PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

4. For the reasons set forth in the preamble, the interim final rule adding §985.313 which was published at 58 FR 32596, is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-19664 Filed 8-13-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 920

[Docket No. FV93-920-1FR]

Kiwifruit Grown in California; Revision of Pack and Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises pack and container requirements for California kiwifruit. The first change adds a new size category to the allowable sizes for packs of kiwifruit. The second change standardizes packaging for certain volume-fill containers packed by weight at 23 pounds. The third change requires all containers of kiwifruit to be marked with the identity of the product; the name, address, and zip code of the shipper; and the quantity of the product within the container. These changes were unanimously recommended by the Kiwifruit Administrative Committee (committee) at its annual meeting.

EFFECTIVE DATE: This final rule becomes effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 720-5127; or Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone (209) 487-5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR Part 920), both as amended, regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 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 65 handlers of California kiwifruit subject to regulation under the marketing order and approximately 600 kiwifruit producers in the production area. The Small Business Administration (13 CFR 121.601) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The proposed rule concerning this action was published in the June 30, 1993, **Federal Register** (58 FR 34940), with a 15-day comment period ending July 15, 1993. No comments were received.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. Current requirements include specifications that such shipments be at least Size 49, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The production of California kiwifruit for the 1992 season was approximately 12.7 million tray equivalents, compared to the 1991 season production of 7.2 million tray equivalents. This represents a 76 percent increase in California kiwifruit production from 1991 to 1992.

The committee, the agency responsible for local administration of the marketing order, met on February 4, 1993, and unanimously recommended changes to the regulations. These recommended changes and the resulting amendments are as follows:

Additional Size Designation

Section 920.302(a)(4)(ii) of the rules and regulations includes a table that specifies numerical size designations to be used in packing certain containers of kiwifruit. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes. The size designation table only applies to kiwifruit packed in bags, volume-fill, or bulk containers, and does not apply to kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. The size designation table defines nine different sizes, beginning with Size 25 (the largest size) and ending with Size 49 (the smallest size). For example, Size 25 means that a maximum number of 27 pieces of kiwifruit may be contained in an 8-pound sample when packed in bags, volume-fill, or bulk containers. The committee recommended adding a Size 21 category which authorizes a maximum number of 22 pieces of fruit in an 8-pound sample.

Size 21 will be the largest size designation for kiwifruit packed in bags, volume-fill, or bulk containers. As a result of improved cultural practices, kiwifruit larger than Size 25 have become more prevalent. During the 1990-91 shipping season, 301 tray equivalents of California kiwifruit shipments were classified in sizes larger than a Size 25 equivalent, but during the 1992–93 shipping season, 6,022 tray equivalents of California kiwifruit shipments were classified as larger than a Size 25 equivalent. This trend is expected to continue.

Currently, for bags, volume-fill, and bulk containers containing kiwifruit the equivalent of Size 21 or larger, the size is marked as "Size 25." This puts handlers shipping kiwifruit larger than Size 25 at a disadvantage, because handlers may receive higher prices for larger sizes of kiwifruit and could benefit by classifying it as a larger size. A handler does have the option of using containers with molded trays and marking them "21 count," but this container is more expensive than using either bags, volume-fill, or bulk containers. For this reason, more kiwifruit is being shipped in bags, volume-fill, and bulk containers. In 1992, 41.8 percent of California kiwifruit was shipped in either bags, volume-fill, or bulk containers as compared to 18 percent in 1987. There is a need for a Size 21 designation so that kiwifruit marked "Size 21" may be shipped in bags, volume-fill, or bulk containers.

In addition, not having a Size 21 designation makes it difficult for handlers to stay within the size tolerances for the Size 25 designation. Current pack requirements specify that kiwifruit designated as Size 25 must be packed within a ½-inch size tolerance. Since there is no Size 21 designation, kiwifruit of Size 21 or larger is often "blended" into the Size 25 designation. Blending occurs because the four largest size designations have the same size tolerance specified under the order (½-inch) and kiwifruit within that tolerance may be packed in any of those sizes. Blending requires handlers to take special care to stay within the size tolerance and reduces the uniformity of the pack size. Establishing a Size 21 designation could reduce the cost of packing larger-sized fruit by making it easier for handlers to stay within the established size tolerances.

