AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



(6) *Consumer package* means a package holding 15 pounds or less net weight of pears.

[46 FR 48116, Oct. 1, 1981, as amended at 47 FR 34116, Aug. 6, 1982; 54 FR 32796, Aug. 10, 1989; 55 FR 25958, June 26, 1990; 56 FR 32063, July 15, 1991; 57 FR 31093, July 14, 1992]

EFFECTIVE DATE NOTE: At 59 FR 10056, Mar. 3, 1994, §917.461 was suspended, effective Apr. 4, 1994.

# PART 920—KIWIFRUIT GROWN IN CALIFORNIA

DEFINITIONS

Sec.
920.1 Secretary.
920.2 Act.
920.3 Person.
920.4 Production area.
920.5 Kiwifruit.
920.6 Varieties.
920.7 Fiscal period.
920.8 Committee.
920.9 Grower.
920.10 Handler.
920.11 Handle.
920.12 District.
920.13 Pack.
920.14 Container.

ADMINISTRATIVE BODY

920.20 Establishment and membership.
920.21 Term of office.
920.22 Nomination.
920.23 Selection.
920.24 Failure to nominate.
920.25 Acceptance.
920.26 Vacancies.
920.27 Alternate members.
920.30 Powers.
920.31 Duties.
920.32 Procedure.
920.33 Expenses and compensation.
920.34 Annual report.

EXPENSES AND ASSESSMENTS

920.40 Expenses.
920.41 Assessments.
920.42 Accounting.
920.45 Contributions.
920.47 Production and postharvest research.
920.48 Market research and development.

REGULATIONS

920.50 Marketing policy.
920.51 Recommendations for regulation.
920.52 Issuance of regulations.
920.53 Modification, suspension, or termination of regulations.
920.54 Special purpose shipments.
920.55 Inspection and certification.

REPORTS

920.60 Reports.

MISCELLANEOUS PROVISIONS

920.61 Compliance.
920.62 Right of the Secretary.
920.63 Termination.
920.64 Proceeding after termination.
920.65 Effect of termination or amendment.
920.66 Duration of immunities.
920.67 Agents.
920.68 Derogation.
920.69 Personal liability.
920.70 Separability.
920.110 Exemptions.
920.112 Late payments.
920.122 Nomination procedures.
920.160 Reports.
920.213 Assessment rate.
920.302 Grade, size, pack, and container regulations.
920.303 Container marking regulations.

AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 49 FR 39658, Oct. 10, 1984, unless otherwise noted.

DEFINITIONS

## §920.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department of whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

## §920.2 Act.

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

## §920.3 Person.

*Person* means an individual, partnership, corporation, association or any other business unit.

## §920.4 Production area.

*Production area* means the State of California.

## §920.5 Kiwifruit.

Kiwifruit means all varieties of kiwifruit, or kiwi grown in the production area.

[58 FR 65102, Dec. 13, 1993]

### § 920.6 Varieties.

*Varieties* means and includes all classifications or subdivisions of kiwifruit.

### § 920.7 Fiscal period.

*Fiscal period* is synonymous with fiscal year and means a 12-month period beginning on August 1 of one year and ending on the last day of July of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

### § 920.8 Committee.

*Committee* means the Kiwifruit Administrative Committee established pursuant to § 920.20.

### § 920.9 Grower.

*Grower* is synonymous with producer and means any person who produces kiwifruit for the fresh market and who has a proprietary interest therein.

### § 920.10 Handler.

*Handler* is synonymous with shipper and means any person (except a common or contract carrier transporting kiwifruit owned by another person) who handles kiwifruit.

### § 920.11 Handle.

*Handle* and ship are synonymous and mean to sell, consign, deliver, or transport kiwifruit, or to cause kiwifruit to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of kiwifruit on the vine, the transportation within the production area of kiwifruit from the vineyard where grown to a packing facility located within such area for preparation for market, or the delivery of such kiwifruit to such packing facility for such preparation.

### § 920.12 District.

*District* means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) *District 1* shall include Butte, Sutter, and Yuba Counties.

(b) *District 2* shall include Tulare County.

(c) *District 3* shall include all counties within the production area not included in Districts 1 and 2.

[75 FR 37291, June 29, 2010]

### § 920.13 Pack.

*Pack* means the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container, or any combination thereof.

### § 920.14 Container.

*Container* means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of kiwifruit.

