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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV98-925-3 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which revised the minimum grade requirements for grapes grown in southeastern California and for grapes imported into the United States for a portion of the 1998 shipping season. The interim final rule also revised container and pack requirements prescribed for California grapes for a limited time. In combination, the revisions allowed 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 were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. The increased bunch size range also applied to imported grapes. This action was in the interest of handlers, producers, importers, and consumers.

EFFECTIVE DATE: August 13, 1999.

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 George Kelhart, Technical Advisor, 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) 720-5698. 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) 720-5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

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 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.

An interim final rule (63 FR 28475, May 26, 1998), increased the range of allowable sizes of grape bunches that California handlers could pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. The increased bunch size range also applied to imported grapes, but no container specifications applied. Grapes packed in this manner by handlers in California had to be marked "DGAC Consumer No. 1 Institutional." The changes in domestic requirements were recommended by the California Desert Grape Administrative Committee (Committee), the agency responsible for local administration of the order. The results of the test marketing effort are being evaluated by the Committee. A decision on whether or not to allow such shipments in future seasons will be made at a later time.

The interim final rule also updated or removed certain obsolete references appearing in § 925.304 of the order's rules and regulations and in § 944.503 of the import regulation. The final rule finalizes these actions.

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. 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. Section 925.304(b)(1) also 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:

(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 meeting all the requirements of U.S. No. 1 Institutional, except for the weight of clusters/bunches. The revision was intended to allow clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting the revised quality requirements were to be marked "DGAC Consumer No. 1 Institutional," but could not be marked "Institutional Pack."

(2) Authorize an experimental master container, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. It further recommended that grapes meeting the "DGAC Consumer No. 1 Institutional" requirements be packed in this container and that this master container could 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 to 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.

California grape handlers can ship and importers can import grapes meeting at least U.S. No. 1 Table, U.S. No. 1 Institutional, or DGAC No. 1 Institutional during the period April 20 through August 15 each year. During the period June 1 through August 15, 1998, grapes also could be shipped and imported meeting the requirements of DGAC Consumer No. 1 Institutional. Grapes meeting this requirement were required to meet all of the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. California grapes meeting this requirement were packed in consumer packages.

The requirements of 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."

Prior to the start of the 1998 shipping season, grape handlers expressed

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 wanted to market grapes packed in these consumer packages. Bunch size requirements made it difficult because grape bunches normally range in weight from 1/4 pound to 3 pounds. Thus, portions of bunches needed to be used to fill the new packages to the weights desired by buyers. Handlers determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces would provide handlers the flexibility needed to pack grapes in the desired consumer containers.

The interim final rule revised § 925.304(a) of the order's rules and regulations and § 944.503 of the import regulation. The revision to § 925.304(a) allowed handlers to ship a new grade of grapes known as "DGAC Consumer No. 1 Institutional" for a portion of the 1998 season. The name recognized that such grapes would be packed in consumer packages and that the grapes would not be packed to the minimum requirements of the U.S. No. 1 Table grade. Grapes meeting this requirement were required to meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, the modified requirements allowed shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight during the period June 1, 1998, to August 15, 1998. The revision to § 944.503 allowed grapes meeting the relaxed requirements to be imported during that period.

Container Requirements

The Committee recommended and the interim final rule established that grapes meeting the requirements of the new "DGAC Consumer No. 1 Institutional" be packed in individual consumer packages. The consumer packages were then required to be packed in a master container.

Typically, the individual consumer packages held either 1/2 or 1 pound of

fruit. To allow for normal shrinkage during handling, handlers generally packed a slightly greater weight than is desired at retail. Section 925.304(b) was revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1 1/2 pounds or less during the period June 1, 1998, to August 15, 1998.

Additionally, the master containers were required to be marked "DGAC Consumer No. 1 Institutional" to accurately reflect their contents. The individual consumer packages did not need to be so marked. Other container marking requirements appearing in the regulation applied to the master containers as well during the test period.

The master containers used for these grapes typically held 10 consumer packages weighing 1 pound each or 20 packages weighing 1/2 pound each. Thus, these containers were exempt from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2) during the period June 1, 1998, to August 15, 1998.

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 the interim final rule applied to imported grapes; none of the container or container marking requirements applied, however. If desired, importers could have labeled containers of grapes meeting the modified U.S. No. 1 Institutional requirements as "DGAC Consumer No. 1 Institutional." Specifically, the interim final rule modified language in § 944.503(a)(1) of Table Grape Import Regulation 4 for fresh grapes imported into the United States.

