

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV02-920-1 IFR]

#### Kiwifruit Grown in California; Relaxation of Pack Requirements

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

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

**SUMMARY:** This rule relaxes the pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

**DATES:** Effective October 24, 2001. Comments received prior to December 28, 2001 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-8938; or e-mail: [moabdoctclerk@usda.gov](mailto:moabdoctclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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:** Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, fax: (202) 205-8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, fax: (202) 205-8938 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. 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 the 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 the 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 the USDA 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 allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit. Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992-93 season. In addition, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was \$1.14 per pound. In 1997-1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992-93 season through the 1997-98 season was \$0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(iv) of the order's administrative rules and regulations was revised by an interim

final rule issued on September 3, 1998 (63 FR 46861).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations is needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. This relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(iv) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
<b>20</b> .....	<b>27</b>
<b>23</b> .....	<b>29</b>
25 .....	27* 32
27/28 .....	30* 35
30 .....	33* 38
33 .....	36* 43
36 .....	42* 45
39 .....	48* 49
42 .....	53* 54
45 .....	55

\* Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the “Size Designation Chart” in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25 respectively.

Additionally, handlers have the option of packing fruit as size designations 23, 20, or 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered “undersized” to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

### 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 action 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 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least \$5,000,000. In addition, 354 of the 360 growers have annual sales less than \$500,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
<b>20</b> .....	<b>27</b>
<b>23</b> .....	<b>29</b>
25 .....	27* 32
27/28 .....	30* 35

Size designation	Maximum number of fruit per 8-pound sample
30 .....	33* 38
33 .....	36* 43
36 .....	42* 45
39 .....	48* 49
42 .....	53* 54
45 .....	55

\*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit in size designations 23 and 20, as well as size designation 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for Size 39 would move approximately 600,000 pounds of fruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. Imports from Europe have increased 1,409 percent since 1992–93. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size designation differences should help

California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry \$24,407,981 in FOB value versus the \$22,442,648 received for the 2000–2001 season. This is an additional \$1.9 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believe that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers, regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit

from this relaxation. It is estimated that grower returns will increase by approximately \$1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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 sectors.

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

Further, 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. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on relaxing a pack requirement currently prescribed under the California marketing order. Any comments received prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other 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 relaxes pack requirements; (2) the 2001–02 harvest is expected to begin during October and this relaxation should cover as much of the harvest as possible; (3) the Committee unanimously recommended these changes to provide handlers more marketing flexibility at a public meeting

and interested parties had an opportunity to provide input; 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. In § 920.302 the table at the end of paragraph (a)(4)(iv) is revised to read as follows:

#### § 920.302 Grade, size, pack, and container regulations.

- (a) \* \* \*  
(4) \* \* \*  
(iv) \* \* \*

Size designation	Maximum number of fruit per 8-pound sample
20 .....	27
23 .....	29
25 .....	32
27/28 .....	35
30 .....	38
33 .....	43
36 .....	45
39 .....	49
42 .....	54
45 .....	55

\* \* \* \* \*

Dated: October 24, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–27205 Filed 10–25–01; 1:46 pm]

BILLING CODE 3410–02–P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM200; Special Conditions No. 25–189–SC]

#### Special Conditions: Boeing Model 727–100/–200 Series Airplanes; High-Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new electronic air data systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is October 19, 2001. Comments must be received on or before November 28, 2001.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), *Docket No. NM200*, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM200*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. NM200.” The postcard will be date stamped and returned to the commenter.

#### Background

On June 5, 2001, Aircraft Systems & Manufacturing, Georgetown, Texas, applied for a Supplemental Type Certificate (STC) to modify Boeing Model 727–100/–200 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 120 and 189 passengers, depending upon the model and configuration. The modification incorporates the installation of new electronic air data systems consisting of a single air data computer, electronic altimeter for display of No. 1 altitude data and an air data display unit for display of No. 2 altitude data. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

#### Type Certification Basis

Under the provisions of 14 CFR 21.101, Aircraft Systems & Manufacturing must show that the Boeing Model 727–100/–200 series airplanes, as modified to include the new electronic air data systems, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of