

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS-FV-08-0106; FV09-925-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The interim final rule relaxed the minimum bunch size requirement for the 2009 season for grapes packed in containers holding 2 pounds net weight or less. Under the relaxation, up to 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. The interim final rule was necessary to provide California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs.

DATES: Effective Dates: Effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT:

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Jen.Robinson@ams.usda.gov or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This 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 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 rule in conformance with Executive Order 12866.

The shipping of table grapes produced in a designated area of southeastern California is regulated by 7 CFR part 925. The regulations specify that bunches of grapes must weigh a minimum of one quarter pound to meet the requirements of U.S. No. 1 Table grade. In response to a marketing opportunity, the industry is experimenting with a new container during the 2009 season. The experimental container's small capacity makes it difficult to completely fill with grape bunches of one quarter pound or larger. Therefore, for the 2009 season, the minimum bunch size requirement was relaxed for U.S. No. 1 table grapes packed in these containers.

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Imported table grapes are subject to regulations specified in 7 CFR part 944. Under those regulations, imported grapes must meet the same minimum size requirements as specified for domestic grapes under the order. Therefore, the minimum bunch size requirement was also relaxed for imported grapes packed in the experimental containers during in the 2009 season.

In an interim final rule published in the **Federal Register** on March 17, 2009, and effective on March 20, 2009 (74 FR 11275, Doc. No. AMS-FV-08-0106, FV09-925-1 IFR), §§ 925.304 and 944.503 were amended by relaxing the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container (individual consumer packages) may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

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 rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 order and about 50 grape producers in the production area. In addition, there are approximately 123 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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. Nine of the 14 handlers subject to

regulation have annual grape sales of less than \$7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the average crop value for 2008 is about \$53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about \$1,060,800, which is above the SBA threshold of \$750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. The average importer receives \$2.8 million in revenue from the sale of grapes. Therefore, it may be concluded that the majority of importers may be classified as small entities.

This rule continues in effect the action that revised § 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 rule continues in effect the action that relaxed the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order 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 the Act.

There is general agreement in the industry for the need to relax the minimum bunch size requirement for grapes packed in clamshells to allow for more packaging options, as noted in the interim final rule. An alternative discussed by the committee was to relax the minimum bunch size requirement for U.S. No. 1 Table grade grapes packed in clamshells containing net weights of 2, 3, and 4 pounds. The committee decided that there is not a problem with clamshells containing net weights of 3 and 4 pounds meeting the minimum requirements at this time. Ultimately, the committee unanimously agreed that the relaxation for grapes packed in clamshells containing 2 pounds net weight or less was appropriate as a test for one season.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet customer demands and consumer needs. Handlers and importers will be able to provide buyers

in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packs, which would have a positive impact on producers, handlers, and importers.

This rule 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, 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 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S.-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were notified of this action.

Comments on the interim final rule were required to be received on or before May 18, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0106>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

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

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 11275, March 17, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

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

PARTS 925 AND 944—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR parts 925 and 944 and that was published at 74 FR 11275 on March 17, 2009, is adopted as a final rule, without change.

Dated: July 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-FV-08-0105; FV09-932-1 FIR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the assessment rate established under the marketing order (order) for olives grown in California for the 2009 and subsequent fiscal years. The interim final rule increased the assessment rate from \$15.60 to \$28.63 per assessable ton of olives handled. The interim final rule was necessary to provide adequate operating funds for the California Olive Committee (committee), which administers the order locally.

DATES: *Effective Date:* Effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT:

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