Clarification/Removal of Obsolete Language

This rule continues in effect the removal of language in the introductory text of § 925.304 that applied to the 1987 season and is no longer necessary.

This rule also continues in effect several other corrections in both the order's administrative rules and regulations and the import regulation. Specifically, the tolerance percentage of "8 percent" was 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 rule continues in effect a correction to those sections to accurately specify the current tolerance for off-size bunches in the U.S. No. 1 Institutional grade. This rule also continues in effect a correction to a Standards reference from section number "51.913" to section number "51.914" in §§ 925.304(a) of the order's rules and regulations and in 944.503(a)(1) of the import regulation. A change to 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 is continued in effect too.

Final 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 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. 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 action finalizes an interim final rule (63 FR 28475, May 26, 1998), which increased the range of allowable sizes of grape bunches that California handlers could pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. Grapes meeting the "DGAC Consumer No. 1 Institutional" requirements were required to be packed in the experimental container, and the container was to be used solely for packing the "DGAC Consumer No. 1 Institutional" grade. The changes in domestic requirements were recommended by the Committee, the agency responsible for local administration of the order. These changes were implemented during the test period and the Committee is evaluating the test results. A decision on a future course of action will be made at a later time. The increased bunch size range also applied to imported grapes during that time period, but no container specifications applied.

The interim final rule also updated or removed certain obsolete references appearing in § 925.304 of the order's rules and regulations and in § 944.503 (a)(1) of the import regulation.

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. 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 authorized containers may be used for export shipments. Only the first nine can be used for domestic shipments. Section 925.304(b)(1) also 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:

(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 meeting all the requirements of U. S. No. 1 Institutional, except for the weight

of clusters/bunches. The revision was intended to allow clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting the revised quality requirements were required to be marked "DGAC Consumer No. 1 Institutional," but could not be marked "Institutional Pack."

(2) Authorize an experimental master container, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. It further recommended that grapes meeting the "DGAC Consumer No. 1 Institutional" requirements be packed in this container and that this master container could only be used for packing the "DGAC Consumer No. 1 Institutional" grade.

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 revision implemented by the interim final rule allowed handlers to ship DGAC Consumer No. 1 Institutional during the period June 1, 1998, to August 15, 1998.

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."

Prior to the start of the 1998 shipping season, handlers expressed 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 wanted to be able to pack these consumer packages. Bunch size requirements made it difficult. Grape bunches normally range in weight from 1/4 pound to 3 pounds. Thus, portions of bunches were needed to fill the new packages to the weights desired by buyers. Handlers determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces would provide handlers the flexibility needed to pack grapes in the desired consumer containers.

The interim final rule revised § 925.304(a) of the order's rules and regulations and § 944.503 of the table grape import regulation allowed handlers and importers to ship a new grade of grapes known as "DGAC Consumer No. 1 Institutional." The name recognized that such grapes would be packed in consumer packages and that the grapes were not packed to the minimum requirements of the U.S. No. 1 Table grade. These grapes had to meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, the modified requirements allowed shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight during the period June 1, 1998, to August 15, 1998.

The Committee recommended and the interim final rule established that grapes meeting the requirements of the new "DGAC Consumer No. 1 Institutional" be packed in a certain way. The grapes were required to be packed in individual consumer packages. The consumer packages were then required to be packed in a master container.

Typically, the individual consumer packages held either 1/2 or 1 pound of fruit. To allow for normal shrinkage during handling, handlers generally packed a slightly greater weight than is desired at retail. Section 925.304(b) was revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1 1/2 pounds or less.

Additionally, the master containers were required to be marked "DGAC Consumer No. 1 Institutional" to accurately reflect their contents. The individual consumer packages did not need to be so marked. Other container marking requirements appearing in the regulation applied to the master containers as well.

The master containers used for these grapes typically held 10 consumer packages weighing 1 pound each or 20 packages weighing 1/2 pound each. Thus, the containers were exempted from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2) during the period June 1, 1998, to August 15, 1998.

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 the interim final rule applied to imported grapes during the test period; none of the container or container marking requirements applied, however. If desired, importers could have labeled containers of grapes meeting the modified U.S. No. 1 Institutional requirements as "DGAC Consumer No. 1 Institutional." Specifically, the interim final rule modified language in § 944.503(a)(1) of the Table Grape Import Regulation 4 for fresh grapes imported into the United States during the period June 1, 1998, to August 15, 1998.