## ADMINISTRATIVE BODY

### § 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate), and eleven members (and alternates). With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers. In accordance with § 920.31(l), district representation on the committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts. The committee may, with the approval of the Secretary, provide such other allocation of membership as may be necessary to assure equitable representation.

[75 FR 37291, June 29, 2010]

### § 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end

on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members.

[76 FR 4202, Jan. 25, 2011]

### § 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than June 1 of each year in which nominations are made, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

[57 FR 1219, Jan. 12, 1992, as amended at 75 FR 37291, June 29, 2010]

### § 920.23 Selection.

From the nominations made pursuant to § 920.22, or from other qualified persons, the Secretary shall select the 12 members of the committee and an alternate for each such member, with the exception of the public member and alternate member, who shall be selected by the Secretary in his discretion.

### § 920.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 920.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 920.20.

### § 920.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

### § 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected, or, in the case of the public member and alternate, selected by the Secretary in his discretion, in the manner specified in §§ 920.22 and 920.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 920.20.

### § 920.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event both a member and his or her alternate are unable to attend a committee meeting, the committee may designate any other alternate member from the same district to serve in such member's place and stead. In the event of

the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

[79 FR 30445, May 28, 2014]

### § 920.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

### § 920.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairperson and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling and marketing conditions with respect to kiwifruit;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

### § 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, production and postharvest research, market research and development, or recommendations for regulations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided*, That a video conference shall be considered an assembled meeting, and votes by those participating through video conference shall be considered as cast in person.

[49 FR 39658, Oct. 10, 1984, as amended at 75 FR 37291, June 29, 2010; 79 FR 30445, May 28, 2014]

### § 920.33 Expenses and compensation.

(a) Except for the public member and alternate, the members of the committee, and alternates when acting as

members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates, including the public alternate, at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

(b) The public member and alternate shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part, and shall receive per diem compensation established by the committee.

### § 920.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

EXPENSES AND ASSESSMENTS

### § 920.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 920.41.

### § 920.41 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles kiwifruit during such period shall pay to the committee, upon demand, assessments on all kiwifruit so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 920.55(c), must be limited to a maximum assessment rate of three and one-half cents per flat, or the equivalent thereof. The Secretary may increase this maximum rate in each succeeding year after the initial year of order operation by the Consumer Price Index (cost of living) for California as published by the Bureau of Labor Statistics. Such increase shall be applied to all kiwifruit handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

[49 FR 39658, Oct. 10, 1984, as amended at 57 FR 1220, Jan. 12, 1992]

### § 920.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his or

her pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used: (i) To defray expenses, during any fiscal period, prior to the time assessment income is insufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his or her possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

### § 920.45 Contributions.

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47 and § 920.48. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

[79 FR 30445, May 28, 2014]

### § 920.47 Production and postharvest research.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving research designed to assist or improve the efficient production and postharvest handling of kiwifruit.

[79 FR 30445, May 28, 2014]

### § 920.48 Market research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of kiwifruit.

[79 FR 30445, May 28, 2014]

REGULATIONS

### § 920.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 920.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of kiwifruit within the production area;

(2) The expected general quality and size of kiwifruit in the production area and in other areas;

(3) The expected demand conditions for kiwifruit in different market outlets;

(4) The expected shipments of kiwifruit produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of kiwifruit; and

(8) The type of regulations expected to be recommended during the marketing season.

(b) [Reserved]

### § 920.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of kiwifruit in the manner provided in § 920.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for kiwifruit during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

### § 920.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of kiwifruit whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area;

(2) Limit the shipment of kiwifruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of kiwifruit.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

### § 920.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 920.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of kiwifruit in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

### § 920.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 920.41, 920.52, 920.53 and 920.55 and the regulations issued thereunder, handle kiwifruit:

(1) For consumption by charitable institutions;

(2) For distribution by relief agencies; or

(3) For commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 920.41, § 920.52, § 920.53 or § 920.55, the handling of kiwifruit:

(1) To designated market areas;

(2) For such specified purposes (including shipments to facilitate the conduct of marketing research and development projects); or,

(3) In such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent kiwifruit handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle kiwifruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the kiwifruit will not be used for any purpose not authorized by this section.

