

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1.195 hours per response.

*Respondents:* Packinghouse owner/operators in Mexico and importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States.

*Estimated annual number of respondents:* 210.

*Estimated annual number of responses per respondent:* 1.195.

*Estimated annual number of responses:* 210.

*Estimated total annual burden on respondents:* 251 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56-2ff, paragraph (c)(3)(vi) would be revised and new paragraphs (j) and (k) would be added to read as follows:

**§ 319.56-ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse followed by the letters "M/US." The stickers may be used only for fruit produced in accordance with this section for export to the United States.

\* \* \* \* \*

(j) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

(k) *Compliance agreements.* (1) Any person other than the permittee (i.e., a second-party or subsequent handler) who moves or distributes the avocados following their importation into the United States must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the

person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

Done in Washington, DC, this 21st day of June 1999.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 920**

[Docket No. FV98-920-4 PR]

**Kiwifruit Grown in California; Changes in Minimum Size, Pack, Container, and Inspection Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed changes to the minimum size, pack, container, and inspection 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 would specify minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers. In addition, this rule proposes to continue, for the 1999-2000 season, the suspension of minimum net weight requirements for kiwifruit tray packs scheduled to expire at the end of the 1998-1999 season. Also, proposed to be continued for the 1999-2000 season is

the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

**DATES:** Comments must be received by July 15, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail:

moab.docketclerk@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.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, 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, PO. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation or obtain a guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**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 (Department) is issuing this proposed

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 the Secretary 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 Secretary 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 Secretary'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 proposal invites comments on changes to minimum size, pack, container, and inspection 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 Committee.

This rule would specify the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule proposes to continue, for the 1999-2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998-1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). No comments were received pursuant to the request for comments in the interim final rule. A final rule published last August suspended the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates for the 1998-1999

season (63 FR 41390 August 4, 1998). This rule also proposes to continue the suspension of this requirement for the 1999-2000 season. The proposed changes were unanimously recommended by the Committee. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance, from 10 percent, by count, in any one container, to 25 percent, by count, for Size 42 kiwifruit, and the maximum number of fruit per 8-pound sample for Sizes 42, 39, 36, 33, and 30 of kiwifruit packed in bags, volume fill, or bulk containers for the 1998-1999 and future seasons. No changes to these provisions are proposed in this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302 (b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that its original intent had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size would apply to all pack styles for the remainder of the 1998-1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999-2000 season. The Committee concluded that the recommended changes made for the 1998-1999 season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999-2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and

not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January, the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of an outdated cup size used in the Size 45 tray. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be studied further.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

#### **New Proposed Changes for the 1999–2000 Season**

##### *Clarification of the Minimum Size Requirements*

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 minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

As previously mentioned, the Committee unanimously recommended suspending the minimum net weight requirements specified in § 920.302(a)(4)(iii) for the 1998–1999 season. This recommendation was implemented through an interim final rule published September 3, 1998 (63 FR 46861).

In early November 1998, the Department determined that suspending § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

The Committee met on February 25, 1999, unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. Size 45 was defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflects the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered establishing a count of 58 or 59 pieces of slightly smaller fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to

prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirements apply to all shipments.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

#### **Lot Stamp Requirement**

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized

inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to these requirements.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, they unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

**Changes to Clarify Pack and Container Marking Requirements**

Section 920.303 of the order’s rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size

designation and net weight; or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change “Sizes” to “Count,” change “30 or larger” to “30 or less,” and change “39 or smaller” to “39 or more”; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from “Sizes” to “Size Designation”; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding “individual consumer packages” to the list of containers in the table specifying the numerical size and maximum number of fruit per 8-pound sample; delete the word “numerical” when describing size; and delete the words “Column 1,” “Column 2,” and “Numerical Count” from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes would: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding “individual consumer packages not within a master container” to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word “bins” and replace it with “containers”;

(3) delete the words “net weight” as they are not necessary; and (4) change language in § 920.302(a)(5) by adding “within a master container” after individual consumer packages.

These changes would ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

**Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season**

*Continued Suspension of Minimum Net Weight Requirements for Trays*

Section 920.302(a)(4) of the order’s rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season.

Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

*Continued Suspension of Reinspection Requirement*

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order’s rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998–1999 season, § 920.155 of the order’s rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year is valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 1, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost

of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save \$50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved \$50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring may reduce the size of the 1999–2000 crop, the Committee believes the industry would continue to benefit from conducting its own reinspection.

The Committee would like to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

**Maintaining Current Regulatory Changes**

*Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit*

Section 920.302(a)(4) of the order’s rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit

from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season would continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

*Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers*

Section 920.302(a)(4) of the order’s 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.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of fruit Per 8 pound sample
21 .....	22
25 .....	27
27/28 .....	30
30 .....	33
33 .....	36
36 .....	42
39 .....	48
42 .....	53
45 .....	55

Currently, under the rules and regulations, kiwifruit packed in bags,

volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are 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. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

#### *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 60 handlers of California kiwifruit subject to regulation under the marketing order and approximately 450 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit receipts of at least \$5,000,000. This figure excludes receipts from any other sources. The remaining 59 handlers have annual receipts less than \$5,000,000, excluding receipts from other sources. In addition, 10 of the 450 producers subject to regulation have annual sales of at least \$500,000, excluding receipts from any other sources. The remaining 440 producers have annual sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This proposal invites comments on changes to minimum size, pack, container, and inspection 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 Committee.

This rule would specify the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule proposes to continue, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302(a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). A final rule published last August suspended, for the 1998–1999 season, the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates (63 FR 41390; August 4, 1998). This rule also proposes to continue the suspension of this requirement for the 1999–2000 season.

The proposed changes were unanimously recommended by the Committee. These changes would clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance for Size 42 kiwifruit and the maximum number of fruit for the 8-pound sample for the 1998–1999 and future seasons. No changes to these provisions are proposed in this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that the intent of its July 8, 1998, recommendation had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size would apply to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers

to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace in the 1998–1999 season because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit would not have met the suspended minimum net weight requirement of 6.5 pounds because of an outdated cup size used in the Size 45 tray. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be further evaluated.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container

marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

#### **New Proposed Changes for the 1999–2000 Season**

##### *Clarification of the Minimum Size Requirement*

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 minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

Prior to the 1998–1999 season, the minimum size for kiwifruit was defined as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style. As previously mentioned, a change of pack requirements recommended by the Committee last summer and implemented by an interim final rule published on September 3, 1998 (63 FR 46861) unintentionally limited application of minimum size requirements to volume fill containers. The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

On February 25, 1999, the Committee unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. The

Committee recommended that Size 45 be defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflects the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered other alternatives to maintaining Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample, as the minimum size, but determined that these alternatives would not adequately address the industry's problems. The Committee discussed establishing two minimum net weight requirements, a lower net weight requirement for Size 45 fruit packed into trays and a higher net weight requirement for Size 45 kiwifruit packed into volume fill containers. This suggestion was not acceptable as the Committee believes pack style should not be the deciding factor in what size fruit is acceptable and that lower weights on trays would discriminate against Size 45 kiwifruit packed into containers other than trays. In addition, members commented that packers of volume fill containers might then have to meet a more restrictive minimum size requirement than importers of kiwifruit, and that two different minimum size requirements could cause confusion in the marketplace and result in disorderly marketing.

The Committee also considered establishing a count of 58 or 59 pieces of fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation (pieces of fruit) for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not

profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes that the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirement applies to all shipments regardless of pack style.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

##### *Lot Stamp Requirement*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to this requirement.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were

utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, it unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

The Committee considered other alternatives to the requirement to stamp all exposed or outside containers, or to attach four placards to the pallet, but determined that these suggestions would not adequately address the positive lot identification requirements.

One suggestion was to utilize one or two placards, but the industry believed that four placards (one on each side) would be a more adequate means of ensuring that the pallet met the positive lot identification (PLI) requirements.

Another suggestion was to identify each package in such a way that it could be traced back to the original inspection certificate. Placing date codes or other types of codes on every container prior to palletizing and using that as PLI on the inspection certificate was discussed. The Committee did not adopt this suggestion as it believed that all containers, including those in the center stacks would have to be marked with a special code, and that this would be more restrictive than current requirements for other containers placed on pallets. The Committee also believed that this might slow down the packing

process, thus resulting in increased packing costs.

