Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV03–920–1 PR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revisions to 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 would: Remove 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; continue 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 exempt 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.

DATES: Comments must be received by July 8, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, 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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revisions to pack requirements currently prescribed for California kiwifruit under the order. This rule would: (1) Remove 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) continue 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) exempt 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 pieces of 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 compartments, cardboard fillers, or molded trays). Volume filled containers were designated by size and also either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container by count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in 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 Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of pieces of kiwifruit.

During the 1993–94 season handlers realized that it was more labor intensive and more expensive to pack volume filled containers designated by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers designated by net weight and size.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some handlers in the industry, including those that are packing a new variety, ''Hort16A'', would like the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 pieces of kiwifruit in each container, the handler would not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of kiwifruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing this requirement as it is obsolete and no longer meets the industry's needs. This relaxation in pack requirements is expected to enable handlers to compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging Requirement for Volume Filled Containers Designated by Weight

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California 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 the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302 (a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight had 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. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season 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) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

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. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140).

To date during the 2002–03 season, handlers shipped 87 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 13 percent in 19.8-pounds (9-kilograms) net weight containers, and less than 1 percent in volume filled containers of other weights).

At its March 12, 2003, meeting, the Committee discussed three options for volume filled containers: (1) Establishing a standard packaging requirement of 19.8-pounds (9-kilograms) net weight, (2) reestablishing a standard packaging requirement of 22-pounds (10-kilograms) net weight and (3) continuing the suspension of the standardized packaging requirement for the 2003–04 season, thus allowing flexibility to pack any net weight volume filled container. In its deliberations, the Committee discussed grower returns and the ability to meet buyer's preferences for alternate containers. Committee members mentioned that 10 percent more containers could be packed if the standard were set at 19.8-pounds (9-kilograms) net weight. Others mentioned that the increased number of containers would not offset the increased handler costs of packing more, smaller containers and would result in decreased grower returns. Many retailers do not differentiate between 19.8-pounds (9-kilograms) net weight volume filled containers and 22-pounds (10-kilograms) net weight volume filled containers and pay the same price for each. Thus, packaging 19.8-pounds (9-kilograms) net weight containers may not be beneficial for growers and handlers.

The Committee also discussed reestablishing the 22-pounds (10-

kilograms) net weight container standard packaging requirement. Some Committee members believe that increased flexibility benefits growers and handlers, as handlers are able to meet buyer's preferences for alternate containers. Before making the change permanent, the Committee would like to gather more data to further evaluate the benefits of suspending standard pack requirements for another season, the 2003–04 season.

The majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or 19.8-pound (9-kilogram) net weight containers should be the standard. The majority of the Committee believes that handlers and growers would benefit by being able to meet buyer's preferences for alternate containers. Small and large growers and handlers are expected to continue benefiting from this change. This suspension would be in effect until July 31, 2004.

Standard Pack ''Tightly Packed'' Requirement

Section 920.52(a)(2) of the order authorizes the establishment of grade standards.

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 under the order to ensure that the ''Hayward'' variety (the predominant kiwifruit variety 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.

Recently, a new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A'' has 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'' variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality ''Hort16A'' 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 46 handlers of California kiwifruit subject to regulation under the marketing order and approximately 300 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 46 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This proposed rule invites comments on revisions to pack requirements prescribed under the California kiwifruit order. This rule would: (1) Remove 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) continue 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) exempt the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement.

The Committee recommended these changes at its March 12, 2003, meeting. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns. Authority for these actions is provided in § 920.52 of the order.

Volume Filled Containers Designated by Count

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) of the order's administrative rules and regulations 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 the Grade Standards listed in 7 CFR 51.2328(c)(2). For example, if the fruit has a size designation of ''30'' marked on the container, then three times the size designation or 90 pieces of 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 were designated by size

and also by either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container as the count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in 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 Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of pieces of kiwifruit.

During the 1993–94 season handlers realized it was more labor intensive and more expensive to pack volume filled containers by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers packed by net weight and size designation.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some kiwifruit handlers in the industry, including those that are packing a new variety, ''Hort16A'', would like the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 pieces of fruit in each container, the handler would not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of fruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing the requirement as it is obsolete and no longer meets the industry's needs. The Committee discussed alternatives to this change, including not removing this requirement from the order's administrative rules and regulations, but concluded that small and large growers and handlers would benefit from this change. This change would not affect volume filled containers packed by net weight and is expected to help handlers compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of 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 the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302(a)(4)(v) specified 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. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season, 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 9.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

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. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140). To date, relaxation of these packaging requirements during the 2002–03 season enabled handlers to ship 73 percent of the crop in 22-pound (10-kilogram) net weight volume filled containers, 13 percent of the crop in 19.8-pound (9-kilogram) net weight containers and less than 1 percent in volume filled containers of other weights.

The Committee concluded that while suspending the standard packaging requirements for the 2002–03 season had enabled handlers to compete more effectively in the marketplace, it would like to gather more data to further evaluate the benefits of nonstandard pack requirements for another season, the 2003–04.

Therefore, the majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change, and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or the 19.8-pound (9-kilogram) net weight container should be the standard. Small and large growers and handlers are expected to benefit from the continued suspension of the standard packaging requirements. The majority of the Committee believes that handlers and growers would benefit by being able to meet buyer's preferences for alternate containers. This suspension would be in effect until July 31, 2004.

The Committee discussed alternatives to this change including reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for the 2003–04 season. Committee members also suggested two other alternatives. One alternative was to establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The other alternative suggested would establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15-pounds or more than 35-

pounds net weight of kiwifruit. 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.

* * * * *

(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

through 51.2340) except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that the ''Hort16A'' variety of kiwifruit is exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

Dated: June 18, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15826 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. FV–03–703]

Honey Research, Promotion, and Consumer Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of honey and importers of honey or honey products to determine whether they favor continuance of the Honey Research, Promotion, and Consumer Information Order (Order).

DATES: The referendum will be conducted from July 25, 2003, through August 22, 2003. To vote in this referendum, producers and importers must have been producing honey or importing honey or honey products during the period from January 1, 2001, through December 31, 2002.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, RP, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended (Act) (7 U.S.C. 4601–4613), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers of honey and importers of honey or honey products. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2001, through December 31, 2002. Persons who are producers of honey or importers of honey or honey products at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from July 25, 2003, through August 22, 2003.

Section 13 of the Act provides that the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. Previous continuance referenda were conducted in 1991, 1996, and 2002. On February 10, 2003, a petition was filed containing the requisite number of eligible voter signatures to call for another continuance referendum.

Sections 12(b)(1)(A) and (B) of the Act provide that the Department shall continue the Order if continuance of the Order is approved by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import not less than 50 percent of the quantity of the honey or honey products produced or imported during the representative period by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 3,290 producers and importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Kathie M. Birdsell and Margaret B. Irby, RP, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures (7 CFR 1240.200 through 1240.207), which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known producers and importers prior to the first day of the voting period. Persons who are producers or importers at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agents no later than one week before the end of the voting period. Ballots must be received by the referendum agents on or before August 22, 2003, in order to be counted.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

Dated: June 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–15825 Filed 6–20–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Eagle Aircraft (Malaysia) Sdn. Bhd. (Eagle) Model 150B airplanes. This proposed AD would require you to modify the canard rear spar and the rear spar attachment bracket. This proposed AD is the result of mandatory continuing