



Agricultural Marketing Service

7 CFR Parts 920 and 944

[Doc. No. AMS-SC-24-0044]

Kiwifruit Grown in California and Imported Kiwifruit; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Kiwifruit Administrative Committee (Committee) to update the handling regulations for kiwifruit grown in California. Consistent with the Committee's proposal, this rulemaking seeks to amend the Size Designation and Size Variation chart located in the pack requirements of the Marketing Order and relax the minimum size requirements for all kiwifruit varieties, except for those of the *Actinidia chinensis* species. This rule also proposes to make a corresponding change to the size requirements under the kiwifruit import regulation, as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be sent to the Docket Clerk electronically by email: MarketingOrderComment@usda.gov; or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the record, will be made available to the

public, and can be viewed at: <https://www.regulations.gov>. Please be advised that comments are posted to [regulations.gov](https://www.regulations.gov) without change.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (559) 487-5901; or email: BiancaM.Bertrand@usda.gov or Abigail.Maharaj@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), amending Marketing Order No. 920 (7 CFR part 920; the Order), regulating the handling of kiwifruit grown in California. The Committee locally administers the Order and is comprised of growers and handlers operating within the production area, and a public member.

This proposed rule is also issued under section 8e of the Act (7 U.S.C. 608e-1), which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for domestically produced commodities.

This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal

Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This proposed rule is not intended to have a retroactive effect.

Under the Order, fresh market shipments of kiwifruit produced in California are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements. This proposed rule would make changes to the Size Designation and Size Variation chart in the Order’s pack requirements to facilitate the handling of large sizes of kiwifruit under the Order. In addition, this proposed rule would relax the Order’s minimum size requirement for all kiwifruit, other than varieties of the *Actinidia chinensis* species. As required by section 8e of the Act, the proposed relaxation of the minimum size requirement for non-*Actinidia chinensis* species varieties would also be applied to the import regulations for kiwifruit in 7 CFR part 944.

Section 920.51 of the Order authorizes the Committee to recommend handling regulations to the Secretary. Section 920.52 of the Order authorizes the Secretary to establish such handling regulations. Further, § 920.53 authorizes the Committee to recommend the modification, suspension, or termination of handling regulations when it finds that industry conditions so dictate. Section 920.302 establishes the minimum grade, size, quality, maturity, pack, and container requirements for kiwifruit handled subject to the Order. Section 920.302(a)(2) establishes the Order’s minimum size requirements and § 920.302(a)(4) details the Order’s pack requirements. Section 920.302(a)(4) includes a Size Designation and Size Variation Chart that specifies the allowable kiwifruit size designations, the maximum number of fruit per 8-pound sample for each size designation, and the corresponding allowable size variation tolerance.

Pursuant to 7 CFR 920.53, the Committee determined that the production and marketing conditions for some varieties of kiwifruit have changed and that the Order’s

handling requirements should be modified accordingly. The Committee met on April 9, 2024, and unanimously recommended, with a vote of twelve in favor and none opposed, relaxing the Order's minimum size requirement in § 920.302(a)(2) for non-*Actinidia chinensis* species varieties and modifying the Size Designation and Size Variation Chart in § 920.302(a)(4) to conform to the current production and marketing environment for California kiwifruit.

At the time that the Order's handling regulations were established in 1985, practically all the kiwifruit grown in California were similar varieties of the *Actinidia deliciosa* species. Recently, the introduction of a new variety of kiwifruit developed in Greece, known as Mega Kiwi, has resulted in the need for larger sizes to be defined in the Size Designation and Size Variation chart in § 920.302(a)(4). Currently, the largest size designation in the pack requirement chart is size "18 or larger", defined as a maximum of 25 pieces of kiwifruit per 8-pound sample. The term "or larger" means that larger sizes may be packed, but there is no designation for what those sizes should be or how they might be defined (e.g., number of fruit per 8-pound sample).

It has been industry practice since the Order was first established that handlers may define their own sizes for fruit that is larger than Size 18. It has been acceptable for each handler to determine their own size (Size 17, 16, 15, 14, 13, etc.) and determine the number of fruit per 8-pound sample, so long as each larger size has fewer fruit per 8-pound sample than the immediately smaller size that they pack. This practice has provided an inconsistent sizing standard for shipments of large size fruit and created complications for inspections. However, until recently, the percentage of total shipments comprised of Size 18 or larger kiwifruit had been relatively small and the lack of definition for such fruit had not created problems for the industry.

