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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV98–925–3 IFR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Revision in Minimum Grade, Container, and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises minimum grade requirements for grapes grown in southeastern California and for grapes imported into the United States. It also revises container and pack requirements currently prescribed for California grapes. This rule allows California grape handlers to market consumer packages of grapes more economically by increasing the range of allowable bunch sizes for a portion of the 1998 season. Master containers of consumer grape packages could be marketed if the grape clusters/bunches in the packages consist of at least 2 berry clusters and the clusters/bunches are not greater than 19 ounces in weight. The increased bunch size range also applies to imported grapes. This action is in the interest of handlers, producers, importers, and consumers.

DATES: Effective June 1, 1998; comments must be received by June 25, 1998 and will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or Anne M. Dec, Team Leader, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (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 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 (Department) 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 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 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after 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 rule increases the range of allowable sizes of grape bunches that California handlers can pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers of consumer grape packages can be marketed if the grape clusters/bunches in the packages consist of at least 2 berry clusters and the clusters/bunches are not greater than 19 ounces in weight. The increased bunch size range also applies to imported grapes, but no container specifications apply. The changes in domestic requirements were recommended by the California Desert Grape Administrative Committee (Committee), the agency responsible for local administration of the order.

Under the terms of the order, fresh market shipments of grapes grown in southeastern California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Current requirements include minimum grade and net weight requirements. Grapes must also be packed in authorized containers, and such containers must be marked with the minimum net weight of the grapes contained therein, the variety of the grapes, the name of the shipper, and the lot stamp number corresponding to the lot inspection conducted by an authorized inspector.

Section 925.52(a)(2) of the grape order provides authority to limit the handling

of any grade, size, quality, maturity, or pack of grapes for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a) of the order's administrative rules and regulations requires grapes to meet the minimum grade requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, 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. Grapes meeting U.S. No. 1 Institutional requirements are required to be marked ''U.S. No. 1 Institutional.'' Grapes meeting the modified U.S. No. 1 Institutional requirements may be marked ''DGAC No. 1 Institutional.'' 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).

Section 925.52(a)(4) of the order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's administrative rules and regulations requires grapes to be packed in new and clean boxes which meet the requirements of sections 1380.14, 1380.19, 1436.37, and 1436.38 of Title 3: California Code of Regulations (CCR). That section also authorizes nine containers that can be used for domestic and export shipments and specifies dimensions for each such container. An additional container, defined in terms of a net weight of 5 kilograms, is authorized for export shipments only. All 10 of the authorized containers may be used for export shipments. Only the first nine can be used for domestic shipments.

Finally, § 925.304(b)(1) authorizes the Committee to approve other containers for experimental or research purposes.

Section 925.304(b)(2) of the order's administrative rules and regulations provides that grapes in any containers weigh at least 20 pounds based on the average net weight of grapes in a representative sample of containers. An exception is provided for grapes packed in experimental containers, or packed in bags or wrapped in plastic or paper. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds. There are no weight requirements specified for experimental containers.

The Committee met on March 24, 1998, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to make the following changes:

(1) Revise the minimum grade requirement for the period June 1, 1998, through August 15, 1998, to allow a pilot test for the marketing of grapes which meet all the requirements of U.S. No. 1 Institutional except for the weight of clusters/bunches. The revision allows clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting these quality requirements are to be marked ''DGAC Consumer No. 1 Institutional'' but cannot be marked ''Institutional Pack.''

(2) Authorize an experimental master container, containing individual consumer packages of grapes which weigh 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. Grapes meeting the ''DGAC Consumer No. 1 Institutional'' requirements must be packed in this container and this master container can only be used for packing the ''DGAC Consumer No. 1 Institutional'' grade.

(3) Update or remove certain obsolete references appearing in the regulation.

Revision in Minimum Grade Requirements

Until 1993, the minimum grade requirement under the order was U.S. No. 1 Table. One requirement of that grade is that grape bunches weigh at least 4 ounces.

