

pounds net weight of kiwifruit. The Committee did not adopt these suggestions, as it believes that continuing the suspension of the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers of kiwifruit designated by weight would allow handlers the flexibility to meet buyer container preferences and to increase sales. Further, the majority of the Committee believes that establishing standard packaging requirements for volume filled containers of kiwifruit packed by net weight may negatively impact grower returns.

#### Standard Pack "Tightly Packed" Requirement

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be "not badly misshapen" and an additional 7 percent tolerance is provided for badly misshapen fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's "tightly packed" provisions were established in the order to ensure that the "Hayward" variety (the predominant kiwifruit produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

As previously mentioned, a new kiwifruit cultivar, the *Actinidia chinensis* "Hort16A" has recently been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The "Hort16A" is referred to as a "gold" variety because the internal flesh is a yellow to gold color when fully mature. The "Hort16A" kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a "beak." Therefore, the "Hort16A" must be handled differently than the "Hayward" variety. Care must be taken during the packing process to protect the beak. To minimize damage, the "Hort16A" is packed into a special shallow molded tray with a notch for the beak. The "Hort16A" kiwifruit, when packed in this shallow tray, may

not meet the "tightly packed" requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all "gold" kiwifruit varieties from the order's "tightly packed" requirement. However, the "Hort16A" with its unique "beak" is currently the only known commercially produced "gold" kiwifruit. Because it is not known whether other "gold" kiwifruit varieties would experience the same difficulty in meeting the "tightly packed" standard pack requirement, this proposal would limit the exemption to the "Hort16A" "gold" variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality "Hort16A" kiwifruit.

The Committee discussed alternatives to this change, including exempting all kiwifruit packs from the "tightly packed" requirement, but did not adopt this suggestion because eliminating the requirement for the "Hayward" variety is unnecessary and is still a pack standard desired by the industry for the vast majority of kiwifruit currently packed in California. It is anticipated that within the next 5 to 10 years more than 1,000 acres of "Hort16A" will be planted in California with production exceeding one million tray equivalents (one tray equivalent equals approximately 7 pounds). Small and large growers and handlers are expected to benefit from this change. These changes are expected to help handlers compete more effectively in the marketplace and to improve grower returns.

These proposed rule changes would relax pack requirements under the kiwifruit order. 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. However, as previously stated, California kiwifruit must meet the "tight-fill" requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Agreement Act of 1946 (7 U.S.C. 1621 through 1627).

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 12, 2003, meeting, was a public meeting and all entities, both large and small, were able 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 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen-days is deemed appropriate because the fiscal period for kiwifruit begins on August 1, 2003, and these changes, if adopted, should be made as soon as possible. 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.

#### § 920.302 [Amended]

2. Section 920.302 is amended as follows:

- A. Paragraph (a)(4)(iv) is removed;
- B. Paragraph (a)(4)(v) is redesignated as paragraph (a)(4)(iv);
- C. The existing suspension of newly designated paragraph (a)(4)(iv) is extended until July 31, 2004;
- D. Paragraph (b) is revised to read as follows:

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

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(b) *Definitions.* The term KAC No. 1 quality means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335