For the above reasons, this change has a positive impact throughout the industry by allowing Size 21 fruit to be uniformly packed in bags, volume-fill, or bulk containers. This change encourages a more uniform pack of larger-sized fruit by decreasing the amount of blending and increasing grower returns since larger fruit often sells at a higher price.

Standardized Packaging

The committee also recommended standardizing the weight of certain volume-fill containers marked by weight at 23 pounds. Paragraph (a)(3) of § 920.52 specifies that the Secretary may fix the weight of containers used in the handling of kiwifruit.

Handlers may ship volume-fill containers of kiwifruit marked by count or by weight depending upon the preference of the receiver. Volume-fill containers marked by count is not affected by this particular change. Also, containers of less than 10 pounds or more than 35 pounds is not affected by this weight standard. Thus, the industry continues to have the flexibility to utilize containers of different weights for a variety of consumer needs.

Currently, there is no standard weight established for volume-fill containers marked by weight. Handlers are shipping volume-fill containers marked by weight primarily of either 21 or 23 pounds. Both containers are sold at essentially the same price. Retailers often expect to receive 23-pound containers and actually receive 21-pound containers. The inconsistency of container sizes has caused confusion and complaints in the marketplace. Standardizing the weight of volume-fill containers marked by weight standardizes marketing practices for the kiwifruit industry.

The committee considered setting the minimum weight for volume-fill containers at 21 pounds rather than at 23 pounds. Those in favor of a 21-pound container believed that such a container packed better. However, some committee members commented that setting a 21-pound standard may result in some loosely packed containers. This in turn could present quality problems caused by a greater amount of jostling during packing and transportation. Proponents of setting a 23-pound standard also pointed out that nearly 90 percent of the volume-fill containers of kiwifruit shipped by the California kiwifruit industry in 1992 were 23-pound containers.

Currently, the committee is aware of three handlers who pack 21-pound volume-fill containers. Most containers used to pack 21 pounds are large enough to contain 23 pounds of kiwifruit. Also, such containers could be used for volume-fill containers marked by count or as 3-layer cartons. This change imposes some minimal costs on some handlers who will have to convert 21-pound volume-fill containers into other types of containers. However, the overall benefits to the California kiwifruit industry by standardizing volume-fill containers at 23 pounds more than offsets the costs imposed on handlers.

An additional packing requirement is added for containers in which quantity is specified by count. The count is required to be equal to three times the size designation. This is already an existing container marking practice of the kiwifruit industry. For example, if the kiwifruit is Size 42, then, on average a total of 126 pieces of fruit would be in the container. The carton would be labeled "Size 42, 126 count." Standardizing the container marking requirements of volume-fill containers marked by count clarifies marketing practices for the kiwifruit industry. Also, the United States Standards for Grades of Kiwifruit in § 51.2338(c)(2) specifies that the actual count shall not vary more than two from the marked count.

Container Marking Requirements

The committee also recommended additional container marking requirements. Section 920.52(a)(3) specifies that the Secretary may set container marking requirements on shipments of kiwifruit. In past years, some container marking requirements on shipments of California kiwifruit were required under the California Agricultural Code. These requirements specified that all containers of kiwifruit be marked with the identity of the product, the name and address of the shipper, and a description of the quantity of kiwifruit contained inside. These three requirements are referred to as identity, responsibility, and quantity (IRQ). The California Department of Food and Agriculture was responsible for the enforcement of these IRQ requirements. Last year, in response to severe budget restraints, the State put this program on a user fee basis. The California kiwifruit industry decided to drop out of the State program, and establish needed container marking requirements under the Federal marketing order.

Specifically, this action establishes under the Federal marketing order's rules and regulations, with minor modifications, the container marking requirements that were formerly required under the California Agricultural Code. The order now requires under § 920.302 that closed containers with cell compartments, cardboard fillers, or molded trays be marked with the count, and that bags, volume-fill, and bulk containers be marked with the size designation, as specified by the size designation table. Also, all containers, except those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export, need to be marked with a lot stamp number.

This action establishes standard container marking requirements similar to IRQ requirements. First, all kiwifruit containers must be labeled with the term "kiwifruit" and the varietal name, if the varietal name is other than Hayward. The container must be labeled as "unknown variety," if the variety of kiwifruit is unknown.

Second, containers also need to be marked with the name and the address of the handler. The address needs to include the city, state, and zip code.

