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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General); Interest on Back Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule implementing a provision of Pub. L. 100-202 that provides for the payment of interest on back pay awards to Federal employees. This rule establishes the interest rate or rates to be used in the computation, the frequency of compounding, the period of time for which interest accrues, and certain other computational procedures.

DATES: This interim rule is effective for all determinations which become final on or after December 22, 1987, awarding back pay under 5 U.S.C. 5596. Comments must be submitted on or before July 19, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 632-5056.

SUPPLEMENTARY INFORMATION: Pub. L. 100-202, December 22, 1987, Further Continuing Appropriations for Fiscal Year 1988, amended 5 U.S.C. 5596 to provide for the payment of interest on back pay awards to Federal employees. This provision applies to determinations that become final on or after the date of enactment. Agencies, therefore, must review their records to determine

whether interest must be computed and paid on back pay awards that became final on or after December 22, 1987.

The statute provides that interest begins to accrue on the effective date of the withdrawal of pay, allowances, and differentials. A particular money amount is not withdrawn from an employee until the actual date (usually a pay date) on which the employee would have received it if the unjustified or unwarranted personnel action had not occurred. Therefore, most awards will involve a series of effective dates, and an additional money amount of withdrawn pay, allowances, and differentials must be incorporated into the interest computation for periods on or after each such date.

Section 5596(b)(1)(A)(i) of title 5, United States Code, reduces an employee's entitlement to back pay by the amount of earnings through other employment during the period covered by the corrective action. The Office of Personnel Management (OPM) has determined that since computing an employee's entitlement to back pay requires deducting the amount of outside earnings, such earnings should not be included in the computation of the employee's entitlement to interest on back pay.

To incorporate this determination into the process of computing the amount of interest due, the interim regulations include a method of prorating the amount of outside earnings. For computation purposes, ensuring that interest does not accrue on outside earnings means that such earnings must be subtracted from the amount of pay, allowances, and differentials due for specific dates during the period covered by the corrective action. However, performing this subtraction only on the actual date such earnings were paid would mean that earnings which exceeded the amount of pay, allowances, and differentials due for the corresponding period would not be deducted from back pay. Therefore, the interim regulations establish a method of uniform proration over the full period covered by the corrective action.

The agency must issue the interest payment within 30 days of the date on which accrual of interest ends. If issuance of the interest payment is delayed more than 30 days after the date on which accrual of interest ends, interest must be recomputed based on a

new ending date that meets the 30-day requirement.

The agency normally will issue the interest payment at the same time it issues the payment of back pay. When simultaneous payment is not feasible (e.g., when a decision became final on or after December 22, 1987, and payment of back pay was issued before implementation of this rule), the payment of back pay will be subtracted from the accrued amount of back pay and interest effective with the date the payment of back pay was issued. Interest will continue to accrue on the remaining amount of back pay (if any) and interest until the date interest accrual ends. Additional guidance concerning the computational procedures to be followed in implementing this provision will be provided through the Federal Personnel Manual System.

The statute also provides for payment of interest on back pay awards if the final determination was made prior to December 22, 1987, and if, under terms of the decision, a right to interest was specifically reserved, contingent on the enactment of a statute authorizing the payment of interest on claims brought under 5 U.S.C. 5596. The Office is aware of only two such decisions—*Karamatsu v. United States* and *Alaniz v. Office of Personnel Management*. If interested parties know of other decisions that meet these conditions, they should bring them to the attention of the Office. The statute provides that payment of interest on these decisions may not be made before October 1, 1988. Affected agencies will be informed of special processing requirements.

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because the effective date of the statute was December 22, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a

substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 550 of Title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for Part 550, Subpart H, is revised to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100-202.

2. In § 550.801, paragraph (a) is revised to read as follows:

§ 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.

3. In § 550.805, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

§ 550.805 Back pay computations.

(f) For the purpose of computing the amount of back pay under paragraph (e) of this section, interest shall be included in the amount from which deductions for erroneous payments are made, as required by § 550.805(e)(2) of this part.

4. Sections 550.806 and 550.807 are redesignated as § 550.807 and § 550.808 respectively; and new section § 550.806 is added to read as follows:

§ 550.806 Interest computations.

(a) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had not occurred.

(b) In computing the amount of interest due under section 5596 of title 5, United States Code, the agency shall reduce the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section by an amount determined as follows:

(1) Divide the employee's earnings from other employment during the period covered by the corrective action, as described in § 550.805(e)(1) of this part, by the total amount of back pay prior to any deductions;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section.

(c) The agency shall compute interest on the amount of back pay computed under section 5596 of title 5, United States Code, and this subpart before making deductions for erroneous payments, as required by § 550.805(e)(2) of this part.

(d) The rate or rates used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury as the overpayment rate under section 6621(a)(1) of title 26, United States Code (or its predecessor statute), for the period or periods of time for which interest is payable.

(e) On each day for which interest accrues, the agency shall compound interest by dividing the applicable interest rate (expressed as a decimal) by 365 (366 in a leap year).

(f) The agency shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.

(g) To the extent administratively feasible, the agency shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends and the interest payment is issued after the payment of back pay is issued, the amount of the payment of back pay shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if

any) and interest until the date on which accrual of interest ends.

(h) This section shall not apply to any determination made before December 22, 1987, if the determination was no longer subject to reconsideration or higher-level review or appeal on December 22, 1987.

[FR Doc. 88-11392 Filed 5-19-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 614]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 614 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 355,000 cartons during the period May 22 through May 28, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 614 (§ 910.914) is effective for the period May 22 through May 28, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action 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 Agricultural Marketing Agreement 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.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on May 17, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purpose of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.914 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.914 Lemon Regulation 614.

The quantity of lemons grown in California and Arizona which may be handled during the period May 22, 1988, through May 28, 1988, is established at 355,000 cartons.

Dated: May 18, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11495 Filed 5-19-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

California Kiwifruit; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish an assessment rate under Marketing Order 920 for the 1987-88 and 1988-89 fiscal periods. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1987 through July 31, 1988 (§ 920.203), and August 1, 1988 through July 31, 1989 (§ 920.204).

FOR FURTHER INFORMATION CONTACT:

Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. This 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. This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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 final rule on small entities.

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

significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the *Federal Register* [53 FR 15228, April 28, 1988]. That document contained a proposal to revise § 920.203 and add § 920.204 to establish expenses and assessment rates for the Kiwifruit Administrative Committee. That rule provided that interested persons could file comments through May 9, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

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: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.203 is revised and § 920.204 is added to read as follows (these sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

§ 920.203 Expenses and assessment rate.

Expenses of \$130,418 by the Kiwifruit Administrative Committee are authorized and an assessment rate of \$0.0125 per 7 1/2 pound tray or equivalent is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

§ 920.204 Expenses and assessment rate.

Expenses of \$112,618 by the Kiwifruit Administrative Committee are