of Management and Budget (OMB) and assigned OMB No. 0581–0189. 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 rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 30-day comment period, which ended October 10, 2002. No comments were received.

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.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 57319, September 10, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 57319, September 10, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29533 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–3 FIR]

Kiwifruit Grown in California; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which revised pack and container requirements prescribed 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 continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule also continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

EFFECTIVE DATE: December 23, 2002.

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 rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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 rule continues in effect container and pack requirements currently prescribed for California kiwifruit under the order. This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule continues in effect revisions to lot stamping

requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. The Committee unanimously recommended these changes at its April 9, 2002, meeting.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(4)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various sizes.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes as shown in the following chart were implemented through an interim final rule (66 FR 1413, October 29, 2001) and a final rule (67 FR 11396, March 14, 2002). Changes are in bold.

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

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

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better 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.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold; however, handlers found that adjustments were still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42 (67 FR 54327, August 22, 2002). The maximum number of fruit allowed in size 23 increased from 29 pieces of fruit per 8-pound sample to 30 pieces; in size 30, 39 pieces of fruit were allowed instead of 38 pieces; in size 36, 46 pieces of fruit were allowed instead of 45; and in size 42, the number of fruit allowed was decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These changes are shown in bold in the following chart.

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29 **30**
25	32
27/28	35
30	38 **39**
33	43
36	45 **46**
39	49
42	54 **53**
45	55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit per 8-pound sample for size 42 will result in more clearly defined size categories, and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

Lot Stamping Requirements

Section 920.52 of the order authorizes the establishment of container requirements. Section 920.55 of the order requires inspection and certification of kiwifruit, handled by handlers.

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002),

§ 920.303(d) required 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. It further required that individual consumer packages of kiwifruit placed directly on a pallet 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. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service (inspection service) were exempted, and continue to be exempted, from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer, where the containers are emptied and returned to a clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor.

The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended and the USDA approved allowing handlers to use any method of positive lot identification (PLI) in accordance with Federal or Federal-State Inspection Service (inspection service) procedures (67 FR 54327, August 22, 2002). The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.52 authorizes the establishment of pack requirements. Paragraphs (a)(1) and (3) of § 920.52 specify that the USDA may fix the weight of containers used in the handling of kiwifruit.

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

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.302(a)(4)(v) required that all volume filled containers of kiwifruit designated by weight shall 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.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight. At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers did not differentiate between an imported 19.8-pound (9-kilogram) and a 22-pound (10-kilogram) net weight volume filled container from California. Because buyers paid the same price for each container in 2001, the effect was not favorable for California handlers.

Additionally, prior to publication of the above-mentioned interim final rule, § 920.302(a)(4)(v) required handlers to utilize a standard packaging of 22-pounds (10-kilograms) net weight for volume filled containers that were over 10-pounds or less than 35-pounds net weight of kiwifruit. This restriction limited California kiwifruit handlers in meeting buyer's demands for other types of packaging.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season (67 FR 54327, August 22, 2002). The Committee expects that this suspension will enable California handlers to meet the packaging demands of retailers for volume filled containers, make California kiwifruit more competitive by allowing handlers to match other packaging styles, and reduce handlers' packaging costs. This change will not affect the import regulation.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Prior to publication of the interim final rule (67 FR 54327, August 22, 2002), paragraphs (a)(1) through (a)(6) of § 920.160 specified the types of information to be provided on the shipment report.

Paragraph (a)(4) required handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) required handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) required handlers to report the amount of fruit set aside for processing.

The Committee had not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting.

Final 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 final 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 52 handlers of California kiwifruit subject to regulation under the marketing order and approximately 326 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 growers subject to regulation have annual sales of at least $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language contained in paragraphs (a)(4), (a)(5), and (a)(6) of § 920.160 that has not been applicable for several years. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. Authority for these actions is provided in §§ 920.52, 920.55, and 920.60 of the order.

Numerical Count Size Designations

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

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(4)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes, as shown in the following chart, were implemented through an interim final rule (66 FR 1413, October 29, 2001), and finalized by a final rule (67 FR 11396, March 14, 2002). Changes are shown in bold.

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

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

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better 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.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold. However, handlers found that adjustments were still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing

equipment had difficulty during the 2001–02 season distinguishing between sizes.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42 (67 FR 54327, August 22, 2002). Size 23 was increased from 29 pieces of fruit per 8-pound sample to 30 pieces, size 30 was increased from 38 pieces of fruit per 8-pound sample to 39 pieces of fruit, size 36 was increased from 45 pieces of fruit per 8-pound sample to 46 pieces, and size 42 was decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These changes are shown in the following chart in bold.