### § 920.55 Inspection and certification.

(a) Whenever the handling of any variety of kiwifruit is regulated pursuant to § 920.52, or § 920.53, each handler who handles kiwifruit shall, prior thereto, cause such kiwifruit to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for kiwifruit which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

### § 920.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of kiwifruit as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the kiwifruit received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made

available to any person, in the form of general reports in which the identities of the individual handler furnishing the information, is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

MISCELLANEOUS PROVISIONS

### § 920.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

### § 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

### § 920.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

### § 920.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property

then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

### § 920.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

### § 920.66 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

[49 FR 39658, Oct. 10, 1984, as amended at 88 FR 82232, Nov. 24, 2023]

### § 920.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

### § 920.68 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

### § 920.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

### § 920.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

### § 920.110 Exemptions.

(a) *Waivers.* A handler may handle kiwifruit without inspection and certification, as prescribed under § 920.55, if all shipments made under such waivers comply with all regulations in effect, and all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 4 hours in advance of the

time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing by the inspection service.

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. This advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Kiwifruit Administrative Committee.

(3) The Federal-State Inspection Service furnishes the handler with the waiver number which shall cover the kiwifruit on which inspection is requested.

(4) When instructed to do so, the handler plainly and conspicuously marks the end of each container with the letter ''W'' and the waiver number assigned by the Federal-State Inspection Service. The letter ''W'' and the number shall not be less than one-half inch in height.

(b) *Minimum quantities.* Notwithstanding any other provision of this section, kiwifruit may be handled without regard to the provision of §§ 920.41, 920.52, 920.55 and 920.60 under the following conditions:

(1) Such kiwifruit are for home use and not for resale.

(2) The total weight of such kiwifruit sold to all persons collectively in any one vehicle during any one day does not exceed 200 pounds.

(3) Such kiwifruit are handled by the person who produced them and, the handling takes place: (i) On the premises where grown, (ii) at a packing house, or retail stand (roadside stand, flea market or any other outlet approved by the committee) which is operated by said handler, or (iii) at a Certified Farmers Market.

[50 FR 4856, Feb. 4, 1985, as amended at 53 FR 34035, Sept. 2, 1988]

### § 920.112 Late payments.

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit shall be deemed late if not received within 30 days of invoice, or such other later time period as specified by the committee. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

[62 FR 45295, Aug. 27, 1997]

### § 920.122 Nomination procedures.

(a) The manner of nominating grower members and alternate members to the committee shall be as follows:

(1) The committee's mailing of an approved nomination form to all kiwifruit growers of record shall constitute notice of nominations. All eligible kiwifruit growers may nominate themselves or any other eligible kiwifruit grower to vacant committee positions for the nominee's district. Completed nomination forms shall be returned to the office of the committee by a date specified by the committee and approved by an agent of the Secretary. Nomination forms shall provide for names of nominees, as well as the nominating grower's name, address, telephone number, and signature. Incomplete nominations forms will not be considered valid.

(2) For each district involved in the current year's nominations, committee staff, with the Secretary's oversight, shall establish a slate of candidates with the names of all qualified nominees received. Persons submitting invalid nomination forms shall be notified of such by the committee. Within a reasonable time period, a ballot containing a slate of candidates shall be mailed to all growers of record within the respective district represented by such candidates. The committee shall provide a reasonable period of time to growers to cast votes on the candidates and return the completed ballots for tallying.

(3) To be eligible to vote, growers must be producing kiwifruit during the crop year nominations are held and within the district represented by the candidates on the ballot. A grower may only vote for candidates from one district and may only cast one ballot. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. Each ballot shall provide for a voter eligibility certification which must include

the voter's name, address, telephone number, and signature, as well as the name(s) of all handlers which handled the current season's crop. At the discretion of the Secretary, the ballots may include other background information about each candidate.

(4) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and are to be returned to the Secretary's agent who will tally the ballots with such assistance from the committee as may be requested by the agent. Such ballots shall be postmarked by a date specified by the committee and approved by an agent of the Secretary.

(5) The names of the persons receiving the highest total number of votes for a particular position shall be submitted to the Secretary as the nominees for such positions. In the event of a tie vote, a ballot containing only the names of the candidates receiving the tied vote shall be mailed to all growers in the affected district.

(b) In the event of a vacancy as specified in § 920.26, the committee shall utilize the same procedure as prescribed in § 920.122(a)(1) through (a)(5) to fill such vacancy.