Third, information regarding the quantity of kiwifruit is required to be marked on each of the following types of containers. (1) The count needs to be marked on all molded trays and 3-layer cartons. (2) The net weight and size designation needs to be marked on volume-fill containers packed by weight. Also, the count and size designation needs to be marked on volume-fill containers packed by count. (3) The net weight and size designation or the net weight, count, and size designation needs to be marked on bulk bins. (4) Master containers, which hold more than one individual package, need to be marked to properly express the quantity of the contents. Also, the size designation needs to be marked. For example, a master container packed with 20 packages each containing 1 pound of Size 49 kiwifruit needs to be labeled "20–1 lb. packages, Size 49." (5) The net weight or count needs to be marked on all individual consumer packages. If the count is used, then it needs to be accompanied by the size designation.

When the quantity is expressed in terms of weight, size designation, or count, the marking needs to be accompanied by the words "net weight," "size," or "count" as applicable. For example, a size designation could be marked on a container as "Size 49" or as "49 size," but not as "49."

The lot stamp number could be plainly marked anywhere on the outside of the container. Lot stamp numbers are not required for consumer packages or those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export. All other container marking information needs to be plainly and conspicuously marked on at least one outside principal display panel. The term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown, or examined under normal or customary conditions of display and purchase.

These requirements are necessary because a number of major export markets, including Canada, require these markings. The California kiwifruit industry may have containers of kiwifruit rejected at points of destination unless such containers are properly marked. Currently, containers may pass inspection at the shipping point yet be detained at the point of destination because of improper markings. The mandatory marking of all containers with information regarding the identity, responsibility, and quantity helps prevent problems for shippers and receivers of kiwifruit.

The committee considered not recommending any new container markings, but concluded that invariably some shippers would not follow customary container marking practices. This could damage the reputation of the California kiwifruit industry if improperly marked kiwifruit containers were rejected at the receiving point. Also, mandatory container marking requirements standardizes labeling for California kiwifruit containers. Inconsistent container marking practices could result in confusion in the marketplace and ultimately lower sales and grower revenue.

In addition, the committee considered remaining under the State program and paying an additional assessment of $.001 per container. Not only is this alternative more expensive than adding the IRQ regulations to the Federal order, but it imposes an additional burden by requiring Shipping Point Inspection (SPI) personnel to contact State Standardization personnel each time a mislabeled container was detected. Under this rule, the SPI inspects and certifies compliance with IRQ requirements, in addition to current grade, size, maturity, pack, and container marking requirements under the order.

For purposes of clarification, portions of paragraph (a)(4) and paragraph (a)(5) of § 920.302 regarding container marking requirements are incorporated, in modified form, into a new § 920.303 which deals specifically with container marking requirements. It is the intent of this action to add new container marking requirements to the rules and regulations and not to replace existing container marking requirements.

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

After consideration of all relevant matter presented, including the information and recommendations 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 action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be implemented prior to the beginning of the shipping season in mid-September. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a proposed rule provided a 15-day comment period and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

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)(5) is removed, and paragraph (a)(4) is revised to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 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. 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 may fail to meet the requirements of this paragraph. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (lbs)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(ii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than 3/8-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than 1/4-inch in diameter (6.4 mm) if Size 45/46 or smaller. 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 may fail to meet the requirements of this paragraph. The following table specifies the numerical size designation to be used in packing such containers as shown in Column 1, and the maximum number of fruit per 8-pound sample as shown in Column 2.

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

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.

(iii) For shipments in volume-fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(iv) All volume-fill containers of kiwifruit designated by weight shall hold 23 pounds net weight of kiwifruit unless such containers hold less than 10 pounds or more than 35 pounds net weight of kiwifruit.

* * * * *

3. A new § 920.303 is added to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 920.303 Container marking regulations.

No handler shall ship any kiwifruit except in accordance with the following terms and conditions:

(a) Each package or container of kiwifruit shall bear on at least one outside principal display panel in plain sight and in plain letters, the word "kiwifruit," the name of the variety (if other than the Hayward variety), if known or, when the variety is not known, the words "unknown variety."

(b) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the name and address (including the city, state, and zip code) of the shipper.

(c) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the following information regarding the quantity of kiwifruit packed within the container:

(1) The quantity shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

(2) The quantity shall be indicated in terms of the size designation and either the net weight for volume-fill containers packed by weight or the count for volume-fill containers packed by count.