The Committee also reviewed the current minimum size requirement in 7 CFR 920.302(a)(2) for varieties of the non-*Actinidia chinensis* species kiwifruit. The industry

indicated that for Size 45, 55 pieces of fruit allowed per 8-pound sample was too restrictive of a requirement. The industry consensus was that Size 45 was the appropriate minimum size, but that the number of pieces allowed in an 8-pound sample needed reconsideration.

At the April meeting, the Committee indicated that the recent introduction of the Mega Kiwi variety necessitated adding new size designations, including appropriate definitions, and making other modifications in the Size Designation and Size Variation chart in § 920.302(a)(4) to facilitate the regulation of the larger size kiwifruit.

Therefore, this proposed rule would amend the Size Designation and Size Variation Chart in 7 CFR 920.302(a)(4) by removing the words “or larger” from the size designation “18 or larger”, leaving only size “18” in its place. Further, this rulemaking would add a Size 12, defined as a maximum of 19 pieces of fruit per 8-pound sample, and a Size 15, defined as maximum of 22 pieces of fruit per 8-pound sample. Both of the proposed new size designations in the chart (12 and 15) would include a 1-inch size variation tolerance.

Further, the allowable size variation tolerance for the revised size 18 would increase from 1/2-inch to 1-inch and the size variation tolerance for size 45 would increase from 1/4-inch to 3/8-inch. The maximum number of fruit per 8-pound sample for Size 45 would be increased from 55 pieces to 56 pieces.

The size requirements under the Order require that all varieties of kiwifruit, except for varieties of the *Actinidia chinensis* species, shall be a minimum of Size 45, defined as a maximum of 55 pieces of fruit per 8-pound sample. This proposed rule would relax the minimum size requirement in § 920.302(a)(2) for all varieties of kiwifruit, other than those of the *Actinidia chinensis* species, by redefining Size 45 as maximum of 56 pieces of fruit per 8-pound sample.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this proposed rule would relax the minimum size requirement for varieties other than those of the *Actinidia chinensis* species, a corresponding change to § 944.550 of the import regulations is also proposed. Under the kiwifruit import regulations, imported kiwifruit are not subject to container and pack requirements. Accordingly, the modifications to the Order's pack requirements, as proposed herein, would not affect the kiwifruit import requirements.

This proposed rule would make changes to the Size Designation and Size Variation chart in the Order's pack requirements and would relax the minimum size requirement for all varieties of kiwifruit, other than varieties of the *Actinidia chinensis* species. The proposed changes in the Order's handling regulations are expected to benefit growers, handlers, and consumers of domestic kiwifruit.

The relaxation in the size requirement for imports of non-*Actinidia chinensis* varieties would allow a greater quantity of kiwifruit to be imported under the regulations. This change is expected to benefit kiwifruit importers and consumers of imported kiwifruit.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique

regulations in that they are brought about through group action of typically small entities acting on their own behalf.

There are approximately 108 kiwifruit growers in the production area and 19 handlers subject to regulation under the Order. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers as those having annual receipts equal to or less than \$3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming). Small agricultural service firms, which include kiwifruit handlers, are defined by the SBA as those having annual receipts equal to or less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

The USDA National Agricultural Statistics Service (NASS) reported an average 2024 California kiwifruit grower received price of \$3,140 per ton and an average yield of 6.8 tons per acre. Dividing the SBA threshold for a small kiwifruit grower of \$3.5 million by the \$3,140 per ton grower received price and then by the yield of 6.8 tons per acre results in approximately 164 acres that would be required for a kiwifruit grower to reach \$3.5 million in annual receipts. Therefore, AMS concludes that a kiwifruit grower would need 165 bearing acres to be considered “large” per the SBA definition.

According to the 2022 Census of Agriculture, published by NASS in February 2024, 10 farms out of the 108 total kiwifruit farms with bearing acreage in California had 100 or more bearing acres. This means that more than 90 percent of farms, or growers, would be considered small businesses under the SBA definition and AMS’s analysis.

To estimate the number of handlers that would be considered small per the SBA definition of no more than \$34 million in average annual receipts, AMS first estimates a total handler value using the 2024 California production figure of 35,400 tons of kiwifruit, published by NASS, and a 2024 average handler price of \$3,700 per ton, calculated using terminal market prices reported by AMS Market News. The product of these two results in a total handler value of nearly \$131 million (35,400 tons multiplied

by \$3,700 per ton). This result assumes that 100 percent of all domestically produced kiwifruit was handled by domestic handlers and that these domestic handlers only handled domestic kiwifruit. Dividing total handler value (\$131 million) by the SBA definition of a small business of \$34 million in average annual receipts indicates that no more than three handlers of the 19 in total could exceed this threshold and be considered “large” per the SBA definition. Therefore, at least 84 percent of handlers (19 minus 3 divided by 19 multiplied by 100) would be considered to be small businesses under the SBA definition and AMS’s analysis.