[57 FR 62160, Dec. 30, 1992]

### § 920.160 Reports.

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit, except as provided in paragraph (e) of this section, shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the month following such shipment, or such other later time established by the committee: *Provided,* That each shipper who ships less than 10,000 trays, or the equivalent thereof, per fiscal year and has qualified with the committee shall furnish such report of shipment and inventory data to the committee twice per fiscal year. The first report shall be due no later than January 5 and the final report no later than the fifth day of the following month after such shipment is completed for the season, or such other later times established by the committee. Such report shall show:

(1) The reporting period;

(2) The name and other identification of the shipper;

(3) The number of containers by type and weight by shipment destination category;

(b) *Kiwifruit Inventory Shipping System (KISS) form.* Each handler, except such handlers that ship less than 10,000 trays, or the equivalent thereof, per season and have qualified with the committee, shall file with the committee the initial Kiwifruit Inventory Shipment System (KISS) form, which consists of three sections ''KISS/Add Inventory,'' ''KISS/Deduct Inventory,'' and ''KISS/Shipment,'' on or before November 5th, or such other later time as the committee may establish. Subsequent KISS forms, including all three sections, shall be filed with the committee by the fifth day and again by the twentieth day of each calendar month, or such other later time as the committee may establish, and will contain the following information:

(1) The beginning inventory of the handler by size and container type;

(2) The quantity of fruit the handler lost in repack and repacked into other container types;

(3) The total domestic and export shipments of the handler by size and container type; and

(4) Any other adjustments which increase or decrease posted handler inventory.

(c) *Handler report of returned fruit.* After fruit is returned to a grower, each handler shall file with the committee, no later than five days from the date the fruit is returned, or such other time as the committee may establish, a Return Receipt of Kiwifruit to Grower Form.

(d) *KISS Price/Shipment report.* Each handler who ships 100,000 or more trays, or the equivalent thereof, per season, shall file the KISS Price/Shipment report with the committee. Handlers are not required to report organic kiwifruit shipments on this report. The handler shall file the report weekly following the first week he or she makes shipments and shall continue filing reports until he or she submits a final report for the season. Each such report shall be filed with the committee no later than 5:00 p.m. (the close of business) on the Tuesday immediately following the shipping week. For the purpose of this subsection, the shipping

week is defined as Sunday through Saturday. The report shall show:

(1) The company name, contact person, and phone number of the handler;

(2) Weekly period covered by the report;

(3) Total fresh market shipments and gross f.o.b. sales of kiwifruit by pack style and size; and

(4) Total fresh market shipments and gross f.o.b. sales to export markets by pack style and size.

(e) Handlers who file the KISS Price/Shipment report specified in paragraph (d) of this section are exempt from filing the shipping report specified in paragraph (a) of this section and the KISS/Shipment report specified in paragraph (b) of this section.

(f) Each handler shall file annually with the Committee an End-of-Season F.O.B. Sales Report, due within 30 days after such handler has completed current season shipments, reporting gross f.o.b. sales value and number of containers by pack style and size for fresh market shipments for the season. The report shall also show the company name, contact person, and phone number of the handler.

(g) Each handler shall file annually with the Committee a Final Packout Report, due within 30 days after such handler has completed current season shipments, reporting total containers shipped, by pack style for fresh market shipments, for each grower entity during the season. The report shall also include the grower entity and farm name, mailing address, the county in which the farm is located, and total acreage for each reported grower entity. Also, the report shall show the company name, contact person, and phone number of the handler.

[50 FR 4856, Feb. 4, 1985, as amended at 52 FR 37130, Oct. 5, 1987; 59 FR 53565, Oct. 25, 1994; 61 FR 51576, Oct. 3, 1996; 67 FR 54332, Aug. 22, 2002; 74 FR 46309, Sept. 9, 2009; 76 FR 80211, Dec. 23, 2011]

### § 920.213 Assessment rate.

On and after August 1, 2022, an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

[88 FR 21061, Apr. 10, 2023]

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

(a) No handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(1) *Grade requirements.* Fresh shipments of kiwifruit shall be at least KAC No. 1 quality.

(2) *Size requirements.* Such kiwifruit, except for varieties of the *Actinidia chinensis* species, shall be at least a minimum Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample. Varieties of the *Actinidia chinensis* species shall be at least a minimum Size 49, defined as a maximum of 64 pieces of fruit in an 8-pound sample.

(3) *Maturity requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.

(4) *Pack requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit, except for varieties of the *Actinidia chinensis* species, shall be fairly uniform in size.

