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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Desert Grape Administrative Committee (Committee) to partially relax the handling requirements currently prescribed under the California table grape marketing order (order) and the table grape import regulation. The Committee locally administers the order and regulates the handling of table grapes grown in a designated area of southeastern California. 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 final rule relaxes 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 five pounds or less. 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 action provides California desert grape handlers and importers with the flexibility to respond to ongoing marketing opportunities to meet consumer needs.

DATES: Effective April 1, 2016.

FOR FURTHER INFORMATION CONTACT:

Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: 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, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule 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 final 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 final rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 final rule partially relaxes 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 five 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 final rule provides 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, in which voters unanimously recommended 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 (See, 75 FR 17031, affirmed at 75 FR 34343). 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 two 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 bunches weighing one-quarter pound or more; 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 the corners of these larger containers to the desired weights with bunches weighing one-quarter pound or more, 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 clamshell containers weighing 5 pounds or less. Under this action, 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 action allows handlers to continue to respond to increased marketing opportunities. Section 925.304(a) is 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). This relaxation in the California Desert Grape Regulation 6 minimum bunch size requirement requires a corresponding relaxation to the minimum bunch size requirement for imported table grapes. Similar to the domestic industry, this action allows importers the flexibility to respond to an ongoing marketing opportunity to meet

consumer needs. Section 944.503(a)(1) is revised accordingly.

Final 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 final 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 14 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 14 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 2014 data from USDA's Foreign Agricultural Service (FAS), shipments of table grapes imported into the United States from Mexico totaled 17,042,386 18-pound lugs, from Chile totaled 38,466,540 18-pound lugs, and from Peru totaled 5,065,653 18-pound lugs. According to FAS data, the total value of table grapes imported into the United States in 2014 was \$1,189,848,000. It is estimated that the average importer received \$11.7 million in revenue from the sale of table grapes in 2014. Based on this information, it may be concluded that the average table grape importer is not classified as a small entity.

This final rule revises § 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 final rule partially relaxes 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 five pounds or less. Under the 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 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 general 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 final rule on affected entities, this rule provides both California desert grape handlers and importers 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 certain packages weighing two pounds or less on a test basis. In 2010, the regulation was revised permanently for consumer clamshell packages weighing two pounds or less due to the positive market response. This rule expands the revised requirements to include larger consumer clamshell packages weighing 5 pounds or less. Customers have been requesting larger sized clamshell packages, and this action enables 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 2010 revision produced the desired results. The Committee believes the partial relaxation of the bunch size requirement for grapes packed in larger consumer clamshell packages is appropriate.

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 final rule does 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.

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

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, the Committee's meeting was widely publicized throughout the Southeastern California grape industry, and all interested persons in the production area 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.

A proposed rule concerning this action was published in the **Federal Register** on March 3, 2015 (80 FR 11346). Copies of the rule were mailed or sent via facsimile to all Committee members and table grape handlers in the production area. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period, ending on April 2, 2015, was provided to allow interested persons to respond to the proposal.

Twelve comments were received during the comment period in response to the proposal. Nine strongly supported the partial relaxation of the handling requirements and three comments were opposed.

One commenter who opposed the partial relaxation specifically for 5-pound clamshells or smaller stated that all consumer packages should be regulated similarly. This commenter also stated that if one clamshell container exceeds the 20 percent tolerance for small bunches, the entire lot is out of grade. The commenter indicated this has caused a problem for him in the past with 2-pound clamshell containers. The commenter also

expressed concern that different grape quality standards are in effect at the same time. Finally, this commenter stated that he had not received notification of the November 5, 2013, meeting.

In response to these comments, it is noted that the relaxed bunch size requirements do not apply to all consumer packages. As indicated in the proposed rule, the Committee's recommendation was specific to clamshell containers because smaller clusters of grapes are needed to fill the corners of these square containers. This aspect of the rule and its rationale is identical to the previous regulation that applied to 2-pound containers. Similar issues regarding other consumer containers were not reported or discussed by the Committee when it recommended this change. However, since this rule was initially recommended, the Committee has indicated that additional options may be considered and recommended in the future if appropriate rationale and justification are presented and evaluated.

Regarding the comment concerning the bunch size tolerance, it is acknowledged that one failing container may cause the entire lot to be out of grade. However, it should be noted that the tolerance allows 20 percent of the weight of the container to contain bunches of grapes smaller than one-quarter pound, but consisting of at least five berries. This is an allowance, not a requirement. Handlers are not required to use any clusters smaller than one-quarter pound to fill the containers. The relaxed tolerance merely provides handlers with the option and flexibility to utilize the smaller clusters to fill out the clamshell corners. Handlers choosing to utilize this practice should be able to fill the container's corners and fall within the 20 percent tolerance.

Regarding the comment concerning different standards for grapes in the market at the same time, the marketing order only regulates grapes grown in Southeastern California. Thus, the order's regulations have no control over grapes from other areas. This rule is not intended to affect the overall quality of grapes in the marketplace. There is only one marketing order for table grapes. It is intended to allow Southeastern California grape handlers to meet the needs of their customers. Furthermore, industry experience following the previous revision for 2-pound clamshell containers, which is similar to this change, has been positive.

In response to the comment that notification of the November 5, 2013, meeting had not been received, it

should be noted that the Committee routinely announces all upcoming meetings at least 3 days before they occur. These announcements are issued to all growers and handlers in the production area. Further, the commenter acknowledged awareness of the open comment period as published in the March 3, 2015, **Federal Register** notice, and his comment was received in a timely manner and is being addressed herein.

Another commenter who opposed the rule believes that this partial relaxation will allow inferior grapes to be packed and is a visual misrepresentation to both the retailer and the consumer.

This action was recommended by the Committee in response to customer complaints about the empty corners of the larger clamshells. While the tolerance for bunch size will be increased for grapes packed in clamshells containers weighing five pounds or less, all other requirements of U.S. No. 1 Table, as set forth in the U.S. Standards for Grades of Table Grapes, will still apply. Thus, the increased tolerance is not expected to affect the overall quality of the grapes in the marketplace. The change is intended to provide the industry with increased flexibility to meet customers' needs.

The last commenter suggested that the math in calculating the acceptable tolerance of the one-quarter pound bunch minimum requirement for 5-pound clamshell containers is incorrect and offered various other weight combinations to meet the 5-pound weight requirement of an individual container. He also asserted that the current minimum bunch size requirement for U.S. No. 1 Table Grade grapes is 1.25 pounds. Finally, this commenter claimed that quality will be sacrificed by allowing 20 percent of the 5-pound containers to consist of loose grapes. These assertions are incorrect. The rationale for this rule is not based on a mathematical calculation of grape bunch sizes that could be used to fill containers. The rationale is to allow use of bunches smaller than one-quarter pound but consisting of at least five berries to properly fill the corners of the square containers. Furthermore, the assertion that the bunch size requirement for U.S. No. 1 Table Grade grapes is 1.25 pounds is not accurate. The bunch size requirement for U.S. No. 1 Table Grade grapes is one-quarter pound. This rule provides for up to 20 percent of the weight of clamshell containers to contain grape clusters weighing less than one-quarter pound, but the clusters must consist of at least five berries each.

Finally, this rule does not allow 20 percent of the 5-pound container to consist of loose grapes. Loose grapes are not permitted by this relaxation. The 20 percent tolerance is given to limit the number of bunches weighing less than one-quarter pound and each must still contain at least five attached berries. As previously stated, this change is not expected to affect the overall quality of grapes in the marketplace as all of the other requirements of U.S. No. 1 Table grade, as set forth in the U.S. Standards for Grades of Table Grapes, will still apply.

A similar requirement has been in place under the marketing order since 2010 for clamshell containers weighing two pounds or less, and the industry has received positive responses from customers. Since that time, the popularity of clamshell containers has increased, and larger sized clamshell containers are now being used for packaging grapes due to customer's demands.

This action simply applies the same requirements to larger clamshell containers, as desired by customers.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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/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.

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. 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 amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 925.304 by revising paragraph (a) introductory text, redesignating paragraphs (a)(1) and (2) as paragraphs (a)(3) and (4) and adding new paragraphs (a)(1) and (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 (4) of this section, such grapes shall meet the minimum grade and size requirements established in paragraphs (a)(1) or (2) of this section.

(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: Provided that 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 revising paragraph (a)(1) introductory text, redesignating paragraphs (a)(1)(i) and (ii) as paragraphs (a)(1)(iii) and (iv) and adding new paragraphs (a)(1)(i) and (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 (iv) of this section, 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 (ii) of this section.

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

[FR Doc. 2015–28136 Filed 11–4–15; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–15–0046; FV15–930–1 IR]

Tart Cherries Grown in the States of Michigan, et al.; Revision of Exemption Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to revise the exemption provisions under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the order and is comprised of growers and handlers operating within the production area. This rule changes the number of years that new market development and market expansion projects are eligible for handler diversion credit from one year to three years. This rule also revises the composition of the subcommittee which