

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS-FV-14-0031; FV14-925-2 PR]

**Grapes Grown in a Designated Area of Southeastern
California and Imported Table Grapes; Relaxation of
Handling Requirements**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on partially relaxing the handling requirements currently prescribed under the California table grape marketing order (order) and the table grape import regulation. The order regulates the handling of table grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (committee). The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. This action would partially relax the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for U.S. No. 1 Table grade grapes packed in consumer packages known as clamshells weighing 5 pounds or less. Under the proposal,

up to 20 percent of the weight of such containers may consist of single grape clusters weighing less than one-quarter pound, but consisting of at least five berries each. This rule would provide California desert grape handlers and importers with the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities

submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Kathie.Notoro@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 925, 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."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule would partially relax the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for all U.S. No. 1 Table grade grapes packed in clamshell consumer packages weighing 5 pounds or less. Under the revision, up to 20 percent of the weight of such containers could consist of single grape clusters weighing less than one-quarter pound but consisting of at least five berries each. This proposed rule would provide California desert grape handlers and importers with the flexibility to respond to an ongoing marketing opportunity. The committee met on November 5, 2013, and conducted an electronic vote on April 8, 2014, to unanimously recommend the partial relaxation

for California desert grapes. The change in the import regulation is required under section 8e of the Act.

Section 925.52(a)(1) of the order provides authority to regulate the handling of any grade, size, quality, maturity, or pack of any and all varieties of grapes during the season. Section 925.53 provides authority for the committee to recommend to USDA changes to regulations issued pursuant to § 925.52. Section 925.55 specifies that when grapes are regulated pursuant to § 925.52, such grapes must be inspected by the Federal or Federal-State Inspection Service (FSIS) to ensure they meet applicable requirements.

Section 925.304(a) of the order's rules and regulations requires grapes to meet the minimum grade and size requirements of U.S. No 1 Table; or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards). To meet the requirements of U.S. No. 1 Table grade, grapes must have a bunch size of at least one-quarter pound.

In 2010, the order's regulations were relaxed with respect to the bunch size requirement specified in the Standards (75 FR 17031). This change permitted the use of bunch sizes smaller than one-quarter pound, but with at least five berries each, in packing consumer clamshell containers containing 2 pounds net weight or less. Not more than 20 percent of the weight of such containers could consist of these smaller bunches. This relaxation was made to allow handlers to take advantage of a new marketing opportunity for grapes packed in small clamshell containers. Prior to the relaxation, handlers were experiencing difficulty filling these containers properly with one-quarter pound bunches; smaller bunches were needed to fill the corners of the square container configuration to achieve the desired weight.

Since the order's regulations were amended in 2010, customers nationwide have been increasingly requesting grapes in larger clamshell containers. Handlers experience difficulty properly filling these larger containers to the desired weights with one-quarter pound bunch sizes, similar to the problem they experienced with the smaller 2-pound clamshell containers. Therefore, the committee recommended that the bunch size requirement in the order's regulations

pertaining to U.S. No. 1 Table grade grapes be partially relaxed with respect to containers weighing 5 pounds or less. Under this proposed change, up to 20 percent of the weight of such containers may consist of single grape clusters weighing less than one-quarter pound, but with at least five berries each. This proposal would allow handlers to continue to respond to increased marketing opportunities. Section 925.304 (a) would be revised accordingly.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation). A relaxation in the California Desert Grape Regulation 6 minimum bunch size requirement would require a corresponding relaxation to the minimum bunch size requirement for imported table grapes. Like the domestic industry, this proposed action would allow importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 944.503(a) (1) would be revised accordingly.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 15 handlers of southeastern California grapes who are subject to regulation under the marketing order and about 41 grape producers in the production area. In addition, there are about 102 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201). Ten of the 15 handlers subject to regulation have annual grape sales of less than \$7,000,000, according to USDA Market

News Service and committee data. Based on information from the committee and USDA's Market News Service, it is estimated that at least 10 of the 41 producers have annual receipts of less than \$750,000. Thus, it may be concluded that a majority of grape handlers regulated under the order and about ten of the producers could be classified as small entities under the SBA definitions.