(3) For bulk bins, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation, net weight, and count.

(4) Master containers, which hold more than one individual package, must be properly marked with the quantity of the contents. The size designation must also be indicated.

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. If count is used, it must be accompanied by the size designation.

(6) Designations of size, count, and net weight on each container shall be accompanied by the words "size," "count," or "net weight" as applicable.

(d) Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(e) As used in this section, the term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19668 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 923

[Docket No. FV93–923–1FR]

Sweet Cherries Grown In Designated Counties In Washington; Finalize Revised Size and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change an interim final rule which increased the minimum size requirement for Washington sweet cherries that can be shipped to fresh market outlets from 52/64 to 54/64 inch in diameter, and revised the pack requirements for such cherries. Such action was designed to provide fresh markets and consumers with slightly larger fruit, and improve the quality of cherries offered to consumers. This is intended to enhance the image of Washington sweet cherries in the fresh market, and improve returns to producers. This action was recommended by the Washington Cherry Marketing Committee (committee), which works with the Department in administering the marketing order.

EFFECTIVE DATE: This final rule becomes effective September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 923 (7 CFR part 923), as amended, regulating the handling of sweet cherries grown in designated counties in Washington, 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 final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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 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 Washington sweet cherries that are subject to regulation under the marketing order. In addition, there are approximately 1,100 producers in the regulated area. The majority of handlers and producers of Washington sweet cherries may be classified as small entities as defined by the Small Business Administration (SBA) (13 CFR 121.601). Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000.

The interim final rule was issued on May 21, 1993, and published in the Federal Register (58 FR 30698, May 27, 1993) with an effective date of May 27, 1993. That rule revised the size and pack requirements for Washington cherries by amending § 923.322. That rule also provided a 30-day comment period which ended June 28, 1993. No comments were received.

The committee met on November 18, 1992, and recommended that the minimum size requirement established for fresh market shipments be increased from $^{52}/_{64}$ to $^{54}/_{64}$ inch in diameter, an increase of $^{2}/_{64}$ inch in diameter. This eliminates the $^{52}/_{64}$ inch or "13 row size" pack and makes the $^{54}/_{64}$ inch or "12 row size" pack the minimum allowable size.

The minimum size increase was designed to improve the image of Washington sweet cherries in the marketplace and provide buyers with slightly larger sized fruit, thus improving the quality level and flavor. That action should encourage repeat purchases and increase cherry sales, shipments, and grower returns.

Approximately 90 million pounds of sweet cherries were shipped during the 1992 season. Shipments of fruit less than $^{54}/_{64}$ inch in diameter accounted for less than one percent of total industry shipments. Approximately $^{1}/_{10}$th of one percent of 1992 shipments consisted of fruit designated as 13 row size. A $^{2}/_{64}$ of an inch increase in the size requirement for sweet cherries grown in designated counties in Washington will have a negligible impact on industry supplies. In addition, the size increase was designed to improve the overall fruit size and quality of the pack. Small cherries tend to be less mature, of poorer flavor, and have more defects affecting quality.

Approximately 95 percent of the total shipments of 13 row size fruit during the 1992 season were shipped during the first two weeks of the season, and 100 percent were shipped during the first four weeks of the season. Initial offerings of cherries set the market tone for the remainder of the season. Purchases of larger, higher quality fruit at the beginning of the season are expected to encourage consumers to make subsequent purchases, thus expanding and stabilizing market demand and increasing returns to growers and handlers.

The committee also recommended a conforming change to the handling requirements. Prior to implementation of the interim final rule, at least 90 percent of the cherries in a lot of face packed containers or containers of 20 pounds or more had to measure at least $^{54}/_{64}$ inch in diameter, and not more than 5 percent could be less than $^{52}/_{64}$ inch in diameter. The intent of that requirement was to restrict the shipment of "13 row size" cherries to containers of 12 pounds or less. Since the increase in the minimum size requirement precluded the shipment of 13 row size cherries, that language is no longer necessary. Therefore, the interim final rule revised paragraph (a)(2) of § 923.322 to reflect the revised minimum size requirement and deleted paragraph (a)(3) of that section relating to face-packed containers and containers of 20 pounds or more.

