

parts of California which produced a larger percentage of smaller and flatter kiwifruit. Generally Size 45 fruit is a rounder fruit. Blending occurs because adjoining size designations have size tolerances that partially overlap and kiwifruit within either size tolerance may be packed in either size designation. In larger sized fruit, handlers see more of a variety of shapes and pack boxes of round fruit and boxes of flat fruit for each size in order to stay within the size variation requirements. For economic and practical reasons, most handlers pack boxes that include both the round Size 45 fruit, as well as smaller flat fruit.

During the past season, a number of handlers experienced increased difficulty in meeting the size variation tolerance in the Size 45 containers. Currently, a variation of 1/4-inch (6.4 mm) difference is allowed between the widest and narrowest pieces of fruit in a Size 45 pack for all containers. There is a tolerance of 5 percent for fruit that exceeds that 1/4-inch variation, meaning that up to 5 percent of the fruit in any one container may exceed the 1/4-inch variation. As the size of the fruit increases, so does the size of the variation allowed. In the larger fruit sizes, failure to meet the required size variation standards results in packs that are visibly irregular in size. In Size 45, however, when the 5 percent tolerance is exceeded, the variation is difficult to detect visually. During the packing operation, a mechanical sizer routinely sorts the fruit by shape and size. The fruit which is missed by the mechanical sizer must be correctly sorted by the handler. Since it is not economically feasible for each handler to be equipped with a caliper to measure size variation, they rely on their visual judgment. During inspection, calipers are utilized by the inspectors to determine if the size variation is met for Size 45 containers. The 5 percent tolerance requirement is seldom met, but the fruit is found to vary slightly above the allowed tolerance of 5 percent (within 6–8 percent tolerance). Handlers have found that it is cost-prohibitive to slow down their operations in an attempt to stay within the current tolerance levels and to recondition the fruit that fails inspection.

The committee's intention in recommending this increase in the size variation tolerance is to set an acceptable size variation tolerance that can be visually discerned while the packing operation is in progress and results in a Size 45 container that is uniform in size.

There is support in the industry to increase the size variation tolerance to

10 percent, by count, for the fruit in any Size 45 container. An alternative studied by the committee field staff and considered by the committee was to increase the degree, or size of the variation allowed, from 1/4-inch to 3/8-inch. Throughout the season, fruit was measured and sample boxes were made up depicting this increased variation. It was the consensus of the field staff, inspection service and industry handlers that such an increase would allow for the blending up of undersize fruit. The end result would be a box that visibly showed a variation of fruit size, including undersize fruit. This was deemed not acceptable as the industry desires to pack a uniform box of fruit.

Another alternative examined and proposed herein is to increase the 5 percent size variation tolerance level to 10 percent. Throughout the season, field staff observed and polled handlers and inspectors on problems encountered with Size 45. The overwhelming majority of the cases where Size 45 fruit was rejected for size variation, the tolerance level was in the 6 percent to 8 percent range. It was not possible to distinguish a box at 10 percent variation from one at 5 percent, without the use of a caliper. The general consensus was that once a 10 percent tolerance was exceeded, the variation became more visibly apparent and the handlers would recognize the need for repacking before calling for inspection.

Relaxing the tolerance for Size 45 packs would allow an increased number of Size 45 kiwifruit in a container that are not within the 1/4-inch variance. For example, the pieces of fruit, which vary more than 1/4-inch in a 22-pound volume fill container, could increase from 2 pieces to 5 pieces. This tolerance increase would not allow for the blending of additional sizes beyond those currently blended, but would grant more flexibility for varying shapes of the fruit. This relaxation would be beneficial to both growers and handlers. The proposed 10 percent size variation tolerance would decrease the amount of handler repacking and reduce inspection time and cost, thereby making it more cost effective for handlers. This would also result in no visual difference in uniformity.

Section 920.302(a)(4) would be amended by revising paragraphs (i) through (iv) and adding new paragraphs (v) and (vi). Included in these changes are editorial changes made for clarity. Diameter variances would be specified for kiwifruit packed in cell compartments, cardboard fillers or molded trays. These provisions appear in § 51.2338(d) of the United States Standards for Grades of Kiwifruit (7 CFR

51.2338(d)). Also, these changes would delete the phrase: "Provided, That for the season ending July 31, 1995, such containers may also hold 23-pounds net weight of kiwifruit" in § 920.320(a)(4)(iv) (59 FR 53565). This phrase is no longer needed as it applied to the 1994–95 season.

This proposed rule would impact all handlers in the same manner. The increased size variation tolerance would ease some of the burden associated with packing and sizing kiwifruit and enable handlers to pack and sell more kiwifruit. This change would reduce costs for handlers and growers.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons an opportunity to respond to this proposal. 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.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 920 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.

2. Section 920.302 is amended by revising paragraphs (a)(4) (i) through (iv) and adding new paragraphs (a)(4) (v) and (vi) to read as follows:

§ 920.302 [Amended]

- (a) * * *
- (4) * * *

(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 shall be fairly uniform in size.

(ii)(A) Kiwifruit packed in cell compartments, cardboard fillers or molded trays may not vary in diameter more than:

Sizes	Diameter
30 or larger	1/2-inch (12.7 mm)
31–38	3/8-inch (9.5 mm)
39 or smaller	1/4-inch (6.4 mm)

(B) Kiwifruit packed in bags, volume fill or bulk containers, fruit may not vary more than: