

paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(2) Any package or container of Earlitreat, Snow Angel, Supechfifteen, or Super Lady variety peaches unless:

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(3) Any package or container of Island Prince, Snow Peak, Spring Princess, or Super Rich variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Candy Red, Crimson Lady, Crown Princess, Early May Crest, Flavorcrest, Honey Sweet, Ivory Duchess, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sweet, Prima Peach IV, Queencrest, Rich May, Sauzee Queen, Scarlet Queen, Sierra Snow, Snow Brite, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Supecheight (012-094), Supechnine, Sweet Scarlet, or Zee Diamond variety peaches unless:

* * * * *

(6) Any package or container of 116LM397, 382LN469, August Lady, August Saturn, Autumn Flame, Autumn Jewel, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Autumn Sun, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Burpeachfifteen (Summer Flame® 34), Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Country Sweet, Crimson Jewel, Diamond Candy, Diamond Princess, Earlich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Golden Moon, Henry III, Henry IV, Ice Princess, Ivory King, Ivory Princess, Jasper Gem, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pearl Princess, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Queen Jewel, Rich Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Duchess, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King,

Snow Magic, Snow Princess, Sprague Last Chance, Strawberry, Sugar Crisp, Sugar Giant, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

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Dated: March 30, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010-7569 Filed 4-2-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS-FV-09-0085; FV10-925-1 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule relaxes the handling requirements 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 rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in consumer packages 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 of at least five berries each. This action continues the relaxation that was prescribed on a one-year test basis in 2009 and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

DATES: Effective April 8, 2010; comments received by May 5, 2010 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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 rule 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: Jerry Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jerry.Simmons@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: Antoinette.Carter@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.

This 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 rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons 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. This action continues the relaxation that was prescribed on a test basis for the 2009 regulatory period and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. The committee met on November 12, 2009, and unanimously recommended the change 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 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 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. 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). In addition, § 925.304(a) prescribes relaxed handling requirements for the 2009 regulatory period for U.S. No. 1 Table grapes packed in individual consumer packages containing 2 pounds net weight or less. The regulatory period runs from April 10 through July 10 each year.

Prior to the 2009 regulatory period, U.S. No. 1 Table grade grapes were required to meet a minimum bunch size requirement of one-quarter pound. Since 2009, there has been interest in packing grapes in individual consumer packages known as clamshells. These containers have been most commonly used to pack strawberries in the past but are also being used for other fruit. They are made of a clear, rigid plastic and vary in size, typically holding two pounds of fruit or less. Some retailers prefer these containers because they are a consistent 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.

It is difficult to fill these small containers to the desired weight using complete bunches weighing one-quarter pound or more. Smaller portions of bunches are needed to combine with the larger bunches to fill the containers to the desired weight.

In response to this new market demand, the minimum bunch size requirements were relaxed for the regulatory period April 10 through July 10, 2009, on a test basis to allow California grape handlers to pack consumer packages containing 2 pounds net weight or less with portions of bunches weighing less than one-quarter pound. The final rule was published in the **Federal Register** on August 3, 2009 (74 FR 38323). These smaller portions were needed to fill the containers to the weights they were designed to hold.

Based on the positive results of the 2009 relaxation and an ongoing marketing opportunity, the committee unanimously recommended continuing relaxation of the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in consumer packages containing 2 pounds net weight or less. Under this 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. This action will continue to provide handlers with the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 925.304(a) is modified 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). The change in the California Desert Grape Regulation 6 minimum bunch size requirement for the 2010 and subsequent seasons requires a corresponding change to the minimum bunch size requirement for imported table grapes. Similar to the domestic industry, this action will continue to allow importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 944.503(a)(1) is 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 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 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 about 15 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 about 100 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. Four of the 15 handlers subject to regulation have annual grape sales of more than \$7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the average crop value for 2009 was about \$55,000,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of \$1,100,000, 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. It is estimated that the average importer receives \$3.2 million in revenue from the sale of grapes. Also, it may be concluded that the majority of importers may be classified as small entities.

This 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 rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons 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 consumer package weighing two pounds or less 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 of the Act.

There is general agreement in the industry for the need to continue to relax the minimum bunch size requirement for grapes packed in these consumer packages to allow for more packaging options. No additional alternatives were considered because the 2009 one-year test relaxation produced the desired results with no identified problems. The committee unanimously agreed that the relaxation for grapes packed in consumer packages containing 2 pounds net weight or less was appropriate to prescribe for the 2010 and subsequent seasons.

Regarding the impact of this 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 relaxed accordingly during that time on

a test basis. As in 2009, 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 packages, 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.

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 12, 2009 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, Costa Rica, Egypt, Italy, Mexico, Morocco, Peru, and South Africa, and known grape importers were notified of this action.

Finally, interested persons are invited to submit comments on this 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the continued relaxation of the handling requirements currently prescribed under the marketing order for grapes grown in southeastern California and for grapes

imported into the United States. Any comments received will be considered prior to finalization of this rule.

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, including the committee's recommendation, and other information, it is found that this interim 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 continues the 2009 season test relaxation of the handling requirements for grapes grown in a designated area of southeastern California and for grapes imported into the United States for the 2010 and subsequent seasons; (2) California desert grape handlers are aware of this action, which was unanimously recommended by the committee at a public meeting; (3) the regulatory period begins on April 10, 2010; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

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.

■ 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

§ 925.304 [Amended]

■ 2. Amend § 925.304 by removing “during the period April 10 through July 10, 2009,” from the fourth sentence in paragraph (a).

PART 944—FRUITS; IMPORT REQUIREMENTS

■ 3. Amend § 944.503 by removing “during the period April 10 through July 10, 2009,” from the fourth sentence in paragraph (a)(1).

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010-7563 Filed 4-2-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 948**

[Doc. No. AMS-FV-08-0115; FV09-948-2 IFR]

Irish Potatoes Grown in Colorado; Relaxation of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule relaxes the size requirement prescribed under the Colorado potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 3 (Committee). This rule provides for the handling of all varieties of potatoes with a minimum diameter of $\frac{3}{4}$ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective April 6, 2010; comments received by June 4, 2010 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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 rule 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:

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, 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.”

The Department of Agriculture (USDA) 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.

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 there from. 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.

This rule relaxes the size requirement for all varieties of Colorado Area No. 3 potatoes by allowing the handling of potatoes with a minimum diameter of $\frac{3}{4}$ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three separate regulatory areas for marketing order purposes. Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Saguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of Colorado potatoes grown in Area No. 3 are contained in § 948.387 of the order's administrative rules and regulations.

The Committee met on June 4, 2009, and again on November 17, 2009, to discuss decreasing the minimum size requirement for certain potatoes. As a consequence of these deliberations, the Committee unanimously recommended on November 17 that § 948.387(a) of the order's handling regulation be revised to provide for the handling of all varieties of potatoes with a minimum diameter of $\frac{3}{4}$ inch, if the potatoes otherwise meet U.S. No. 1 grade requirements (a potato meeting all the requirements of a U.S. No. 1 grade potato as defined in the U.S. Standards for Grades of Potatoes would have a minimum size of $1\frac{1}{8}$ inches). This recommendation provides for the handling of potatoes within both the