

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 841, 842, and 843

RIN 3206-AK57

#### Federal Employees' Retirement System; Death Benefits and Employee Refunds

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing Final rules that revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to conform the tables to the previously published economic assumptions adopted by the Board of Actuaries.

**DATES:** This final rule is effective October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Karla Yeakle, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** On December 1, 2004, we published (at 69 FR 69805) interim regulations to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99-335, 100 Stat. 514, based on changed economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. Those changed economic assumptions (principally the change in expected investment return from 6.75 percent to 6.25 percent)

require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act. The revised factors were effective on October 1, 2004. To implement these changes in factors, we issued interim regulations on December 1, 2004. At that time we also requested comments on the interim regulations. We received no comments. Accordingly we are now adopting the interim regulation as final without change.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired employees, spouses, and former spouses.

#### List of Subjects in 5 CFR Parts 841, 842 and 843

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

■ Accordingly, the Office of Personnel Management adopts its interim regulations amending 5 CFR parts 841, 842, and 843 published at 69 FR 69805 on December 1, 2004, as final rule without change.

[FR Doc. 05-16592 Filed 8-19-05; 8:45 am]

**BILLING CODE 6325-39-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV05-920-1 FR]

#### Kiwifruit Grown in California; Relaxation of Pack Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the pack requirements for California kiwifruit 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 requires that kiwifruit marked as Size 39 or 42 not vary in diameter by more than  $\frac{3}{8}$  inch, regardless of pack type. In addition, the three tables that are currently under the pack regulation will be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

**EFFECTIVE DATE:** August 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Shereen Marino, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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."

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. 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 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA will 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 revises the pack requirements for California kiwifruit under the order. This rule requires that Size 39 and Size 42 fruit not vary in size by more than  $\frac{3}{8}$  inch, regardless of pack type. The Committee unanimously recommended these changes at its March 2, 2005, meeting.

Currently, three tables are included under the pack regulation to designate sizes and list the size variances permitted for the different pack arrangements used in the industry. This rule consolidates the three tables into one table that lists size designations with applicable size variation tolerances for kiwifruit regardless of the pack or container type. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's regulations specifies pack requirements for fresh shipments of California kiwifruit. Pack requirements include the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container.

Section 920.302 of the order's regulations specifies grade, size, pack, and container regulations for the fresh shipment of California kiwifruit. This section contains three tables regarding

pack. One table in § 920.302(a)(4)(iii) specifies size designations for kiwifruit packed in volume fill containers (such as bags or bulk containers). These size designations are based on the maximum number of pieces of fruit per 8-pound sample. Two tables in § 920.302 specify size variation tolerances. One table in § 920.302(a)(4)(ii)(B) is applicable to volume fill containers and lists size designations with the corresponding size variation tolerance listed by diameter. The other table in § 920.302(a)(4)(ii)(A) is applicable to kiwifruit packed in trays and lists the variation tolerance in diameter by count (number of pieces of kiwifruit packed in a tray).

Since 1989, there have been two different size variation tolerances for Size 39 and Size 42 kiwifruit, depending on style of pack. The majority of Size 39 and Size 42 kiwifruit is initially packed in volume fill containers and must meet a size variation tolerance of  $\frac{3}{8}$ -inch. It has become more common for some of the fruit to then be restyled (repacked) into trays. In fact, the current estimate is that 10 percent of the crop is restyled into trays. All kiwifruit restyled within the production area must be reinspected.

Restyling fruit from volume fill containers into trays may require resizing the fruit because the size variation tolerance differs for the two containers. Fruit packed in trays that is 39 and 42 count must meet a size variation tolerance of  $\frac{1}{4}$ -inch. In order to meet the more restrictive  $\frac{1}{4}$ -inch tolerance, handlers must resize the fruit. Resizing is costly and slows down the restyling process. In addition, during the initial packing process, pack styles can change several times daily depending upon market demand. Resizing may also reduce returns to growers. Thus, the Committee recommended changing the size variation requirement for Size 39 and Size 42 kiwifruit from  $\frac{1}{4}$  inch to  $\frac{3}{8}$  inch when packed in cell compartments, cardboard fillers, or molded trays.

The Committee also recommended revising the regulations to specify one standard size variation tolerance of  $\frac{3}{8}$ -inch for Size 39 and Size 42 kiwifruit, regardless of whether the fruit is packed in volume fill containers or trays. To facilitate this change the three tables under the pack regulation will be consolidated into one that lists both size designations and their applicable size variation tolerances for fruit packed in all container types. Additionally, clarifying language that was inadvertently omitted from under the first table (Count) in prior rulemaking will be restored. The language clarifies

that the average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations. Section 920.302 is revised accordingly.

#### 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 45 handlers of California kiwifruit subject to regulation under the marketing order and approximately 275 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$6,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. None of the 45 handlers subject to regulation have annual kiwifruit sales of at least \$6,000,000. In addition, six growers subject to regulation have annual sales exceeding \$750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule relaxes the pack requirements currently specified in § 920.302 for kiwifruit. The rule creates one standard size variation tolerance to be applied uniformly to all container types. Additionally, the three tables currently under the pack regulation will be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances, regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations. Authority for this action is provided in § 920.52 of the order, which authorizes the establishment of pack requirements.