All kiwifruit marketed under the Order will continue to be packed to the minimum grade of KAC No.1. This proposed rule would only impact the Order’s pack and size requirements. This proposed rule would add two new size designations (Size 12 and 15) to the chart in the Order’s pack requirements. Each new size designation would be assigned a corresponding maximum number of fruit per 8-pound sample (19 and 22, respectively) and an allowable size variation tolerance of 1-inch (25.4 mm). In addition, this proposed rule would amend the size designation “18 or larger” to read “18” and would increase the allowable size variation tolerance for that size designation from 1/2-inch (12.7 mm) to 1-inch (25.4 mm). Further, this proposed rule would amend the definition for Size 45 by increasing the maximum number of fruit per 8-pound sample from 55 to 56 and increasing the size variation tolerance from 1/4-inch (6.4 mm) to 3/8-inch (9.5 mm).

This proposed rule would also relax the Order’s minimum size requirement for all kiwifruit varieties, other than varieties of the *Actinidia chinensis* species. The current minimum size under the size requirements is Size 45, which is defined as a maximum of 55 pieces of fruit per 8-pound sample. This proposed rule would increase the maximum number of pieces of fruit per 8-pound sample from 55 to 56. As is required by section 8e of the Act, this proposed rule would also make a corresponding change to the minimum

size requirement in the kiwifruit import regulation for non-*Actinidia chinensis* species varieties consistent with §§ 920.52 and 920.53 of the Order.

This proposed rule would not impose any additional costs to industry. If implemented, the changes to the handling regulations are expected to make the inspection and handling of kiwifruit more efficient. Further, the quality of fruit to consumers is not expected to be significantly affected, as modifying the allowable pack and size requirements would not impact the Order's minimum quality requirements.

The Committee considered alternatives to the recommended changes, including taking no action and continuing to regulate according to the requirements as currently established. As discussed by the Committee, handlers currently may define their own size designations for fruit that are larger than Size 18 (*e.g.*, Size 17, 16, 15, 14, 13, etc.). The Committee considered the various optional size designations and the merits of each. Ultimately, the Committee determined that the addition of two larger size designations under the pack requirements, along with the other minor changes to the Order's size and pack requirements proposed herein, was in the best interests of the growers, handlers, and consumers of California kiwifruit and rejected all other alternatives.

Committee meetings are widely publicized throughout the California kiwifruit industry. All interested persons are invited to attend meetings and participate in Committee deliberations. Like all Committee meetings, the April 9, 2024, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Fruit

Crops. This proposed rule does not require changes to the current information collection. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule 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.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges, Plums, Prunes.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR parts 920 and 944 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.

2. Amend § 920.302 by removing in paragraph (a)(2) the text “55 pieces” and adding in its place the text “56 pieces”, and by revising table 1 to paragraph (a)(4)(ii)(A) to read as follows:

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

(a) * * *

(4) * * *

(ii) * * *

(A) * * *

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
12 or larger	19	1-inch (25.4 mm)
15	22	1-inch (25.4 mm)
18	25	1-inch (25.4 mm)
20	27	1/2-inch (12.7 mm)
23	30	1/2-inch (12.7 mm)
25	32	1/2-inch (12.7 mm)
27/28	35	1/2-inch (12.7 mm)
30	39	1/2-inch (12.7 mm)
33	43	3/8-inch (9.5 mm)
36	46	3/8-inch (9.5 mm)
39	49	3/8-inch (9.5 mm)
42	53	3/8-inch (9.5 mm)
45	56	3/8 inch (9.5 mm)
49 ²	64	Not applicable

¹ Not applicable to Actinidia chinensis species varieties.

² Applicable only to Actinidia chinensis species varieties.

* * * * *

PART 944 – FRUITS; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 944.550 [Amended]

4. Amend § 944.550(a) by removing the text “55 pieces” and adding in its place the text “56 pieces”.

Erin Morris,
Administrator,
Agricultural Marketing Service.

[FR Doc. 2026-02372 Filed: 2/5/2026 8:45 am; Publication Date: 2/6/2026]