The interim final rule also made a conforming change to the Washington cherry pack requirements. Paragraphs (c)(2) and (c)(3) of § 923.322, establish pack requirements under the marketing order, which were not in conformity with the Washington State Standards for Grades of Sweet Cherries (Standards) prior to the implementation of the interim final rule. Prior to implementation of that rule, these paragraphs stated that containers marked with a minimum diameter could be shipped if at least 90 percent, by count, of the cherries in any lot met the minimum diameter requirements. The Standards provide that containers marked with a minimum diameter may be shipped only if at least 95 percent, by count, of the cherries in any lot meet the specified minimum diameter. Therefore, the interim final rule revised the current pack requirements under the order concerning minimum diameter markings to conform with the off-size tolerances of the Standards. The interim final rule amended paragraph (c)(2), and eliminated paragraph (c)(3) of § 923.332. That action permitted containers marked with a minimum diameter to be shipped only if at least 95 percent, by count, of the cherries in any lot met the minimum diameter requirements. That action was designed to eliminate possible confusion about labelling requirements, and clarify the requirements, resulting in better service to the industry.

The interim final rule also clarified pack requirements for containers of cherries with row count markings. That action specified that the percentage count for off-size cherries be applied only to individual lots and not to individual containers.

It is the Department's view that this action will benefit producers and handlers. The anticipated increase in demand and grower returns will significantly offset the costs of compliance with the regulations. In addition, the committee believes that the regulatory change will improve returns to producers in the production area while consistently providing fresh markets with slightly larger, good quality, flavorful sweet cherries.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of sweet cherries grown in designated counties in Washington State.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule as published in the **Federal Register** [58 FR 30696, May 27, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

[**Note:** This section will appear in the annual Code of Federal Regulations.]

2. Accordingly, the interim final rule amending the provisions of § 923.322, which was published in the **Federal Register** [58 FR 30696, May 27, 1993] is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19665 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–1) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning OSM Regulatory Reform I and II issues, State initiatives, and stylistic or editorial changes. The proposed changes are intended to revise the Indiana program to be consistent with changes made to the corresponding Federal regulations, and to address industry petitions and State initiatives.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

Since July 29, 1982 (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), and August 24, 1988 (Regulatory Reform II), that a number of Indiana regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated March 26, 1992 (Administrative Record No. IND–1057), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package consisting of revisions to 60 sections of the Indiana rules. These revisions address some of the changes to the Indiana program that were identified in the two letters referred to above. Industry and the State have also proposed additional changes which Indiana believes will further improve the approved State program.

OSM announced receipt of the proposed amendment in the May 21, 1992 **Federal Register** (57 FR 21634), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 22, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated June 15, 1992 (Administrative Record Number IND–1098), the IDNR submitted to OSM, proposed changes to program amendments 91–8 and 92–1 at 310 IAC 12–2–2, 310 IAC 12–3–112, and 310 IAC 12–3–13. These same changes are also proposed in the 92–1 amendment package. OSM announced receipt of the proposed changes in the August 19, 1992, **Federal Register** (57 FR 37498), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on September 3, 1992. The proposed changes to 310 IAC 12–2–2, 310 IAC 12–3–13, and 310 IAC 12–3–112 were subsequently approved by OSM on December 30, 1992 (57 FR 62207), and will not, therefore, be discussed in this notice.

By letter dated August 19, 1992 (Administrative Record No. IND–1128), OSM responded to Indiana's proposed rules by identifying specific concerns and requesting clarification from Indiana. Indiana responded by letter dated November 5, 1992 (Administrative Record No. IND–1166). Indiana provided additional information by letter dated February 1, 1993 (Administrative Record Number IND–1258). OSM identified additional concerns on March 9, 1993, and March 12, 1993. Indiana responded by letter dated May 17, 1993 (Administrative Record Number IND–1244).

By letter dated December 2, 1992 (Administrative Record Number IND–1175), Indiana submitted program amendment 92–7 concerning subsidence liability. In the 92–7 amendment package, Indiana proposes to add new section 310 IAC 12–5–130.1 to the Indiana program. Some of the new provisions proposed at 310 IAC 12–5–130.1 are closely related to the proposed changes in amendment package 92–1 at 310 IAC 12–5–133. Therefore, the Director transferred the proposed changes at 310 IAC 12–5–133 to Indiana's proposed amendment 92–7.