

processing at the time of the substitution.

(1) Interest Assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (c) of this section to receive their initial and subsequent IA payments.

Signed in Washington, DC, on June 16, 2005.

James R. Little,
Administrator.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV05-920-1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the pack requirements for California kiwifruit 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). This rule would require that kiwifruit marked as size 39 or 42 not vary in diameter by more than $\frac{3}{8}$ inch, regardless of pack type. In addition, the three tables currently under the pack regulation would be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

DATES: Comments must be received by July 12, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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, or Internet: <http://www.regulations.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: Shereen Marino, 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, 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.

SUPPLEMENTARY INFORMATION: This proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 proposed rule invites comments on revisions to the pack requirements for California kiwifruit under the order. This rule would require that Size 39 and Size 42 fruit not vary in size by more than $\frac{3}{8}$ inch, regardless of pack type. The Committee unanimously recommended these changes at its March 2, 2005, meeting.

Currently, three tables are included under the pack regulation to designate sizes and list the size variances permitted for the different pack arrangements used in the industry. This rule would consolidate tables into one table that would list size designations with applicable size variation tolerances for kiwifruit regardless of the pack or container type. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's regulations specifies pack requirements for fresh shipments of California kiwifruit. Pack requirements include the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container.

Section 920.302 of the order's regulations specifies grade, size, pack, and container regulations for the fresh shipment of California kiwifruit. This section contains three tables regarding pack. One table in § 920.302(a)(4)(iii) specifies size designations for kiwifruit packed in volume fill containers (such as bags or bulk containers). These size designations are based on the maximum number of pieces of fruit per 8-pound sample. Two tables in § 920.302 specify size variation tolerances. One table in § 920.302(a)(4)(ii)(B) is applicable to volume fill containers and lists size designations with the corresponding size variation tolerance listed by diameter. The other table in § 920.302(a)(4)(ii)(A) is applicable to kiwifruit packed in trays and lists the variation tolerance in diameter by count (number of pieces of kiwifruit packed in a tray).

Since 1989, there have been two different size variation tolerances for Size 39 and Size 42 kiwifruit, depending on style of pack. The

majority of Size 39 and Size 42 kiwifruit is initially packed in volume fill containers and must meet a size variation tolerance of $\frac{3}{8}$ -inch. It has become more common for some of the fruit to then be restyled (repacked) into trays. In fact, the current estimate is that 10 percent of the crop is restyled into trays. All kiwifruit restyled within the production area must be reinspected.

Currently, restyling fruit from volume fill containers into trays may require resizing the fruit because the size variation tolerance differs for the two containers. Fruit packed in trays that is 39 and 42 count must meet a size variation tolerance of $\frac{1}{4}$ -inch. In order to meet the more restrictive $\frac{1}{4}$ -inch tolerance, handlers must resize the fruit. Resizing is costly and slows down the restyling process. In addition, during the initial packing process, pack styles can change several times daily depending upon market demand. Resizing may also reduce returns to growers. Thus, the Committee recommended changing the size variation requirement for Size 39 and Size 42 kiwifruit from $\frac{1}{4}$ inch to $\frac{3}{8}$ inch when packed in cell compartments, cardboard fillers, or molded trays.

The Committee also recommended revising the regulations to specify one standard size variation tolerance of $\frac{3}{8}$ -inch for Size 39 and Size 42 kiwifruit, regardless of whether the fruit is packed in volume fill containers or trays. To facilitate this change the three tables under the pack regulation would be consolidated into one that would list both size designations and their applicable size variation tolerances for fruit packed in all container types. Additionally, clarifying language that was inadvertently omitted from under the first table (Count) in prior rulemaking would be restored. The language clarifies that the average weight of all sample units in a lot must weigh at least 8 pounds, but no sample

unit may be more than 4 ounces less than 8 pounds. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations. Accordingly, section 920.302 is proposed to be revised.

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 45 handlers of California kiwifruit subject to regulation under the marketing order and approximately 275 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 \$6,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. None of the 45 handlers subject to regulation have annual kiwifruit sales of at least \$6,000,000. In addition, six growers subject to regulation have annual sales exceeding \$750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This proposed rule would relax the pack requirements currently specified in

§ 920.302 for kiwifruit. The rule would create one standard size variation tolerance to be applied uniformly to all container types. Additionally, the three tables currently under the pack regulation would be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances, regardless of pack or container this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

Authority for this action is provided in § 920.52 of the order, which authorizes the establishment of pack requirements.

The impact of this change on handlers was discussed by the Committee.

Approximately 10 percent of shipments are restyled from a volume fill container to a tray pack. Based on an industry survey, restyling costs an average of \$.07 per tray equivalent. If there is no longer a need for handlers to resize the fruit when restyling from a volume fill container to a tray pack, it is estimated that restyling costs per tray equivalent would decrease to \$.035 per tray equivalent. The average of Size 39 and 42 fruit sold over a 6-year period is approximately 22 percent of the crop. Current restyling costs are obtained by calculating 10 percent of the average of Size 39 and 42 fruit (22 percent of the total packout) and multiplying that number by the estimated cost per tray equivalent.

Based on a total crop of 6 million tray equivalents (te) the cost savings for repacking/restyling would be around \$9,000. This amount is obtained by subtracting \$9,240 from \$18,480 from the table below, which is the difference between the restyling costs incurred when fruit must be resized and restyling costs when fruit does not need to be resized.

Total Crop Sold (te)	6,000,000
Total Size 39 & 42 fruit (22% of total crop) (te)	1,320,000
Estimated number of Size 39 & 42 fruit restyled annually from bulk to trays (10% of total 39/42's packed) (te)	132,000
Approximate cost to restyle Sizes 39 and 42 fruit without rechecking/resizing for size variation difference (0.07 cents per te)	\$9,240
Approximate cost to restyle Size 39 and 42 fruit that requires resize for size variation difference (0.14 cents per te)	\$18,480

The change would reduce packing costs since handlers would no longer need to resize fruit to the more restrictive $\frac{1}{4}$ -inch tolerance in the restyling (repacking) process. The packing process would also move more rapidly since frequent resizing adjustments would no longer be necessary. Fewer resizing adjustments

may also mean increased returns to growers.

The Committee considered the alternative of not revising the rule, but this was not considered viable because of the confusion currently experienced because of differences in the size variation tolerance in the different packs and the resulting increased packing costs. The Committee reasoned that the

only viable alternative was to create a standard size variation tolerance regardless of pack.

This proposed rule would create one size variation standard that would be applied uniformly to all container types as well as consolidate the three tables currently in the pack regulation of the order into one table. Accordingly, these actions would 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. In fact, this proposed action would relax the current requirements under the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627) with regard to “fairly uniform in size”.

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 March 2, 2005, meeting, was a public meeting and all entities, both large and small, were encouraged to express their views on

these issues. 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.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because this rule should be in place by September 10, 2005, which would be prior to the start of the 2005/2006 crop year. All written comments timely received would be considered before a final determination is made on this matter.

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 proposed to be 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, paragraph (a)(4) is revised to read as follows:

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

(a) * * *

(4) *Pack requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) (A) When kiwifruit is packed in any container, it would be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

SIZE DESIGNATION AND SIZE VARIATION CHART

Column 1—size designation	Column 2— maximum number of fruit per 8-pound sample	Column 3—fruit size variation tolerance (diameter)
18 or larger	25	½-inch (12.7 mm).
20	27	½-inch (12.7 mm).
23	30	½-inch (12.7 mm).
25	32	½-inch (12.7 mm).
27/28	35	½-inch (12.7 mm).
30	39	½-inch (12.7 mm).
33	43	⅜-inch (9.5 mm).
36	46	⅜-inch (9.5 mm).
39	49	⅜-inch (9.5 mm).
42	53	⅜-inch (9.5 mm).
45 or smaller	55	¼-inch (6.4 mm).

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or

more than 35 pounds net weight of kiwifruit.

* * * * *

Dated: June 16, 2005.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12254 Filed 6–21–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–4; FV03–991–01]

Hops Produced in WA, OR, ID and CA; Proposed Marketing Agreement and Order No. 991; Termination of Proceeding on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates the proceeding to establish a marketing agreement and order for hops grown in Washington, Oregon, Idaho and