

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV00-920-1 PR]

#### Kiwifruit Grown in California; Temporary Suspension of Inspection and Pack Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed temporary suspensions of inspection and pack requirements prescribed under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would continue, for the 2000-2001 season, the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates, and would also continue the suspension of the minimum net weight requirements for kiwifruit tray packs. Both suspensions are scheduled to expire at the end of the 1999-2000 season. These changes are expected to reduce handler packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

**DATES:** Comments must be received by May 24, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public

inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on proposed temporary suspensions of inspection and pack requirements prescribed under the order. This rule would continue, for the 2000-2001 season, the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates, and the suspension of the minimum net weight requirements for kiwifruit tray packs. Both suspensions are scheduled to expire at the end of the 1999-2000 season (July 31, 2000). These suspensions are expected to reduce handler-packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace. This rule was unanimously recommended by the Committee at its February 24, 2000, meeting and would be in effect through July 31, 2001.

#### Continued Suspension of Reinspection Requirement

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998-1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provided. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in limited quantities of fruit remaining in cold storage for repacking and evaluation. The Committee would like to fully evaluate the suspension of the reinspection requirement during a normal season. Therefore the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for another season, the 2000–2001 season. This suspension would be in effect until July 31, 2001.

**Continued Suspension of Minimum Net Weight Requirements for Trays**

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

920.52 authorizes the establishment of minimum size, pack, and container requirements.

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

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule which was published September 3, 1998 (63 FR 14861) and finalized July 29, 1999 (64 FR 41019).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the market. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of

the industry was that the absence of tray weights had no impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season to evaluate the suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010) and is in effect until July 31, 2000.

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season the Committee would like to suspend the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee, once again, unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. This suspension would be in effect until July 31, 2001 and is expected to result in reduced handler packing costs, and increased grower returns, and enable handlers to compete more effectively in the marketplace.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of California kiwifruit subject to regulation under the marketing order and approximately 400 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$500,000, and small

agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. Fifty-nine handlers have annual receipts less than \$5,000,000, excluding receipts from other sources. Three hundred ninety producers have annual sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This rule invites comments on proposed temporary suspensions of inspection and pack requirements prescribed under the order. This rule would continue, for the 2000–2001 season, the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates, and the minimum net weight requirements for kiwifruit tray packs. Both suspensions are scheduled to expire at the end of the 1999–2000 season (July 31, 2000). Continuation of the suspensions is expected to reduce handler-packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace. This rule was unanimously recommended by the Committee at its February 24, 2000, meeting and would be in effect through July 31, 2001.

**Continued Suspension of Reinspection Requirement**

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely

recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers, less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in less fruit remaining in cold storage for repacking and evaluation.

While the Committee believes the industry realized benefits from the suspension of the reinspection requirement, it would like to evaluate the results of the suspended reinspection requirements during a normal season. Thus the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for the 2000–2001 season. This suspension would be in effect until July 31, 2001.

**Continued Suspension of Minimum Net Weight Requirements for Trays**

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements.

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Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

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44 and smaller .....	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the market. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry that season was that the absence of tray weights had no negative impact during the 1998–1999 season

due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting, unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season in order to evaluate the suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010) and is in effect until July 31, 2000.

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season the Committee would like to suspend the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee, once again, unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. This suspension would be in effect until July 31, 2001, and is expected to reduce handler-packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, growers, buyers, and consumers. The impact of these changes is expected to be beneficial to all handlers and growers regardless of size.

The Committee discussed alternatives to this change, including indefinitely suspending these requirements. While the industry continues to believe that the suspensions helped handlers reduce packing costs and compete more effectively in the marketplace, it is not yet ready to recommend permanent suspension for the 2000–2001 and future seasons. Both the 1998–1999 and 1999–2000 seasons were abnormal in some respects and the Committee would like to study the results of the suspensions during a normal season. Thus, the Committee unanimously agreed to suspend these requirements for the 2000–2001 season.

This proposed rule would relax inspection and pack requirements under the kiwifruit marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 24, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The majority of the industry are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would meet to be in place by August 1, 2000 as the current suspension expires on July 31, 2000, and handlers need to make operational decisions in time for the 2000–2001 season. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

#### **PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **§ 920.155 [Suspended in part]**

2. In part 920, § 920.155 is suspended in its entirety effective August 1, 2000, through July 31, 2001.

#### **§ 920.302 [Suspended in part]**

3. In § 920.302, paragraph (a)(4)(iii) is suspended effective August 1, 2000, through July 31, 2001.

Dated: April 18, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–10064 Filed 4–21–00; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Rural Utilities Service**

#### **7 CFR Part 1724**

#### **RIN 0572–AB54**

### **Electric Engineering, Architectural Services and Design Policies and Procedures**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend its regulations to revise its requirements regarding RUS approval of plans and specifications for buildings. Specifically, RUS is proposing that the requirement for RUS approval of architectural plans and specifications for buildings be eliminated and that instead the borrower's architect or engineer be required to state that the design complies with certain specific standards. This change is being made in order to provide better service to borrowers.

**DATES:** Written comments must be received by RUS, or bear a postmark or equivalent, no later than June 23, 2000.

**ADDRESSES:** Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: [fgatchel@rus.usda.gov](mailto:fgatchel@rus.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and,