After considering the alternatives, the Committee unanimously recommended that individual consumer packages placed directly on a pallet have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit.

#### *Changes To Clarify Pack and Container Marking Requirements*

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change "Sizes" to "Count," change "30 or larger" to "30 or less," and change "39 or smaller" to "39 or more"; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from "Sizes" to "Size Designation"; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding "individual consumer packages" to the list of containers that utilize the table which specifies the numerical size and maximum number of fruit per 8-pound sample; delete the word "numerical" when describing size; and delete the words "Column 1," "Column 2," and "Numerical Count" from the size

designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes would: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding "individual consumer packages not within a master container" to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word "bins" and replace it with "containers"; (3) delete the words "net weight" as they are not necessary; and (4) change language in § 920.302(a)(5) by adding "within a master container" after individual consumer packages.

These changes would ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

#### **Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season**

##### *Continued Suspension of Minimum Net Weight Requirements for Trays*

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Before the suspension action last September, § 920.302(a)(4)(iii) specified minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet



minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 46861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

*Continued Suspension of Reinspection Requirements*

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the

order’s rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to the 1998–1999 season, § 920.155 of the order’s rules and regulations prescribed that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever was later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipping.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save \$50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved \$50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring may reduce the 1999–2000 crop estimate, the Committee believes the industry would continue to benefit from conducting its own reinspection.

The Committee would like to evaluate this suspension one more season before making a decision to permanently

remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

**Maintaining Current Regulatory Changes**

*Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit*

Section 920.302(a)(4) of the order’s rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season, a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season would continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

*Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers*

Section 920.302(a)(4) of the order’s 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.

Section 920.302(a)(4)(iv) was revised by an interim final rule published

September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of fruit per 8 pound sample
21 .....	22
25 .....	27
27/28 .....	30
30 .....	33
33 .....	36
36 .....	42
39 .....	48
42 .....	53
45 .....	55

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are 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. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

The proposed changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, producers, buyers, and consumers. The impact of these changes on producers and handlers is expected to be beneficial for all levels of business.

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

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 25, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12

members. Three of these members are handlers and producers, eight are producers only, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because: (1) The changes proposed in this rule, if adopted, should be in place as soon as possible to enable handlers to make operational decisions in time for the 1999-2000 season which begins August 1; and (2) this action was unanimously recommended by the Committee at a public meeting and is not expected to be controversial. All written comments timely received will 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.

**§ 920.155 [Suspended]**

2. In part 920, § 920.155 is suspended in its entirety effective August 1, 1999, through July 31, 2000.

3. Section 920.302 is amended by revising paragraphs (a)(2), (a)(4)(ii), and (a)(4)(iv), suspending paragraph (a)(4)(iii), effective August 1, 1999, through July 31, 2000, removing the phrase "Definitions. (1) The term KAC No." in paragraph (b) and adding in its place the phrase "Definitions. The term Kac No.", and removing paragraph (b)(2) to read as follows:

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

(a) \* \* \*

(2) Size Requirements. Such kiwifruit shall be at least a minimum Size 45. Size 45 is defined as a maximum of 55 pieces of fruit in an 8-pound sample.

\* \* \* \* \*

(4) \* \* \*

(ii) Kiwifruit packed in cell compartments, cardboard fillers or molded trays (excluding individual consumer packages) may not vary in diameter more than:

Count	Diameter
30 or less .....	1/2 inch (12.7 mm).
31-38 .....	3/8 inch (9.5 mm).
39 or more .....	1/4 inch (6.4 mm).

Kiwifruit packed in individual consumer packages, bags, volume fill, or bulk containers, fruit may not vary more than:

Size Designation	Diameter
30 or larger .....	1/2 inch (12.7 mm).
33, 36, 39, and 42 ...	3/8 inch (9.5 mm).
45 or smaller .....	1/4 inch (6.4 mm).

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 requirements of this paragraph.

\* \* \* \* \*

(iv) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used.