In 1991, a new U.S. No. 1 Institutional grade was added to the Standards. This grade—used primarily for sales to restaurants and other food service firms—provides for grape lots which have very small bunches. At the request of the table grape industry, this grade was added to meet market demand for individual consumer sized servings of grapes. The Standards were further revised in 1996 to lower the minimum bunch size to a two berry cluster and specify a separate 4 percent tolerance for off-size bunches.

The minimum grade requirements under the order were changed in 1993 to allow California grape handlers to pack the newly established U.S. No. 1 Institutional grade. Because handlers experienced difficulties in packing this grade, these requirements were further revised in 1994 to provide a tolerance of 33 percent for off-size bunches. This modified U.S. No. 1 Institutional grade is referred to as DGAC No. 1 Institutional.

Currently, during the period April 20 through August 15 each year, California grape handlers can ship grapes meeting at least U.S. No. 1 Table, U.S. No. 1 Institutional, or DGAC No. 1 Institutional.

The requirements of the U.S. No. 1 Institutional are essentially the same as those of the U.S. No. 1 Table grade, with three major exceptions. The first difference relates to bunch size. Under the U.S. No. 1 Table grade, there is a minimum bunch size requirement of 4 ounces and no maximum bunch size. Under the U.S. No. 1 Institutional grade, grapes are to consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. A cluster is two or more berries sharing a common point of attachment.

The second difference is that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked ''Institutional Pack.'' There are no marking requirements under the U.S. No. 1 Table grade.

The third difference relates to the tolerances for off-size bunches. For grapes grading U.S. No. 1 Table, an 8 percent tolerance is established for all grade requirements, including off-size bunches. The U.S. No. 1 Institutional grade has a separate tolerance of 4 percent for off-size clusters/bunches and an 8 percent tolerance for the remaining grade requirements.

Requirements for the DGAC No. 1 Institutional are the same as for the U.S. No. 1 Institutional, except that the tolerance for off-size bunches is 33 percent. Because grapes meeting these requirements do not meet the U.S. No. 1 Institutional grade requirements, they cannot be marked ''Institutional Pack.'' They may, however, be marked ''DGAC No. 1 Institutional.''

Recently, there has been interest in packing grapes in individual consumer packages known as ''punits'' or ''clamshells.'' These containers, used most commonly to pack strawberries, are made of a clear, hard rigid plastic and typically hold a half pound or a pound of fruit. Some retailers prefer these containers because they are of the same net weight, and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

To meet changing market requirements, California grape handlers would like to be able to pack these consumer packages. Current bunch size requirements make it difficult however. Grape bunches normally range in weight from ¼ pound to 3 pounds. Thus, portions of bunches have to be used to fill the new packages to the weights desired by buyers. Handlers have

determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces will provide handlers the flexibility needed to pack grapes in the desired consumer containers.

This rule revises § 925.304(a) of the order's rules and regulations to allow handlers to ship a new grade of grapes to be known as DGAC Consumer No. 1 Institutional. The name recognizes that such grapes will be packed in consumer packages and that the grapes are not packed to the minimum requirements of the U.S. No. 1 Table grade. Grapes meeting this requirement must meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, these modified requirements allow shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight.

Container Requirements

The Committee recommended that grapes packed in accordance with the new DGAC Consumer No. 1 Institutional requirements be packed in a certain way. These grapes must be packed in individual consumer packages. The consumer packages must then be packed in a master container.

Typically, the individual consumer packages hold either ½ or 1 pound of fruit. To allow for normal shrinkage during handling, handlers generally pack a slightly greater weight than is desired at retail. Section 925.304(b) is revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1½ pounds or less.

Additionally, these master containers are required to be marked ''DGAC Consumer No. 1 Institutional'' to accurately reflect their contents. The individual consumer packages do not need to be so marked. Other container marking requirements appearing in the regulation apply to the master containers as well.

The master containers used for these grapes will typically hold 10 consumer packages weighing 1 pound each or 20 packages weighing ½ pound each. Thus, these containers are exempt from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2).

Application to Imports

Section 8e of the Act specifies that whenever certain commodities, like grapes, are regulated under a Federal order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Pack and container requirements are not authorized by section 8e. Thus, the revised grade requirements implemented by this rule apply to imported grapes; none of the container or container marking requirements apply, however. If desired, importers may label containers of grapes meeting the modified U.S. No. 1 Institutional requirements as ''DGAC Consumer No. 1 Institutional.'' Specifically, this rule modifies language in § 944.503(a)(1) of the Table Grape Import Regulation 4 for fresh grapes imported into the United States.