Mexico, Chile, and Peru are the major countries that export table grapes to the United States. According to 2013 data from USDA's Foreign Agricultural Service (FAS), shipments of table grapes imported into the United States from Mexico totaled 16,582,989 18-pound lugs, from Chile totaled 47,922,204 18-pound lugs, and from Peru totaled 3,519,448 18-pound lugs. According to FAS data, the value of table grapes imported from Mexico, Chile, and Peru was \$332,284,000, \$760,952,000, and \$80,912,000, respectively, for a total value of \$1,174,148,000. It is estimated that the average importer receives \$11.5 million in revenue from the sale of table grapes. Based on this information, it may be concluded that the average table grape importer would not be classified as a small entity.

This proposed rule would revise § 925.304(a) of the rules and regulations of the California desert grape order

and § 944.503(a)(1) of the table grape import regulation. This proposed rule would partially relax the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for U.S. No. 1 Table grade grapes packed in consumer clamshell packages weighing 5 pounds or less. Under the proposed relaxation, up to 20 percent of the weight of each package may consist of single grape clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the proposed change to the California desert grape rules and regulations is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

There is agreement in the industry for the need to expand the revised minimum bunch size requirement for grapes packed in these consumer clamshell packages to allow for more packaging options.

Regarding the impact of this proposed rule on affected entities, this rule would provide both California desert grape handlers and importers with the flexibility to continue to respond to an ongoing marketing opportunity to meet consumer needs. This marketing opportunity initially existed in the 2009 season, and the minimum bunch size

regulations were revised for consumer clamshell packages weighing 2 pounds or less, on a test basis. In 2011, the regulation was revised permanently for consumer clamshell packages weighing 2 pounds or less due to the positive market response. This proposal would expand the revised requirements to include larger consumer clamshell packages weighing 5 pounds or less. Customers have been requesting larger sized clamshell packages, and this proposed action would enable handlers and importers to take advantage of increased market opportunities, which may result in increased shipments of consumer grape packages. This is expected to have a positive impact on producers, handlers, and importers.

No additional alternatives were considered because the 2011 revision produced the desired results, and no problems were identified. The committee believes the partial relaxation of the bunch size requirement for grapes packed in larger consumer clamshell packages was appropriate to prescribe for the 2014 and subsequent seasons.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189.

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

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

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, 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 grape industry, and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the November 5, 2013 meeting was a public meeting; and all

entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible to allow handlers to take advantage of this relaxation during the regulatory period which begins on April 10, 2015. All written comments timely received will be considered before a final determination is made on this matter.

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

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting, and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Amend §925.304(a) by re-designating paragraphs (a)(1) and (a)(2) as paragraphs (a)(3) and (a)(4), revising paragraph (a) introductory text and adding new paragraphs (a)(1) and (a)(2) to read as follows:

§925.304 California Desert Grape Regulation 6.

* * * * *

(a) Grade, size, and maturity. Except as provided in paragraphs (a)(3) and (a)(4) of this section, such grapes

shall meet the minimum grade and size requirements established in paragraphs (a)(1) or (a)(2).

(1) U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type 7 CFR 51.880 through 51.914), with the exception of the tolerance percentage for bunch size when packed in individual consumer clamshell packages weighing 5 pounds or less: not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each; or

(2) U.S. No. 1 Institutional, with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked "DGAC No. 1 Institutional" but shall not be marked "Institutional Pack."

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PART 944—FRUITS; IMPORT REQUIREMENTS

3. Amend § 944.503 by redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1)(iii) and

(a) (1) (iv), revising paragraph (a) (1) introductory text and adding new paragraphs (a) (1) (i) and (a) (1) (ii) to read as follows:

§944.503 Table Grape Import Regulation 4.

(a) (1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, and except as provided in paragraphs (a) (1) (iii) and (a) (1) (iv), the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements established in paragraphs (a) (1) (i) or (a) (2) (ii).

(i) U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type 7 CFR 51.880 through 51.914), with the exception of the tolerance percentage for bunch size when packed in individual consumer clamshell packages weighing 5 pounds or less: not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each; or

(ii) U.S. No. 1 Institutional, with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked "DGAC No. 1 Institutional" but shall not be marked "Institutional Pack."

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Dated: February 23, 2015.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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