recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39406). Copies of the rule were provided to all committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 1, 2001. No comments were received.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without changes, as published in the **Federal Register** (66 FR 39406, July 31, 2001), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 66 FR 39406, July 31, 2001, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6148 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 FIR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, a corrected interim final rule which relaxed pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: April 15, 2002.

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, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 205–8938 or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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 USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

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

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of

a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(4)(iv) of the order's administrative rules and regulations was revised by an interim final rule issued on September 3, 1998 (63 FR 46861). A final rule published on July 30, 2001, redesignated § 920.302(a)(4)(iv) as (a)(4)(iii)(66 FR 39267).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations was needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. The continued relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller-sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(4)(iii) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27 * 32
27/28	30 * 35
30	33 * 38
33	36 * 43
36	42 * 45
39	48 * 49
42	53 * 54
45	55

* Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25, respectively.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Final Regulatory Flexibility Analysis

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

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

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined by the Small Business Administration as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers subject to regulation have annual sales less than $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the

maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	27* 32
27/28	30* 35
30	33* 38
33	36* 43
36	42* 45
39	48* 49
42	53* 54
45	55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule continues to allow one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit as size designation 23, 20, or size designation 45. This rule continues to reduce the percentage of fruit packed in the 40 series and continues to increase the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into new size designation 33. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered undersized to be shipped. Imports from Europe have increased 1,409 percent since 1992–1993. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $2.0 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believes that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

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

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2001 (66 FR 54411). Copies of the rule were mailed by the Committee staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the internet by the Office of the Federal Register and USDA. That rule provided a 60-day comment period which ended December 28, 2001. No comments were received. A correction concerning this action was published in the **Federal Register** on January 11, 2002. (67 FR 1413). The interim final rule, as published, contained an error in the amendatory instructions affecting 7 CFR part 920. The amendatory instructions incorrectly indicated that the revised table in § 920.302 appears at the end of paragraph (a)(4)(iv). The revised table actually appears at the end of paragraph (a)(4)(iii) of that section and appropriate corrections were made to the interim final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, which was published in the **Federal Register** (66 FR 54411, October 29, 2001) and corrected in the **Federal Register** (67 FR 1413, January 11, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 66 FR 54411, October 29, 2001, and corrected at 67 FR 1413 on January 11, 2002, is adopted as a final rule without change.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6138 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–1 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes handled. The Committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202)720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning on January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002 and subsequent fiscal periods from $0.01 to $0.015 per 18-pound lug of grapes.

The grape marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 5, 2001, and estimated a January 2002 beginning reserve of approximately $124,800, and unanimously recommended expenditures of $195,215 and an assessment rate of $0.015 per 18-pound lug of grapes for the 2002 fiscal period. In comparison, last year's budgeted expenditures were $186,023. The assessment rate of $0.015 is $0.005 higher than the rate currently in effect. The higher assessment rate is needed to offset increases in salaries and to keep the operating reserve at an adequate level.

The expenditures recommended by the Committee for the 2002 fiscal period include $100,000 for research, $28,200 for compliance activities, $41,000 for salaries, and $26,015 for other expenses. Budgeted expenses for these items in 2001 were $100,000, $35,200, $15,000, and $35,823, respectively.

The assessment rate recommended by the Committee was chosen because it will provide $142,500 in assessment income (9.5 million lugs x $.015 per lug) and, when $2,000 in interest income and $50,715 of its reserves are used for