Clarification/Removal of Obsolete Language

This rule removes language in the introductory text of § 925.304 by removing a proviso that applies to the 1987 season and is no longer necessary.

This rule makes several other corrections in both the order's administrative rules and regulations and the import regulation. Specifically, the tolerance percentage of ''8 percent'' is changed to ''4 percent'' in §§ 925.304(a) of the order's administrative rules and regulations and in 944.503(a)(1) of the import regulation. This corrects those sections to accurately specify the current tolerance for off-size bunches in the U.S. No. 1 Institutional grade. This rule corrects a reference to the Standards from section number ''51.913'' to section number ''51.914'' in §§ 925.304(a) of the order and in 944.503(a)(1) of the import regulation; and changes a California Department of Food and Agriculture reference from ''California Administrative Code (Title 3)'' to ''Title 3: California Code of Regulations'' in paragraph (a)(1)(ii) of § 944.503 of the import regulation.

Initial Regulatory Flexibility Analysis

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. Accordingly, AMS has prepared this initial 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 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 27 handlers of California grapes who are subject to regulation under the order and approximately 80 grape producers in the production area. In addition, there are approximately 127 importers of grapes. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Ten of the 27 handlers subject to regulation have annual grape sales of at least $5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least $500,000, and the remaining 10 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers are classified as small entities. The average importer receives $2.8 million in grape revenue, excluding receipts from other sources. Therefore, we believe that the majority of these importers are small entities.

This rule increases the range of allowable sizes of grape bunches that California handlers can pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers of consumer grape packages can be marketed if the grape clusters/bunches in the packages consist of at least 2 berry clusters and the clusters/bunches are not greater than 19 ounces in weight. The increased bunch size range also applies to imported grapes, but no container specifications apply. The changes in domestic requirements were recommended by the California Desert Grape Administrative Committee (Committee), the agency responsible for local administration of the order.

Under the terms of the order, fresh market shipments of grapes grown in southeastern California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Current requirements include minimum grade and net weight requirements. Grapes must also be packed in authorized containers, and such containers must be marked with the minimum net weight of the grapes contained therein, the variety of the grapes, the name of the shipper, and the lot stamp number corresponding to the lot inspection conducted by an authorized inspector.

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Finally, § 925.304(b)(1) authorizes the Committee to approve other containers for experimental or research purposes.

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There are no weight requirements specified for experimental containers.

The Committee met on March 24, 1998, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to make the following changes:

(1) Revise the minimum grade requirement for the period June 1, 1998, through August 15, 1998, to allow a pilot test for the marketing of grapes which meet all the requirements of U.S. No. 1 Institutional except for the weight of clusters/bunches. The revision allows clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting these quality requirements are to be marked ''DGAC Consumer No. 1 Institutional'' but cannot be marked ''Institutional Pack.''

(2) Authorize an experimental master container, containing individual consumer packages of grapes which weigh 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. Grapes meeting the ''DGAC Consumer No. 1 Institutional'' requirements must be packed in this container and this master container can only be used for packing the ''DGAC Consumer No. 1 Institutional'' grade.

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Recently, there has been interest in packing grapes in individual consumer packages known as ''punits'' or ''clamshells.'' These containers, used most commonly to pack strawberries, are made of a clear, hard rigid plastic and typically hold a half pound or a pound of fruit. Some retailers prefer these containers because they are of the same net weight, and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

To meet changing market requirements, California grape handlers would like to be able to pack these consumer packages. Current bunch size requirements make it difficult however. Grape bunches normally range in weight from 1/4 pound to 3 pounds. Thus, portions of bunches have to be used to fill the new packages to the weights desired by buyers. Handlers have determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces will provide handlers the flexibility needed to pack grapes in the desired consumer containers.

This rule revises § 925.304(a) of the order's rules and regulations to allow handlers to ship a new grade of grapes to be known as DGAC Consumer No. 1 Institutional. The name recognizes that such grapes will be packed in consumer packages and that the grapes are not packed to the minimum requirements of the U.S. No. 1 Table grade. Grapes meeting this requirement must meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, these modified requirements allow shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight.

The Committee recommended that grapes packed in accordance with the new DGAC Consumer No. 1 Institutional requirements be packed in a certain way. These grapes must be packed in individual consumer packages. The consumer packages must then be packed in a master container.

Typically, the individual consumer packages hold either ½ or 1 pound of fruit. To allow for normal shrinkage during handling, handlers generally

pack a slightly greater weight than is desired at retail. Section 925.304(b) is revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1½ pounds or less.

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The master containers used for these grapes will typically hold 10 consumer packages weighing 1 pound each or 20 packages weighing ½ pound each. Thus, these containers are exempt from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2).

Section 8e of the Act specifies that whenever certain commodities, like grapes, are regulated under a Federal order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Pack and container requirements are not authorized by section 8e. Thus, the revised grade requirements implemented by this rule apply to imported grapes; none of the container or container marking requirements apply, however. If desired, importers may label containers of grapes meeting the modified U.S. No. 1 Institutional requirements as ''DGAC Consumer No. 1 Institutional.'' Specifically, this rule modifies language in § 944.503(a)(1) of the Table Grape Import Regulation 4 for fresh grapes imported into the United States.

This regulation provides handlers and importers more marketing flexibility, is estimated to result in increased shipments of consumer-sized grape packs, and is expected to have positive impact on California grape handlers and importers of grapes. The changes address the marketing and shipping needs of the grape industry, and are in the interest of handlers, producers, importers, and consumers.

During the last several seasons, Mexico has been the largest exporter of grapes to the United States during the June 1 through August 15 period. Chile and Italy have exported small quantities of grapes to the U.S. during this same period. Chile is the dominant exporting country from December through May each year.

During the pilot test period of June 1, 1998, through August 15, 1998, imports are estimated to total 5.5 million lugs from Mexico, 33 thousand lugs from Chile, and approximately 4 thousand lugs from Italy. These estimates are based upon lug weights of 18 pounds.

According to Department inspection officials, minimal quantities of grapes meeting the institutional grades have been imported since the ''Institutional Pack'' was implemented. Based on historical data, it is estimated that approximately .5 percent to 1 percent of the imported lugs will meet the requirements of either the ''U.S. No. 1 Institutional'' or the ''DGAC No. 1 Institutional'' grades. It is further estimated that less than 1 percent of the imported lugs will meet the requirements of the ''DGAC Consumer No. 1 Institutional'' grade. The majority of imported grapes meet the higher grade requirements of U.S. No. 1 Table, U.S. Fancy Table, or U.S. Extra Fancy Table.

The Committee estimates the 1998 domestic crop will be approximately 8 million lugs. Domestic handlers in southeastern California, regulated under the order, are expected to ship approximately 6.2 million lugs during the test period. It is estimated that approximately .5 percent (31,000 lugs) to 1 percent (62,000 lugs) of the crop will be packed as U.S. No. 1 Institutional or DGAC No. 1 Institutional and that less than 1 percent (62,000 lugs) of the crop will be packed as ''DGAC Consumer No. 1 Institutional'' during the test period. The estimates for the DGAC Consumer No. 1 Institutional are based upon a lug weight of 10 pounds. The Committee estimated that handlers will receive approximately $0.60 to $1.00 per pound for a total estimated value of $372,000 to $620,000 for this new individual consumer pack. Handlers will receive approximately $0.10 more for the new consumer packages than for bagged grapes. Consumers will benefit by being able to purchase grapes in preferred containers.

The Committee requested that this rule be effective by June 1, 1998. The California grape shipping season is expected to begin shortly, and continue until August 15, 1998. Therefore, an effective date of June 1 will allow handlers and importers approximately 10 weeks to test the market.

At the meeting, the Committee discussed the potential impact of this rule and determined that this action will not require any changes in grape handling practices. Those who choose to pack to this new grade could achieve additional sales which will be a benefit to the grape industry as a whole.