The impact of this change on handlers was discussed by the Committee. Approximately 10 percent of shipments are restyled from a volume fill container to a tray pack. Based on an industry survey, restyling costs an average of \$.07 per tray equivalent. Since there will no longer be a need for handlers to resize the fruit when restyling from a volume fill container to a tray pack, it is estimated that restyling costs per tray equivalent will decrease to \$.035 per tray equivalent. The average of Size 39 and 42 fruit sold over a 6-year period is approximately 22 percent of the crop. Current restyling costs are obtained by calculating 10 percent of the average of Size 39 and 42 fruit (22 percent of the total packout) and multiplying that number by the estimated cost per tray equivalent.

Based on a total crop of 6 million tray equivalents (te) the cost savings for repacking/restyling will be around \$9,000. This amount is obtained by subtracting \$9,240 from \$18,480 from the table below, which is the difference between the restyling costs incurred when fruit must be resized and restyling costs when fruit does not need to be resized.

Total Crop Sold (te)—6,000,000

Total Size 39 & 42 fruit (22% of total crop) (te)—1,320,000

Estimated number of Size 39 & 42 fruit restyled annually from bulk to trays (10% of total 39/42's packed) (te)—132,000

Approximate cost to restyle Sizes 39 and 42 fruit without rechecking/resizing for size variation difference (0.07 cents per te)—\$9,240

Approximate cost to restyle Size 39 and 42 fruit that requires resize for size variation difference (0.14 cents per te)—\$18,480

This change reduces packing costs since handlers will no longer need to resize fruit to the more restrictive 1/4-inch tolerance in the restyling (repacking) process. The packing process will also move more rapidly since frequent resizing adjustments are no longer necessary. Fewer resizing adjustments may also mean increased returns to growers.

The Committee considered the alternative of not revising the rule, but this was not considered viable because of the confusion currently experienced

because of differences in the size variation tolerance in the different packs and the resulting increased packing costs. The Committee reasoned that the only viable alternative was to create a standard size variation tolerance regardless of pack.

This rule creates one size variation standard that will be applied uniformly to all container types as well as consolidate the three tables currently in the pack regulation of the order into one table. Accordingly, these actions do 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 sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. In fact, this action will relax the current requirements under the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627) with regard to "fairly uniform in size."

In addition, 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 on all issues. Like all Committee meetings, the March 2, 2005, meeting, was a public meeting and all entities, both large and small, were encouraged to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on June 22, 2005 (70 FR 36060). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period ending July 12, 2005, was provided to allow interested persons to respond to the proposal. 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 matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place by September 10, 2005, which is prior to the start of the new shipping season. This rule relaxes requirements currently in effect. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

#### 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 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. In § 920.302, paragraph (a)(4) is revised to read as follows:

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

(a) \* \* \*

(4) *Pack Requirements.* (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 any container shall be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

SIZE DESIGNATION AND SIZE VARIATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8-pound sample	Column 3 size variation tolerance (diameter)
18 or larger .....	25	1/2-inch (12.7 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 or smaller .....	55	1/4-inch (6.4 mm).

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

\* \* \* \* \*

Dated: August 17, 2005.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*  
 [FR Doc. 05-16571 Filed 8-19-05; 8:45 am]  
**BILLING CODE 3410-02-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 229**

[Regulation BB; Docket No. R-1225]

**Community Reinvestment Act; Correction**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; correction.

**SUMMARY:** The Board of Governors is correcting the Paperwork Reduction Act information that it provided in connection with a final rule amending certain provisions of Regulation BB,

which was published in the **Federal Register** of August 2, 2005.

**DATES:** The final rule is effective on September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Michelle E. Long, Federal Reserve Board Clearance Officer, 202-452-3829, Division of Research and Statistics. For users of Telecommunications Device for the Deaf (TDD) only, contact 202-263-4869.

**SUPPLEMENTARY INFORMATION:** The Board published a final rule in the **Federal Register** of August 2, 2005 (70 FR 44256), that amended certain provisions of Regulation BB, effective September 1, 2005. The Paperwork Reduction Act section for this final rule included detailed information about the paperwork burden estimate for State Member Banks that are required to comply with the regulation. Inadvertently, the Board omitted from this Paperwork Reduction Act calculation the burden hours for a couple of optional requirements. This document corrects the error by revising the burden estimate on page 44265, in the second column, as follows:

Board:

*Number of Respondents:* 914.

*Estimated Time per Response:* Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

*Total Estimated Annual Burden:* 131,662 hours.

By order of the Board of Governors of the Federal Reserve System, August 15, 2005.

**Jennifer J. Johnson,**  
*Secretary of the Board.*  
 [FR Doc. 05-16459 Filed 8-19-05; 8:45 am]  
**BILLING CODE 6210-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM325; Special Conditions No. 25-294-SC]

**Special Conditions: Gulfstream Model G150 Airplanes; Side-Facing Single-Occupant Seats**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Gulfstream Model G150 airplanes. These airplanes will have a novel or unusual design feature(s) associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is August 9, 2005. Comments must be received on or before October 6, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No.