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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Doc. No. AMS-FV-13-0032; FV13-920-1 FIR]

**Kiwifruit Grown in California and Imported Kiwifruit;
Relaxation of Minimum Grade Requirement**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the minimum grade requirement under the marketing order for kiwifruit grown in California (order), and for kiwifruit imported into the United States that are shipped to the fresh market, by increasing the tolerance of kiwifruit which is "badly misshapen" from 7 percent to 16 percent. This change is intended to facilitate the packing of fruit to meet the minimum grade requirement of "KAC No. 1," and reduce costs associated with re-sorting and repacking this grade of fruit.

DATES: Effective [INSERT DATE 3 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and

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Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;
or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit 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."

This rule is also issued under section 8e of the Act, 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, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563.

The handling of kiwifruit grown in California is regulated by 7 CFR part 920. Prior to this change, the minimum grade requirement under the definition for KAC No. 1 kiwifruit quality allowed a tolerance of 7 percent for "badly misshapen" fruit. Increasing the tolerance for badly misshapen fruit to 16 percent is expected to reduce the incidence of containers of KAC No. 1 fruit failing to meet grade requirements, thereby reducing costs associated with repacking and re-sorting failing fruit. It is also expected to help facilitate and streamline the packing process by avoiding disruptions associated with repacking and re-sorting fruit.

Imported kiwifruit is subject to regulations specified in 7 CFR part 944. Under those regulations, imported kiwifruit must meet the same minimum size requirements as specified for domestic kiwifruit under the order. Therefore, the tolerance of kiwifruit which is "badly

misshapen" was also relaxed from 7 percent to 16 percent for kiwifruit imported into the United States.

This rule continues in effect the rule that relaxed the minimum grade requirement for both domestic and imported kiwifruit.

In an interim rule that was published in the **Federal Register** on July 22, 2013, (78 FR 43758, Doc. No. AMS-FV-13-0032; FV13-920-1 IR), §§ 920.302 and 944.550 were amended by changing the definition of KAC No. 1 quality to allow a tolerance of 16 percent for kiwifruit that is "badly misshapen."

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 178 kiwifruit growers subject to regulation under the marketing order and approximately 28 handlers in the production area. There are approximately 53 importers of kiwifruit. Small agricultural service firms, which include kiwifruit handlers and importers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2011-12 season at 37,700 tons, with an average price of \$775 per ton. Based on the average price and shipment information provided by the CASS and the Kiwifruit Administrative Committee (Committee), the majority of kiwifruit handlers would be considered small businesses under the SBA definition. Based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower

revenue is less than \$750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities. In addition, based on data from the U.S. Census Bureau, Department of Commerce, the value of imported kiwifruit for 50 of the 53 importers was less than \$7,000,000. Thus, it can be concluded that the majority of kiwifruit importers may be classified as small entities.

This rule continues in effect the action that relaxed the minimum grade requirement for KAC No. 1 kiwifruit grown in California and for imported kiwifruit. This rule relaxes the tolerance for kiwifruit that is "badly misshapen" from 7 percent to 16 percent under the provisions of §§ 920.302 (b) and 944.550 of the order. Authority for the change in the order's rules and regulations is provided in § 920.53. The change in the import regulation is provided under section 8e of the Act.

This action is not expected to increase costs associated with the order requirements or the kiwifruit import regulation. Rather, this action is expected to reduce costs to handlers and growers of kiwifruit, and to increase efficiencies in the packing process. Increasing the tolerance for misshapen fruit will reduce the amount of product that fails to meet the minimum grade, thus reducing

re-sorting and repacking costs and reducing inefficiencies in the packing process. The quality of fruit to consumers is not expected to be significantly affected.

Importers also benefit from this change as a greater volume of fruit is available for shipment to the United States. The opportunities and benefits of this rule are equally available to all kiwifruit handlers, growers, and importers, regardless of their size.

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, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers in California or importers. 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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting where this change was recommended was widely publicized throughout the California kiwifruit industry. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 27, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 20, 2013. One comment was received. The commenter supported this action, stating that increasing the tolerance for misshapen fruit would decrease food waste and increase the availability of affordable fresh fruit for consumers. No changes are being made to the interim rule based on comments received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0032-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C.101).

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

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 43758, July 22, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements.

7 CFR Part 944

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

920 and 944 - [AMENDED]

Accordingly, the interim rule that amended 7 CFR parts 920 and 944 and that was published at 78 FR 43758 on July 22, 2013, is adopted as a final rule, without change.

Dated: February 25, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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