit is \$0.000045 per pound less than the assessment rate currently in

effect. The committee locally administers 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 fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 17, 2004. Comments received by November 15, 2004, 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, e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901; fax: (559) 487-5906; or George Kelhart, Technical Advisor, 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.

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 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, 2004, 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 and changes the assessable unit established for the committee for the 2004-05 and subsequent fiscal periods from \$0.045 per 22-pound, volume-fill container or equivalent to \$0.002 per pound of kiwifruit. The assessment rate of \$0.002 per pound of kiwifruit is about \$0.000045 per pound less than the assessment rate currently in effect for

the 2003-04 and subsequent fiscal periods.

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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002-03 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 July 15, 2004, and unanimously recommended 2004-05 fiscal period expenditures of \$91,839 and an assessment rate of \$0.002 per pound of kiwifruit. In comparison, last fiscal period's budgeted expenditures were \$88,659. The assessment rate of \$0.002 per pound of kiwifruit is \$0.000045 per pound lower than the rate currently in effect and is based upon a per-pound unit rather than upon a 22-pound, volume-fill container or container equivalent.

The committee unanimously recommended decreasing the assessment rate slightly because the 2004-05 fiscal period kiwifruit crop is expected to be 8,550,000 pounds larger than the 2003-04 crop of 41,850,000 pounds. Revenue from assessments, along with other revenue from interest income and reserve carryover funds, should allow the committee to meet its expenses. The reserve at the end of the fiscal period should be about \$30,686, which is within the maximum amount permitted under the marketing order.

The following table compares major budget expenditures recommended by the committee for the 2003-04 and 2004-05 fiscal periods:

Budget expense categories	2003-04	2004-05
Administrative Staff & Field Salaries .....	\$57,600	\$61,000
Travel .....	7,200	6,500
Office Costs/Annual Audit .....	14,075	14,555
Vehicle Expense Account .....	9,784	9,784

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses (\$91,839) minus the 2003–04 fiscal period carry forward (\$21,725), plus the 2005–06 fiscal period anticipated reserve (\$30,686), divided by the total estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of \$0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of \$91,839 and result in a reserve of \$30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period’s expenses (§ 920.41).

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 2004–05 fiscal period budget and those for subsequent fiscal periods would 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 270 producers of kiwifruit in the production area and approximately 45 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000, and defines small agricultural

service firms as those whose annual receipts are less than \$5,000,000.

None of the 45 handlers subject to regulation have annual kiwifruit sales of \$5,000,000. In addition, only six producers have annual sales of at least \$750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent fiscal periods from \$0.045 per 22-pound, volume-fill container or container equivalent to \$0.002 per pound of kiwifruit.

The committee unanimously recommended 2004–05 fiscal period expenditures of \$91,839 and an assessment rate of \$0.002 per pound of kiwifruit. The proposed assessment rate of \$0.002 per pound of kiwifruit is \$0.000045 lower than the rate during the 2003–04 fiscal period, and is based upon a per-pound assessable unit rather than the assessment rate currently in effect, which is based upon a 22-pound container or container equivalent. The quantity of assessable kiwifruit for the 2004–05 fiscal period is estimated to be 50,400,000 pounds of kiwifruit. Thus, the \$0.002 per-pound rate should provide \$100,800 in assessment income and be adequate to meet this fiscal period’s expenses.

The following table compares major budget expenditures recommended by the committee for the 2003–04 and 2004–05 fiscal periods:

Budget expense categories	2003–04	2004–05
Administrative Staff & Field Salaries .....	\$57,600	\$61,000
Travel .....	7,200	6,500
Office Costs/Annual Audit .....	14,075	14,555
Vehicle Expense Account .....	9,784	9,784

The committee reviewed and unanimously recommended 2004–05 fiscal period expenditures of \$91,839, which included increases in salaries and office/annual audit costs, and a decrease in travel expenses. Prior to arriving at this budget, the committee considered alternative expenditure levels and varying crop sizes, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses (\$91,839) minus the 2003–04 fiscal period carry forward (\$21,725), plus the 2005–06 fiscal period anticipated reserve (\$30,686), divided by the total

estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of \$0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of \$91,839 and result in a reserve of \$30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period’s expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2004–05 fiscal period could range between \$9.50 and \$13.00 per pound of kiwifruit. Therefore, the estimated assessment

revenue for the 2004–05 fiscal period as a percentage of total grower revenue could range between 0.015 and 0.021 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 July 15, 2004, 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.

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/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.

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 2004–05 fiscal period began on August 1, 2004, and the marketing order requires that rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (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 fiscal periods; and (4) this interim final rule provides a 60-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.

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

##### **§ 920.213 Assessment rate.**

On and after August 1, 2004, an assessment rate of \$0.002 per pound of kiwifruit is established for kiwifruit grown in California.

Dated: September 9, 2004.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–20849 Filed 9–15–04; 8:45 am]

**BILLING CODE 3410–02–P**

#### **NUCLEAR REGULATORY COMMISSION**

##### **10 CFR Part 35**

**RIN 3150–AH47**

##### **Medical Use of Byproduct Material Minor Amendments: Extending Expiration Date for Subpart J**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations governing the medical use of byproduct material to extend the expiration date for training and experience requirements that will be superseded (Subpart J) for 1 year, from October 24, 2004, to October 24, 2005. The rulemaking is necessary to allow sufficient time for implementation of the forthcoming final rule that amends the training and experience requirements, including new requirements for recognition of specialty board certifications.

**EFFECTIVE DATE:** October 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr.

Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6233, e-mail: [ant@nrc.gov](mailto:ant@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

##### **Background**

###### *The 2002 Final Rule*

On April 24, 2002 (67 FR 20249), the NRC published a final rule amending its regulations regarding the medical use of byproduct material. The final rule addressed, among other things, new

training and experience (T&E) requirements for radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, and authorized users. This rule also addressed the requirements for recognition of medical and other specialty boards whose certifications may be used to demonstrate the adequacy of the T&E of individuals mentioned above. This final rule was effective on October 24, 2002. In addition, NRC retained the existing T&E requirements, designated as subpart J in 10 CFR part 35, for a 2-year period. Therefore, subpart J remains effective until October 24, 2004.

##### *Statements in the Preamble of the 2002 Final Rule*

In the preamble, NRC stated that during an NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI) briefing of the Commission on February 19, 2002, the issue of recognition of medical and other specialty boards was discussed. In that meeting, two committee members expressed concern that some boards did not qualify for recognition and might not be ready to apply for recognition within 6 months after publication of the final rule. Therefore, implementation of the new part 35, without Subpart J, could disrupt the current license authorization process for new medical personnel because many license authorizations are granted based on recognition of board certification.

The preamble further stated that NRC had considered this matter and decided to retain the training requirements in subpart J for a 2-year period after the effective date of the final rule. During this transition period, the NRC would continue working with the ACMUI and the medical community to resolve any concerns about the training and experience requirements. The NRC would consider changes to the T&E requirements, as appropriate.

##### **The T&E Proposed Rule**

After the publication of the 2002 final rule, the NRC worked with the ACMUI and other stakeholders to consider what changes were necessary to the T&E requirements. Several public meetings were held to discuss the changes. On December 9, 2003 (68 FR 68549), a proposed rule on T&E requirements was published for a 75-day public comment period. The NRC is currently considering public comments and developing the T&E final rule.

One commenter stated that the current transition period for subpart J, which ends on October 24, 2004, must be extended to allow time for boards to