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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV03-920-1 FR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises pack requirements currently prescribed 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 removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; continues to suspend, for the 2003-04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and exempts the "Hort16A" kiwifruit variety from the "tightly packed" standard pack requirement. These changes were recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

EFFECTIVE DATE: This final rule becomes effective July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, 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 final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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 final rule revises pack requirements currently prescribed for California kiwifruit under the order. This rule: (1) Removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continues to suspend, for the 2003-04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempts the "Hort16A" kiwifruit variety from the "tightly packed" standard pack requirement. The Committee recommended these changes at its March 12, 2003, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

Volume Filled Containers Designated by Count

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(a)(1) and (3) of the order authorizes the establishment of pack requirements for California kiwifruit.

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

Section 920.302(a)(4)(iv) provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the U.S. Standards for Grades of Kiwifruit (Grade Standards). For example, if the fruit has a size designation of "30" marked on the container, then three times the size designation or 90 kiwifruit must be packed into the container and the container must be marked with "90 count."

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. (Volume filled containers are those in which kiwifruit are loosely packed without cell