Size designation	Maximum number of fruit per 8-pound sample	
20		27
23	29	**30**
25		32
27/28		35
30	38	**39**
33		43
36	45	**46**
39		49
42	54	**53**
45		55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit in 8-pound samples for size 42 will result in more clearly defined size categories and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

The Committee discussed alternatives to these changes. It considered suspending the size designation chart to lower inspection costs and allow handlers to pack similar to imports. However, it did not adopt this option because it concluded inspection costs will not be significantly lowered and because a recent grower survey showed that uniform sizing is one of the most important issues to California kiwifruit growers.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers will benefit from the revised numerical counts for sizes 23, 30, 36, and 42.

After considering these alternatives, the Committee recommended and the USDA approved relaxing the pack requirements for three sizes and tightening the pack requirements for one size (67 FR 54327, August 22, 2002). Small and large growers and handlers are expected to benefit from these changes. A reasonable crop estimate for the 2002–03 season is 7.5 million tray equivalents. The average FOB value for the 2001–02 season is estimated to be $3.50 per tray equivalent. The Committee estimated that the changes to the numerical count for size designations 23, 30, 36, and 42 will increase the average FOB value for the 2002–03 season to $3.75 per tray equivalent. It is anticipated that the FOB value for the 2002–03 season will increase by $1,875,000 ($3.75 − $3.50 × 7,500,000 tray equivalents). This change will not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. These changes will not affect import requirements. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

Lot Stamping Requirements

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.303(d) required 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. It further required that individual consumer packages of kiwifruit placed directly on a pallet 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. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the inspection service were exempted, and continue to be exempted, from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit and the information in the working papers is used by the inspector to determine the grade of the inspected lot.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer where the containers are emptied and returned to a clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of PLI in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

The Committee discussed alternatives to this change including not changing the lot stamp requirements for plastic containers. After considering this

alternative, the Committee recommended and the USDA approved relaxing the container marking requirements provided that plastic containers meet any approved method of PLI (67 FR 54327, August 22, 2002). The Committee believes that handlers and growers will benefit from such a relaxation. This change is expected to help handlers compete more effectively in the marketplace and to improve grower returns, and will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

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

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.302(a)(4)(v) required all 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.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended, and USDA established standard packaging for certain volume filled containers packed by weight. At that time, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern Hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

Prior to publication of the interim final rule (67 FR 54237, August 22, 2002), § 920.302(a)(4)(v) required handlers to utilize a standard 22-pound (10-kilogram) net weight standard for packaging volume filled containers that were over 10-pounds or less than 35-pounds net weight. This restriction limited California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standard 22-pounds (10-kilograms) net weight packaging requirement for volume filled containers designated by weight for the 2002–03 season (67 FR 54327, August 22, 2002). The Committee expects that this suspension will enable California handlers to meet packaging demands of retailers for volume filled containers; make California kiwifruit more competitive with imports by allowing handlers to pack similar to imports; and reduce handlers' packaging costs. This change will not impact import requirements.

The Committee discussed alternatives at the April 9, 2002, meeting. One Committee member suggested leaving the standard packaging requirement unchanged. However, the Committee believes that relaxing the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales.

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

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Prior to publication of the interim final rule (67 FR 54327, August 22, 2002), paragraphs (a)(1) through (a)(6) of § 920.160 specified the types of information to be provided on the shipment report. Paragraph (a)(4) required handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) required handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) required handlers to report the amount of fruit set aside for processing.

The Committee had not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting. It is estimated that the handler burden will not be impacted, as the current shipment report form approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189 does not contain these data elements.

This rule will continue to relax pack and container requirements under the kiwifruit order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 22, 2002. Copies of the rule were mailed by the Committee Staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period which ended October 21, 2002. No comments were received.

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.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without

change, as published in the **Federal Register** (67 FR 54327, August 22, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 67 FR 54327, August 22, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29530 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV02–984–1 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses of $2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective November 22, 2002. Comments received by January 21, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, 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 rule is issued under Marketing Agreement and Order No. 984 both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, 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. Such 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 rule decreases the assessment rate established for the Board for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002–03 expenditures of $2,970,000 and an assessment rate of $0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's