The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

The Committee discussed alternatives to this revision, including not having a pilot test, but determined that handlers, producers, importers and consumers should benefit from this pilot test.

The Committee also discussed adding a percentage tolerance for off-size bunches of 33 percent similar to the additional percentage tolerance allowed for the DGAC No. 1 Institutional grade, but determined that the 4 percent tolerance, as contained in the Standards, was adequate to facilitate packaging of the ''punits'' or ''clamshells''.

This action will 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. In addition, the Department 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 on all issues. Like all Committee meetings, the March 24, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members: 8 are handlers and producers, 1 is a producer only, and 2 are handlers only. The twelfth Committee member is the public member. In addition, the embassies of Mexico, Chile, and Italy were notified of the anticipated action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action revises minimum grade requirements currently in effect for grapes grown in designated

areas of southeastern California and for grapes imported into the United States and offers handlers and importers more marketing flexibility; (2) California grape handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. In addition, the embassies of Mexico, Chile, and Italy were notified of the anticipated action; (3) no changes in packing procedures are required by this rule for either California handlers or importers, and they will need no additional time to comply with the revised requirements; (4) California grape shipments are expected to begin soon, and this rule needs to be in effect by June 1, 1998, so handlers can test market acceptance for the remainder of the season; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. For the same reasons, a 30-day comment period is deemed appropriate to provide for comments from interested persons. Further, the end of the 1998 season is August 15.

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:

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. Section 925.304 is amended by revising the introductory text, paragraph (a) introductory text, paragraph (b)(1)(iii) and the first sentence of paragraph (b)(2) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 20 through August 15 each year, no person shall pack or repack any variety of grapes except Emperor, Almeria, Calmeria, and Ribier varieties, on any Saturday, Sunday, Memorial Day, or the observed Independence Day holiday, unless approved in accordance with paragraph (e) of this section, nor handle any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the requirements specified in this section.

(a) Grade, size, and maturity. Except as provided in paragraphs (a)(1) and (a)(2) of this section, such grapes shall meet the minimum grade and size requirements of 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), or shall meet all the requirements of 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.'' In addition, during the period June 1, 1998, through August 15, 1998, grapes may be handled that meet all the requirements of U.S. No. 1 Institutional, except that clusters/bunches must consist of at least a 2 berry cluster ranging to clusters and/or bunches of grapes not greater than 19 ounces in weight. Such grapes must be marked ''DGAC Consumer No. 1 Institutional'' and meet the container requirements in paragraph (b)(1)(iii) of this section.

* * * * *

(b) * * *

(1) * * *

(iii) Such other types and sizes of containers as may be approved by the Committee for experimental or research purposes: *Provided,* That for the period June 1, 1998, through August 15, 1998, master containers may be used if they are packed with individual consumer packs of grapes that weigh 1½ pounds or less, net weight, and meet the requirements of the ''DGAC Consumer No. 1 Institutional.'' *Provided further,* That grapes meeting the requirements of ''DGAC Consumer No. 1 Institutional'' shall be packed only in this container, and this master container shall be marked ''DGAC Consumer No. 1 Institutional.''

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, or packed in bags or wrapped in plastic or paper, and containers authorized in paragraph (b)(1)(iii) of this section, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers. * * *

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PART 944—FRUITS; IMPORT REQUIREMENTS

3. In § 944.503, paragraphs (a)(1) introductory text and (a)(1)(ii) are revised 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, 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 specified in 7 CFR 51.884 for 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), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance 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 shall not be marked ''Institutional Pack'', but may be marked ''DGAC No. 1 Institutional.'' In addition, during the period June 1, 1998, through August 15, 1998, grapes may be imported if they meet all the requirements of U.S. No. 1 Institutional, except that clusters/bunches must consist of at least a 2 berry cluster ranging to clusters and/or bunches of grapes not greater than 19 ounces (0.532 kilograms) in weight. Such grapes may be marked ''DGAC Consumer No. 1 Institutional'' but shall not be marked ''Institutional Pack.''

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(ii) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch (1.5875 centimeters) and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1463.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

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Dated: May 19, 1998.

Robert C. Keeny,

Deputy Administrator, Fruit and Vegetable Programs.

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