Size designation	Maximum number of fruit Per 8-pound sample
21 .....	22
25 .....	27
27/28 .....	30
30 .....	33
33 .....	36
36 .....	42
39 .....	48
42 .....	53
45 .....	55

\* \* \* \* \*

4. In § 920.303, paragraphs (c)(3), (c)(5), and (d) are revised to read as follows:

**§ 920.303 Container marking regulations.**

\* \* \* \* \*

(c) \* \* \*

(3) For bulk containers or individual consumer packages not within a master container, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation and count.

\* \* \* \* \*

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages within a master container. If count is used, it must be accompanied by the size designation.

\* \* \* \* \*

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet.

\* \* \* \* \*

Dated: June 21, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-16209 Filed 6-24-99; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1412

RIN 0560-AF79

#### Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Advance notice of proposed rulemaking—Additional comments.

**SUMMARY:** The Commodity Credit Corporation (CCC) is re-issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on reductions of Production Flexibility Contract (PFC) payments that were affected by the planting of fruits or vegetables in violation of section 118(b)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7218(b)(1)). Comment was previously requested by a Notice published on May 5, 1999 (64 FR 24091) for which the comment period closed on June 2, 1999. This notice will allow for an extension of the comment period.

**DATES:** Comments must be received at the address below by July 23, 1999.

**ADDRESSES:** Comments should be directed to Sharon Biastock, Farm Service Agency (FSA), STOP 0517, 1400

Independence Avenue, SW.,  
Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:**  
Sharon Biastock, (202) 720-6336.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into Production Flexibility Contracts (PFC's). The 1996 Act prohibited the planting of fruits and vegetables on PFC acreage except as provided by specific exceptions. Two exceptions require the application of an acre-for-acre payment reduction for each acre of fruit or vegetables planted on PFC acreage. A violation of the PFC occurs when producers do not comply with the fruit and vegetable provisions and the exceptions unless it is determined that the violation is not serious enough to warrant termination of the PFC. The 1996 Act provides that if the Secretary determines that a violation does not warrant termination of the PFC, the Secretary may require the owner or producer subject to the contract to: (1) Refund to the Secretary that part of the contract payments received by the owner or producer during the period of the violation, together with interest on the contract payments as determined by the Secretary; or (2) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

Under current regulations, if the county FSA committee determines that a planting violation does not warrant termination of the PFC, a reduction may be made in the current or future contract payments, proportionate to the severity of the violation and equal to the sum of either or both: (1) The market value of the fruits and vegetables planted on contract acreage, and (2) the contract payment for each contract acre. The market value is determined by the State committee for the specific fruit or vegetable without any adjustment to reflect costs associated with planting, cultivating or harvesting the fruit or vegetable. If the number of acres on the farm planted to fruits or vegetables exceeds the total PFC acreage and more than one fruit or vegetable has been planted on the farm, the calculation is based on the fruit or vegetable determined to have the highest value. If the acreage of fruit or vegetable with the highest value is less than the acres in violation, the calculation for the remaining acres in violation is based on the fruit or vegetable with the next

highest value. The payment reduction is applied to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

For example, if the county committee determines that 25 acres of fruit or vegetables were planted on PFC acreage in violation of the PFC, but the violation did not warrant termination of the PFC, a payment reduction for the planting violation would be assessed in addition to an acre-for-acre reduction for each of the 25 acres. If, on the farm in this example, the producer planted 100 acres of green peas, which the State committee determined had a value of \$500 per acre, and one acre of celery, which the State committee determined had a value of \$3,000 per acre, the payment reduction for the planting violation in this example would be \$15,000 plus a PFC payment reduction for 25 acres. The \$15,000 payment reduction for the planting violation represents the value of the one acre of celery and 24 acres of green peas, as determined by the State committee. This payment reduction would be applied to the current year PFC payments and any future PFC payments for the farm on which the planting violation occurred and any other farm in which the producers sharing in the PFC payments for the farm on which the planting violation occurred have an interest.

The payment reductions calculated in accordance with the current implementing regulations and procedure are viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. Accordingly, as indicated below, the public is invited to comment on PFC violations for planting fruits and vegetables.

**Purpose**

The purpose of this ANPRM is to seek comments on: (1) The appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.401; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC's which have been terminated, or for which contract acreage was reduced, because of the current method of calculating