(ii) (A) Kiwifruit packed in any container shall be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

TABLE 1 TO PARAGRAPH (a)(4)(ii)(A)—SIZE DESIGNATION AND SIZE VARIATION CHART

| Size designation | Maximum number of fruit per 8-pound sample | Size variation tolerance (diameter) [1] |
|---|---|---|
| 18 or larger | 25 | ½-inch (12.7 mm). |
| 20 | 27 | ½-inch (12.7 mm). |
| 23 | 30 | ½-inch (12.7 mm). |
| 25 | 32 | ½-inch (12.7 mm). |

TABLE 1 TO PARAGRAPH (a)(4)(ii)(A)—SIZE DESIGNATION AND SIZE VARIATION CHART—Continued

| Size designation | Maximum number of fruit per 8-pound sample | Size variation tolerance (diameter) [1] |
|---|---|---|
| 27/28 | 35 | ½-inch (12.7 mm). |
| 30 | 39 | ½-inch (12.7 mm). |
| 33 | 43 | ⅜-inch (9.5 mm). |
| 36 | 46 | ⅜-inch (9.5 mm). |
| 39 | 49 | ⅜-inch (9.5 mm). |
| 42 | 53 | ⅜-inch (9.5 mm). |
| 45 | 55 | ¼-inch (6.4 mm). |
| [2] 49 | 64 | Not applicable. |

[1] Not applicable to *Actinidia chinensis* species varieties.
[2] Applicable only to *Actinidia chinensis* species varieties.

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall 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.

(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 16 percent is provided for kiwifruit that is ''badly misshapen,'' and except that all varieties of kiwifruit are 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.

(c) *Exemptions.* Any person may handle kiwifruit without regard to the provisions of this section provided that such kiwifruit is handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; or (3) commercial processing into products. For the purposes of this section, *commercial processing into products* means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

[50 FR 36568, Sept. 9, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 920.302, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

### § 920.303 Container marking regulations.

No handler shall ship any kiwifruit except in accordance with the following terms and conditions:

(a) Each package or container of kiwifruit shall bear on at least one outside principal display panel in plain sight and in plain letters, the word *kiwifruit*, the name of the variety (if other than the Hayward variety), if known or, when the variety is not known, the words *unknown variety*.

(b) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the name and address (including the city, state, and zip code) of the shipper.

(c) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the following information regarding the quantity of kiwifruit packed within the container:

(1) The quantity shall be indicated in terms of count and size for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

(2) The quantity shall be indicated in terms of the size designation and either the net weight for volume-fill containers packed by weight or the count for volume-fill containers packed by count.

(3) For bulk containers or individual consumer packages not within a master container, the quantity shall be indicated in terms of the size designation and net weight, or in terms of the size designation and count.

(4) Master containers, which hold more than one individual package, must be properly marked with the quantity of the contents. The size designation must also be indicated.

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages within a master container. If count is used, it must be accompanied by the size designation.

(6) Designations of size, count, and net weight on each container shall be accompanied by the words *size*, *count*, or *net weight* as applicable.

(d) Except as provided in paragraph (f) of this section, containers of kiwifruit must be positive lot identified prior to shipment in accordance with the following requirements. All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on the pallet, shall be positive lot identified with a plain mark corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet positive lot identified with a plain mark corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. Reusable plastic containers of kiwifruit, placed on a pallet, shall be positive lot identified in accordance with Federal or Federal-State Inspection Service procedures and shall have required information on the cards of the individual containers, as provided in this section of the regulations.

(e) As used in this section, the term *principal display panel* means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

(f) Kiwifruit that has been inspected and certified, and is subsequently placed into new containers, does not have to be positive lot identified, as prescribed in paragraph (d) of this section: *Provided*, That:

(1) Such kiwifruit is of the same grade and size as originally inspected; and

(2) The handler requests a verification number from the Federal or Federal-State Inspection Service prior to shipment; plainly marks one end of each container with such number and the letter ''R,'' both of which shall be at least one-half inch in height; and submits a Kiwifruit Verification Form to the Federal or Federal-State Inspection Service within 3 business days of such request. The handler shall provide the following information on the Kiwifruit Verification Form.

(i) From the original inspection:

(A) The positive lot identification numbers;

(B) The identity of the handler;

(C) The inspection certificate numbers;

(D) The grade and size of the kiwifruit;

(E) The number and type of containers; and

(F) The handler's brand; and

(ii) On the kiwifruit placed into new containers:

(A) The number and type of containers; and

(B) The applicable brand.

[58 FR 43246, Aug. 16, 1993, as amended at 61 FR 13395, Mar. 27, 1996; 64 FR 41019, July 29, 1999; 69 FR 54199, Sept. 8, 2004; 71 FR 58249, Oct. 3, 2006]