The interim final rule provided handlers and importers more marketing flexibility, was estimated to result in increased shipments of consumer-sized grape packs, and was expected to have a positive impact on California grape handlers and importers of grapes. The changes addressed the marketing and shipping needs of the grape industry, and were 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 were estimated to total 5.5 million lugs from Mexico, 33 thousand lugs from Chile, and approximately 4 thousand lugs from Italy. These estimates were 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 was estimated that approximately .5 percent to 1 percent of the imported lugs would meet the requirements of either the "U.S. No. 1 Institutional" or the "DGAC No. 1 Institutional" grades. It was further estimated that less than 1 percent of the imported lugs would 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. It is believed that no "DGAC Consumer No. 1 Institutional" grade grapes were imported during the test period.

The Committee estimated the 1998 domestic crop would be approximately 8 million lugs. Domestic handlers in southeastern California, regulated under the order, were expected to ship approximately 6.2 million lugs during the test period. It was estimated that approximately .5 percent (31,000 lugs) to 1 percent (62,000 lugs) of the crop would 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 would be packed as "DGAC Consumer No. 1 Institutional" during the test period. The estimates for the DGAC Consumer No. 1 Institutional were based upon a lug weight of 10 pounds. The Committee estimated that handlers would 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. It was estimated that handlers would receive approximately \$0.10 per pound more for the new consumer packages than for bagged grapes and that consumers would benefit by being able to purchase grapes in preferred containers.

Actual domestic shipments totaled 11.4 million lugs. Domestic handlers in southeastern California, regulated under the order, shipped 10.6 million lugs during the test period. The quantity of

grapes shipped during the test period meeting the requirements of DGAC Consumer No. 1 Institutional was small. Thus, the level of benefits of the interim final rule are difficult to quantify.

The Committee had requested that the interim final rule be effective by June 1, 1998. When the recommendation was made, the industry expected the California grape shipping season to begin shortly and to continue until August 15, 1998. Therefore, an effective date of June 1 would have allowed handlers and importers approximately 10 weeks to test the market. The season ended early with the last shipments of grapes on July 22, 1998. This allowed a test period of approximately 7 weeks versus the anticipated 10 weeks.

At the meeting, the Committee discussed the potential impact of this rule and determined that this action would not require any changes in grape handling practices. The Committee expected the new grade and pack to generate additional sales that would benefit the grape industry as a whole.

The benefits of this rule were 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 would benefit from the 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 the packaging of the "punits" or "clamshells".

This action did 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, as noted in the initial regulatory flexibility analysis, 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.

The interim final rule concerning this action was published in the **Federal Register** (63 FR 28475, May 26, 1998) with an effective date of June 1, 1998. Copies of the rule were mailed by the Committee staff to all Committee members and grape handlers. A summary of the interim final rule was sent to all importers of record and to foreign embassies known to be interested in table grapes. A copy of the summary was also faxed to the National Institute of Standards and Technology so the Institute could notify the World Trade Organization Secretariat of the action. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended June 25, 1998. No comments were received.

A request to extend the final date for comments was received from the European Commission, Brussels, Belgium, on behalf of the European Community. The requester asked the Department to provide a total of 60 days for comments in line with the recommendation of the Committee on Technical Barriers to Trade established under General Agreement on Tariffs and Trade. However, a decision was made not to extend the comment period for 30 additional days. Notice of the short term relaxation was given to government officials in grape exporting countries consistent with trade obligations, the relaxed import requirements provided importers with more marketing flexibility during the test market period that ended August 15, 1998, and finally, no useful purpose would have been gained by extending the comment period for 30 additional days.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 28475, May 26, 1998), 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.

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

PART 944—FRUITS; IMPORT REQUIREMENTS

Accordingly, the interim final rule amending 7 CFR parts 925 and 944 which was published at 63 FR 28475 on May 26, 1998, is adopted as a final rule without change.

Dated: July 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-49-AD; Amendment 39-11224; AD 99-15-05]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50

Series Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes, that requires a one-time visual inspection to determine if all corners of the aft lower cargo doorjamb have been previously modified. This amendment also requires low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. This amendment is prompted by fatigue cracks found in the fuselage skin and doubler at the corners of the aft lower cargo doorjamb. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and