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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

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 was 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 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", want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer 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 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules

and regulations require that 60 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 85 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 12 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 will not offset the increased handler costs of packing more, smaller containers and could 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 needs 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 will 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 will 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 will experience the same difficulty in meeting the "tightly packed" standard pack requirement, this final rule limits 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.

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 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 final rule revises pack requirements prescribed under the California kiwifruit 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. 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 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 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”, want 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 kiwifruit in each container, the handler will 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 will benefit from this change. This change will 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 9.8-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, 12 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 needs to gather more data to further evaluate the benefits of suspended standard 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 will benefit by being able to meet buyer’s preferences for alternate containers. This suspension will 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 will 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 was to establish a standard packing requirement that requires 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 will 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 commercial produced “gold” kiwifruit. Because it is not known whether other “gold” kiwifruit varieties will experience the same difficulty in meeting the “tightly packed” standard

pack requirement, this rule limits 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.

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 “tightly packed” 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 changes relax pack requirements under the kiwifruit order. Accordingly, these actions 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 sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on June 23, 2003 (68 FR 37097). Copies of the rule were mailed or sent via facsimile to all Committee members

and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending July 8, 2003, was provided to allow interested persons to respond to the proposal. 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 matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the fiscal period for kiwifruit begins on August 1, 2003, and these relaxations should be made as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

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 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: July 23, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03-19131 Filed 7-25-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-62-AD; Amendment 39-13246; AD 2003-15-04]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins and corrective action if necessary. The actions specified by this AD are intended to prevent failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing.

DATES: Effective September 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850

McLaren Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1175, fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on April 15, 2003 (68 FR 18168). That action proposed to require inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from \$60 to \$65 per work hour. The economic impact information below has been

revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$7,410, or \$130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration