Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV03–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Proposed Change in Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulatory periods when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation. The current regulatory periods for both domestic and imported grapes are April 20 through August 15 of each year. The California Desert Grape Administrative Committee (Committee), which locally administers the order, unanimously recommended changing the date when these requirements expire for grapes grown in California to July 10 because few grapes are normally shipped after that date. A corresponding change for imported table grapes is required under section 8e of the Agricultural Marketing Agreement Act of 1937. The Desert Grape Growers League of California (the ''League'') requested that the beginning date of the regulatory period for imported table grapes be changed from April 20 to April 1. The League requested this change to prevent the marketing of grape imports that do not meet the California grape order's grade, size, quality, and maturity requirements. The Act provides authority for such change. If implemented, the regulatory period for domestic grapes would be April 1–July 10 so both sets of requirements apply during the same time period. This proposed rule also would clarify the maturity (soluble solids) requirements for southeastern California and imported Flame Seedless variety grapes.

DATES: Comments must be received by July 25, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should 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, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* 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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo or Kurt Kimmel, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, 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.

Small businesses may request information on complying with this regulation 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@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and 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 proposed 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 table grape import regulation is specified in § 944.503 (7 CFR part 944.503).

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 608c(15)(A) of the Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under this section, 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. Section 608c(15)(B) 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 that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Introduction

Section 925.52(a)(2) of the order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods. Under the terms of the order, fresh market shipments of grapes grown in a designated area of southeastern

California are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements during the period April 20 through August 15 of each year.

Current requirements under the marketing order require such shipments to be at least 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; (Standards), or meet the requirements of the U.S. No. 1 Institutional grade, except for the tolerance percentage for bunch size. The tolerance is 33 percent instead of 4 percent as is required to meet the U.S. No. 1 Institutional grade.

Grapes meeting the institutional quality requirements may be marked ''DGAC No. 1 Institutional'' but shall not be marked ''Institutional Pack.'' Grapes of the Flame Seedless and Perlette varieties are required to meet the ''other varieties'' standard for berry size (ten-sixteenths of an inch).

In addition, fresh shipments of grapes from the marketing order area are required to meet the minimum maturity requirements for table grapes as specified in the California Code of Regulations (3 CCR 1436.12). Grapes of the Flame Seedless variety shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or 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 the California Code of Regulations.

Currently, the foregoing requirements also apply to imported table grapes under section 8e of the Act during the period April 20 through August 15 (except for the 16.5 percent soluble solids option). However, as described below, importers of grapes currently manage to avoid these requirements.

For example, imported grapes can be (and are in fact) shipped in large quantities before the requirements come into effect and then are stored, allowing them to be marketed during the regulatory period of the order without having to meet the same requirements as domestic grapes. The changes in this proposed rule would ensure more equitable and stable conditions for all market participants, consistent with the statutory mandate.

A USDA/ERS report discussed the purposes and benefits of quality/condition standards (USDA, Economic Research Service, Agricultural Economic Report Number 707, ''Federal Marketing Orders and Federal Research and Promotion Programs, Background for 1995 Farm Legislation'', by Steven A. Neff and Gerald E. Plato, May 1995). The basic rationale for such standards is that only satisfied customers are repeat customers. Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality. This helps create buyer confidence and contributes to stable market conditions. When consumers purchase satisfactory quality grapes, they are likely to purchase grapes again. If they purchase poor quality grapes, they are likely to delay future purchases, which could reduce demand for all grapes.

Changing the Date When Domestic and Imported Table Grape Regulations Expire

Section 925.304 of the order provides a regulatory period of April 20 through August 15 when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California. A final rule published on March 20, 1987, (52 FR 8865) established these regulatory periods to promote the orderly marketing of grapes.

The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order to change the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period (April 20–July 10) should also apply to pack and container requirements under the order.

Since 1987, the amount of grapes handled in the production area after July 10 has generally decreased as older vineyards, which typically produce late [season] varieties, have been removed. From 2000–2004, more than 99 percent of the 8.0 million 18-pound lugs of grapes grown in the production area were handled during the period April 20–July 10. On average, less than half of one percent (21,688 18-pound lugs) of these grapes were harvested and marketed during the period July 11–August 15.

Southeastern California grapes handled after July 10 tend to bring much lower prices than early season grapes. For example, in 2003, Flame Seedless grapes during the first two weeks of May had an average FOB price of $13.85 to $23.85 while end-of-season (August) Flame Seedless grapes brought an average FOB price of $11.85 to $12.85 per 18-pound lug.

Additionally, inspection costs outweigh the benefits of the order for grapes handled after July 10, with inspection fees proportionally higher for the volume of grapes inspected. For inspections of production area grapes, the Federal/State Inspection Service (Inspection Service) charges range from $0.026 to $0.043 depending on the weight of the container, or $25 per certificate, whichever is greater. Inspector travel and overtime fees also are charged, as applicable. This information can be viewed at *http://www.cdfa.ca.gov/is/spi/schedule.htm* and *http://www.cdfa.ca.gov/is/spi/feeinfo.htm.* At the end of the season, grape handlers from the production area ship a smaller volume and inspection fees are proportionally higher per lug.

The Committee believes that ending regulatory requirements in July would benefit handlers and producers by reducing inspection costs. Therefore, at its November 14, 2002, meeting, the Committee unanimously recommended modifying § 925.304 of the order to change the date when minimum grade, size, quality, and maturity requirements expire to July 10.

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).

Section 944.503(a)(3) of the import regulation specifies that the regulatory period for imported grapes for the fresh market is April 20 through August 15 of each year. Since this proposal would change the regulatory period when grade, size, quality, and maturity requirements expire for grapes grown in the production area under the marketing order to July 10, a corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act.

Reports from the U.S. Census Bureau indicate that during April through October of 2000, 2001, 2002, and 2003, an average of 12.6 million 18-pound lugs of Mexican grapes were imported and marketed. Average imports from Chile at these times totaled 8.7 million 18-pound lugs. On average, Mexico and Chile accounted for 98 percent of the imports. The remaining 2 percent came from various countries.

It is expected that an earlier end to the regulatory period for domestic and imported grapes would benefit handlers, producers, and importers, because this would reduce the regulatory burden on these entities.

Changing the Beginning of the Regulatory Period for Domestic and Imported Table Grapes

In January 2003, the League requested USDA to change the beginning date of the regulatory period for imported table grapes from April 20 to April 1, and provided information supporting that request. The League contends that during the prior year, imports of grapes that did not meet marketing order requirements were on the market and were able to avoid the California grape order's grade, size, maturity, and quality requirements. The League further contends that there would be no adverse effect on the availability and prices of grapes if the regulatory period for imports were changed to April 1.

Section 608e–1(b)(1) of the Act allows the Secretary of Agriculture to extend order requirements for a period, not to exceed 35 days, during which the order requirements would be effective for an imported commodity during any year, if the Secretary determines that the additional period of time is necessary to effectuate the purposes of the Act and to prevent the circumvention by imports of the grade, size, quality, or maturity requirements of the marketing order applicable to domestic production. Further, section 608e–1(b)(2) of the Act provides that in making such a determination, the Secretary, through notice and comment procedures, shall consider:

(A) To what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) If the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality, or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) The availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

Imported grapes are either sold immediately or stored for later sale. Importers may voluntarily request inspection of grapes suspected of not meeting U.S. No. 1 Table Grade or other contractual requirements desired by the importer prior to April 20. Data provided by the League shows that a high percentage of grapes subjected to these voluntary inspections failed to meet the requested quality checks.

The data reflects a pattern of uneven quality—both high and low—of imported grapes prior to April 20. The data also shows sales of imported grapes that would have failed section 8e requirements in the market during the regulated period, and that lower quality/condition grapes are purchased for lower prices than those obtained for higher quality fruit. Quality includes size, color, shape, texture, freedom from defects, and other more permanent physical properties of a product that can affect its market value. Condition includes the stage of maturity, decay, freezing injury, shriveling, or any other deterioration that may have occurred, or progressed, since the product was harvested and that may continue to progress.

Since exporting countries can and, in fact, do export many high quality grapes to the United States prior to April 20, and have the capability to export grapes meeting minimum import requirements, we would not expect a shortage of grapes in the market with an earlier effective date for section 8e import requirements. An earlier date would only ensure that grapes being imported met minimum requirements. As a result, we would expect prices to firm up since there would not be a heavy volume of low quality/poor condition grapes in the market. Further, buyers would be assured of good quality grapes with excellent value. This is expected to result in repeat purchases of high quality imported and domestic grapes, which would benefit both segments of the industry.

USDA will review and analyze all comments received as a result of publication of this proposed rule. Given the provisions of section 608(e)–1(b)(2) of the Act, and information provided by petitioners, USDA is specifically interested in any comments, information or data which addresses the following: (a) During prior years, whether imports of grapes that did not meet section 8e requirements were sold to retailers in the United States during the period that such requirements were in effect; (b) whether imported grapes did or were likely to circumvent such section 8e requirements; and (c) whether there would be any adverse effects on the availability and prices of grapes if the beginning of the regulatory period for imports were changed to April 1.

The U.S. Census Bureau indicates that on average for 2000, 2001, 2002, and 2003 (January through December), 60.0 million 18-pound lugs of grapes were imported into the United States. The two main countries exporting to the United States were Chile, with average exports of 45.7 million 18-pound lugs (76 percent of the total), and Mexico, with 12.6 million 18-pound lugs (21 percent of the total). The remaining three percent came from various countries.

Trade data from the U.S. Census Bureau shows that Chile accounts for almost all U.S. imports of fresh grapes in the February through April period in recent years. The total average grape imports for that period in the years 2000–2004 averaged 33.6 million 18-pound lugs. Of this amount, 32.8 million came from Chile (97.6 percent). South Africa accounted for 0.5 million lugs (1.6 percent), and the remaining 0.8 percent came from various countries.

Information from the League for 2000, 2001, 2002, 2003, and 2004 shows that the Port of Philadelphia (where historically the greatest percentage of Chilean table grapes enters the United States) received on-average 20 million 18-pound lugs of imported Chilean grapes during the February 1–April 19 period, with 30 percent (6 million) of these 20 million 18-pound lugs arriving between April 1 and April 19.

The League compiled weekly inspection summaries of inspection data from USDA's Fresh Products Branch, Fruit and Vegetable Programs. These inspection summaries consisted of voluntary condition and quality inspections of imported grapes at the Port of Philadelphia for the period February–April in 2000, 2001, 2002, 2003 and 2004. Based on AMS experience, importers request voluntary quality and condition inspections on grapes that appear to be of lower quality or condition than buyer specifications prior to April 20 to determine the grade of the fruit as specified in the Standards.

The Table Grape import regulation specifies that imported grapes must meet the minimum grade and size requirements for U.S. No. 1 Table or for U.S. No. 1 Institutional grade as specified in the Standards, with the exception of the extra tolerance for bunch size for U.S. No. 1 Institutional.

The USDA Fresh Products Branch data on voluntary inspections of Chilean grapes indicates a relatively high failure rate, tending toward the upper part of the range as the April 20 effective date nears.

According to the data provided by the League, approximately 2 million 18-pound lugs of imported Chilean grapes arriving at the Philadelphia Port during the April 1 through April 19 period were inspected voluntarily for quality and condition with failure rates ranging from a low of 75 percent to a high of 90 percent in 2000; from 65 percent to 78 percent in 2001; from 65 percent to 70 percent in 2002; from 53 percent to 78 percent in 2003; and from 42 percent to 57 percent in 2004. For the two to three days immediately prior to April 20 in

2000, 2001, 2002, 2003, and 2004, the failure rates averaged 90 percent in 2000, 78 percent in 2001, 67 percent in 2002, 73 percent in 2003, and 46 percent in 2004.

Prior to April 20, grapes voluntarily inspected may be placed into the channels of commerce in the United States. By contrast, imported grapes that fail import quality requirements during the period April 20–August 15 may be reworked and marketed in the United States if the grapes meet the import requirements when re-inspected; otherwise the grapes must be exported, destroyed, or utilized in processed products.

When consumer demand exceeds supply, the imported grapes move directly into retail markets; however, when supply exceeds demand, the imported grapes are put in cold storage until there is a demand for the grapes. The length of storage may negatively affect the quality of the grapes.

Studies of table grape importer storage behavior performed by SURRES, a division of the Applied Technology Corporation, and the College of Business and Management, University of Maryland, indicate that importers use their storage capability extensively during the March–April time frames and that storage periods in the 30–60 day range are not uncommon at this time of year. Thus, this would allow grapes imported prior to April 20, which would not have met import quality requirements currently in place after April 20, to be sold after April 20, in competition with grapes that have passed inspection and met or exceeded the marketing order and import requirements.

The League's weekly inspection summary indicates that an insignificant amount of grapes are imported after April 20 and the amount imported during the regulated period would not account for the substantial percentage of imported grapes that are being bought and sold consistently in May. USDA Market News Service market reports classify commodities as fine/excellent, good, fair, ordinary, or poor condition/quality. Many of the USDA Market News Service Reports show that fair, ordinary, and poor condition imported table grapes were on the market during May 2000, 2001, 2002, 2003, and 2004; and June 2000, 2001 and 2004. Generally, the ordinary and poor condition imported grapes would not be permitted to enter the United States during the regulation period because they would fail the minimum import requirements. Fair condition grapes might also fail to meet minimum import requirements.

USDA Market News Wholesale reports indicate that fair, ordinary, and poor condition imported grapes are on the market during the period that the southeastern California marketing order requirements are in effect and that these imported grapes compete against grapes that comply with the standards implemented under the marketing order. USDA Market News Philadelphia Wholesale Fruit and Vegetable Reports, dated May 15, 16, and 17, 2002, show that imported poor condition Chilean Red Seedless grapes were selling in the market for $.50 a lug. Chilean Red Seedless grapes were in various markets on May 17, 2002: Fair/good condition grapes were in the St. Louis market at $8 a lug; ordinary/fair condition grapes were in the Boston and Chicago markets at $5 to $8 a lug; ordinary condition grapes were in the New York market at $5 a lug and in the Baltimore market at $3 to $6 a lug; and poor condition grapes were in the Detroit market at $3 to $4 a lug. Excellent and good quality grapes from the production area were sold in various markets during that time at prices ranging from $22 to $37 per 18-pound lug of grapes. Additionally, USDA Market News Philadelphia Reports dated May 7, 8 and 9, 2003, show that poor/ordinary condition grapes were on the market at $1 to $6 a lug. Good quality grapes from the production area were sold in various markets during that time at prices ranging from $24 to $29 per 18-pound lug of grapes. USDA Market News Philadelphia Wholesale Fruit and Vegetable Reports, dated May 13 and 14, 2004, show that imported ordinary condition Chilean Crimson Seedless grapes were selling in the market for $5–$10 a lug, and reports dated May 17, 2004, show that imported ordinary condition Thompson Seedless grapes were selling in the market for $5 a lug. Good quality grapes from the production area were sold in various markets during that time at prices ranging from $30 to $40 a lug. The domestic industry contends that it might have received higher prices due to consumer demand if the lower condition imported grapes were not competing with them during that time.

The California Table Grape Commission (CTGC) Market Activity Report of May 10, 2002, indicates that 12 percent of the stores in the Central Market (Terre Haute, Ft. Wayne, and Indianapolis, IN) were carrying poor condition Chilean Red Seedless grapes at $1.79 a pound; and that 18 percent of the stores in the West Market (Phoenix, Arizona) were carrying poor/fair condition Chilean Black Seedless grapes at $1.99 a pound, as well as fair condition Chilean Red Seedless Grapes at $.79–$1.49 a pound.

Additionally, the CTGC Grape Market Activity Report of May 10, 2002, shows that 36 percent of the West Market (Phoenix, Arizona) stores carried fair/good condition Chilean Thompson Seedless grapes, while the May 17, 2002, report shows that 35 percent of the stores in Central Markets were carrying poor/fair Chilean Thompson seedless grapes priced at $1.99–$2.49 a pound and that 67 percent of the stores in the Northeast Market (New York, New Jersey, Pennsylvania) were carrying poor/fair Chilean Thompson seedless grapes priced at $2.49–$3.99 a pound. Additionally, the May 18, 2001, report shows that 11 percent of the Central stores were carrying very poor condition Chilean Thompson Seedless grapes at $2.49 a pound. The CTGC Market Activity Report of May 16, 2003, indicates that 25 percent of the stores in Indianapolis, IN and San Antonio, TX were carrying fair condition Chilean Thompson Seedless grapes at $2.59 a pound. The June 6, 2003, report indicates that 40 percent of the stores in the Northeast Market were carrying fair condition Chilean Crimson Seedless grapes at $1.99 a pound.

Weekly arrival summaries were provided by the League from Sermaco, a private company that provides import information on Chilean table grapes from ships' manifests. The weekly arrival summaries show that 1.6 million 18-pound lugs of imported Chilean Thompson Seedless grapes arrived at all ports during the weeks of April 1–April 19, 2004. These arrival summaries also showed that 3,846 18-pound lugs of Chilean Thompson Seedless grapes arrived after the regulatory period began on April 20, 2004. USDA Market News Terminal Reports indicate that imported Chilean poor, ordinary, and fair condition Thompson Seedless grapes [that probably would not meet the standards provided in the marketing order] were on various markets during the regulated period, whereas the grapes imported during the regulatory period were subject to import requirements. From the above referenced information, USDA believes that imported Chilean grapes that were in fair, ordinary, and poor condition and that were imported prior to April 20, were stored and then marketed during May 2000, 2001, 2002, 2003, and 2004; and during June 2000, 2001, and 2004, in competition with inspected and marketing order compliant California grapes. In addition, fair, ordinary, and poor condition imported grapes were on the market during May 2000, 2001, 2002, 2003, and

2004 and during June 2000, 2001, 2003, and 2004.

The League believes that an earlier beginning (April 1) to the regulatory period would allow most questionable quality/condition and failing grapes to clear the market before the southeastern California grape industry begins shipments. The League believes that this would help strengthen the market and firm up prices for both domestic and imported grapes.

The League believes that the marketing of grapes of lower quality/condition (because they did not have to meet the marketing order standards) in competition with grapes that do have to meet those standards and are of a higher quality/condition tends to lower market demand and depress prices for all grapes in the market.

The proposed change in the beginning date of the regulatory period for grapes would help alleviate price depressing conditions by prohibiting the sale of low-quality and low-condition grapes and help set a positive market tone.

USDA Market News Wholesale Fruit and Vegetable Reports and CTGC's Grape Market Activity Reports indicate that low condition and failing grapes are sold at reduced prices. In addition, USDA Market News Service Terminal Market Wholesale Fruit and Vegetable Reports show the condition and price of Chilean, Brazilian, South African, Mexican, and southeastern California grapes and indicate that better condition grapes tend to receive higher prices per box.

For example, the Philadelphia Wholesale Fruit and Vegetable Report for May 10, 2004, indicates that small size, good-to-excellent condition, white seedless grapes from southeastern California sold for $46 per 18-pound lug (bagged), and that Chilean large poor condition white seedless grapes sold for $5 to $10 per 18-pound lug. Poor condition, lower-priced, imported grapes are present in the marketplace at the same times as better condition grapes that meet the minimum quality requirements under the marketing order and import regulations. Without the presence of poorer condition grapes in the market, the overall quality/condition level of domestic and imported grapes should advance. Higher overall condition/quality should result in increased demand and repeat purchases. This would benefit the marketers of both domestic and imported grapes.

The April 1 date is being proposed because this date would enable most grapes imported prior to April 1 to clear the market prior to the commencement of the southeastern California harvest and marketing season.

In addition, the information from USDA's Market News Service indicates that better condition grapes yield higher prices, which could offset the added inspection costs of 2.5 cents per box for imported grapes. In 2000, 2001, and 2002, less than half of one percent of imported grapes required mandatory inspection. However, if inspection in these years had been mandatory as of April 1, about 15 percent would have had to be inspected. Thus, consumers would have been assured of receiving fewer low quality grapes.

This proposed rule is expected to prevent circumvention of the intent of the Act by grape imports and to provide consumers with higher quality/condition grapes on a more consistent basis. Experience has shown that an improvement in product quality and condition results in increased acceptance in the marketplace, and more frequent purchases. If this were achieved, domestic producers and handlers of southeastern California grapes, and exporters and importers of foreign-produced grapes would benefit from more stable marketing conditions and prices. Buyers, too, would be rewarded with more satisfactory quality/condition grapes, which could result in more grape purchases. This would benefit the producers and marketers of both domestic and imported grapes.

Inspection fees would be applicable to grapes imported during the period April 1 through April 19. These fees vary, depending on such factors as the location of the inspection, the size of the load to be inspected, and whether there are multiple commodities to be inspected. Current inspection fees for imported grapes are 2.5 cents per package when inspected at dockside. When the inspection is performed at a location other than dockside, the fees range from $76 to $99 per car lot depending the number of packages in the load and the type of inspection requested. A carlot usually contains 45,000 pounds of grapes. Information on inspection fees can be viewed at *http://www.ams.usda.gov/fv/fpboverview.htm.*

During October 2003–April 2004, FOB prices for imported grapes ranged from $6 to $44 per package, depending on the month, condition, and size of the grapes. In April 2004, prices per package ranged from $8 to $26 per package. Therefore, inspection fees would be less than 1 percent of the value of the grapes imported during this period of time.

USDA also is proposing to change the beginning of the domestic regulatory period from April 20 to April 1 to keep the beginning of both regulatory periods the same and to ensure that the same requirements apply to both domestic and imported grapes during the April 1–19 period.

Clarification of Maturity Requirements

This proposed rule also revises § 944.503(a)(1)(ii) to clarify that imported Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or 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 the California Code of Regulations (3 CCR 1436.3, 1436.5, 1463.6, 1436.7, 1436.12, and 1436.17). Currently, this subparagraph does not include the 16.5 percent option for meeting maturity requirements. In addition, obsolete language regarding requirements in effect only in 1998 is removed from paragraph (a)(1). These same requirements are already in effect for grapes shipped from southeastern California under Marketing Order No. 925.

Initial Regulatory Flexibility Impact Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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 comparable to those established under Federal marketing orders.

There are approximately 20 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, which include grape handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Twelve of the 20 handlers subject to regulation have annual grape sales of less than $ 6 million. In addition, just under 80 percent of producers in the production area have annual sales less than $750,000. Therefore, a majority of handlers and producers may be classified as small entities. The average importer receives $2.8 million in revenue from the sale of grapes. Therefore, we believe that the majority of these importers are small entities.

Summary of Proposed Changes

This rule would revise the regulatory periods when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order, and to imported grapes under the table grape import regulation. The current regulatory periods for both domestic and imported grapes are April 20 through August 15 of each year. The California Desert Grape Administrative Committee (the ''Committee''), which locally administers the order for grapes grown in a designated area of southeastern California, unanimously recommended changing the date when these requirements expire for grapes grown in California to July 10. A corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act. This shortened regulatory period is in the interest of handlers and producers.

The Desert Grape Growers League of California (the ''League'') requested that the beginning date of the regulatory period for imported grapes be changed from April 20 to April 1 and provided information to support its request. This proposed action is expected to prevent circumvention of the California grape order's grade, size, quality, and maturity requirements by low-quality grapes and to provide consumers with higher quality grapes on a more consistent basis. Experience has shown that an improvement in product quality results in increased acceptance in the marketplace, and more frequent purchases. To keep the beginning of the domestic regulatory period in line with the beginning of the import regulatory period, USDA also is proposing to change the beginning of the domestic regulatory period from April 20 to April 1.

Changing the Ending of the Regulatory Period for Domestic and Imported Grapes

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 differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304 of the order's administrative rules and regulations provides a regulatory period of April 20 through August 15 when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order. A final rule published on March 20, 1987, (52 FR 8865) established these regulatory periods to promote the orderly marketing of grapes.

Grape handlers in the production area shipped and marketed on average 8 million 18-pound lugs of grapes annually from 2000–2004. Approximately 99 percent of the 8 million 18-pound lugs were shipped and marketed during the period May 1–July 10. At least fourteen varieties are grown in the production area regulated under the order and marketed in major U.S. market areas. The four major varieties are Flame Seedless, Perlettes, Thompson Seedless, and Sugraone.

Since 1987, the amount of grapes handled after July 10 has decreased, and in the period 2000–2004, the amount of grapes handled after July 10 constituted less than 1 percent of the on-average 8 million lugs produced in the production area. The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to advance the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period should also apply to pack and container requirements under the order.

The amount of grapes handled in the production area after July 10 has generally decreased as older vineyards, which typically produce late season varieties, have been removed. During the past three years, more than 99 percent of the grapes grown in the production area were handled during the period April 20 through July 10.

Grapes handled after July 10 tend to bring much lower prices than early season grapes. For example, in the 2003 season, early season (handled in the first two weeks of May) Flame Seedless grapes had an average FOB price of $13.85 to $23.85 while end-of-season Flame Seedless grapes brought an average FOB price of $11.85 to $12.85 per 18-pound lug.

Additionally, inspection costs outweigh the benefits of the order requirements for grapes handled after July 10, as inspection fees are proportionally higher for the volume of grapes inspected. Thus, this shortened regulatory period is expected to benefit handlers and producers. This change would also benefit enterprises that import grapes after July 10.

Reports from the U.S. Census Bureau indicate that during the April–October period of 2000, 2001, 2002, and 2003, an average of 12.6 million 18-pound lugs of Mexican grapes were imported and marketed. Average imports from Chile at these times totaled 8.7 million 18-pound lugs. On average, Mexico and Chile accounted for 98 percent of imports. The remaining 2 percent came from other countries.

Other alternatives were suggested to more adequately reflect the end of the harvest for the domestic production area and to generate shipments of higher quality grapes.

For example, one suggestion was to change the ending date of the regulatory period for grapes grown in the designated area of southeastern California to July 1 or July 5. This suggestion was not adopted because the Committee believes that July 10 would be more reflective of the end of the [season], as less than half of one percent of grapes are shipped from the production area after July 10.

Section 8e of the Act specifies that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. 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).

Section 944.503(a)(3) of the import regulation specifies that the regulatory period for imported grapes for the fresh market is April 20 through August 15 of each year. Since this proposal would change the expiration date of regulatory period for the California production area to July 10, a corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act.

It is expected that the shortened regulatory period for domestic and imported grapes would benefit handlers, producers, and importers because their regulatory burdens would be reduced.

Changing the Beginning of the Regulatory Period for Imported Grapes

The U.S. Census Bureau indicates that on average for 2000, 2001, 2002, and

2003 (January through December); 60.0 million 18-pound lugs of grapes were imported into the United States. The two main countries exporting to the United States were Chile, with average exports of 45.7 million 18-pound lugs (76 percent of the total), and Mexico with 12.6 million 18-pound lugs (21 percent of the total). The remaining three percent came from other countries.

The major varieties imported from Chile include Thompson Seedless, Flame Seedless, Red Globes, and Crimson Seedless. The majority of Chilean shipments arrive in the United States during the December–April period. Imports from Mexico to the United States are concentrated in the months of May, June, and July, with the majority of the crop shipped during the months of May and June. The most significant imported Mexican varieties are Thompson Seedless, Perlette, and Flame Seedless. The League requested that the beginning date of the regulatory period for imported grapes be advanced from April 20 to April 1, and submitted information to support its request to USDA for review and evaluation. USDA is proposing to change the beginning of the domestic regulatory period to keep the import and domestic regulatory period dates the same.

The authority for changing the beginning date of the regulatory period for imports is specified in § 608e–1(b) of the Act. These provisions allow the Secretary to extend import requirements for a period, not to exceed 35 days, during which the import requirements would be effective for the imported commodity. To change the beginning date, USDA considers the following: (1) For the prior year, whether imports of grapes that did not meet import requirements were marketed in the United States during the period that such import requirements were in effect; (2) whether imported grapes did or were likely to circumvent such import requirements; and (3) whether there would be any adverse effect on the availability and prices of grapes if the regulatory period for imports was changed to April 1.

The League contends that such an action is needed to prevent circumvention of the California grape order's grade, size, maturity, and quality requirements by table grape imports.

Trade data from the U.S. Census Bureau also shows that Chile accounts for almost all U.S. imports of fresh grapes during the February–April period in recent years. The total average grape imports for that period in the years 2000–2004 averaged 33.6 million 18-pound lugs. Of this amount, 32.8 million came from Chile (97.6 percent). South Africa accounted for 0.5 million lugs (1.6 percent). The remaining 0.8 percent came from other countries. Information from the League for 2000, 2001, 2002, 2003, and 2004 shows that the Port of Philadelphia (where historically the greatest percentage of Chilean table grapes enters the United States) received on-average 20 million 18-pound lugs of imported Chilean grapes during the February 1–April 19 period, with 30 percent (6 million) of these 20 million 18-pound lugs arriving between April 1 and April 19.

The League compiled weekly inspection summaries of inspection data from USDA's Fresh Products Branch, Fruit and Vegetable Programs. These inspection summaries consisted of voluntary condition and quality inspections of imported grapes at the Port of Philadelphia for the period February–April 2000, 2001, 2002, 2003, and 2004.

Based on AMS experience, importers request voluntary quality and condition inspections on grapes that appear to be of lesser quality prior to April 20 to determine the grade of the fruit as specified in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.914).

According to the data provided by the League, approximately 2 million 18-pound lugs of imported Chilean grapes arriving at the Philadelphia Port during the April 1 through April 19 period were inspected voluntarily for quality and condition with failure rates ranging from a low of 75 percent to a high of 90 percent in 2000; from 65 percent to 78 percent in 2001; 65 percent to 70 percent in 2002; from 53 percent to 78 percent in 2003; and from 42 percent to 57 percent in 2004. For the two to three days immediately prior to April 20 in 2000, 2001, 2002, 2003, and 2004, the failure rates averaged 90 percent in 2000, 78 percent in 2001, 67 percent in 2002, 73 percent in 2003, and 46 percent in 2004.

As mentioned earlier, these summaries and U.S. Census Bureau trade data indicate that voluntarily inspected and uninspected imported grapes were imported into the United States prior to April 20 and were marketed during the April 20–June period each year. As a practical matter, the quantities of grapes imported immediately prior to the beginning of the regulatory period are generally so large that they could not all be marketed before import requirements go into effect or the domestic industry begins shipments.

USDA Market News data indicates that poorer condition imported grapes are marketed at lower prices than those obtained for better condition domestic or imported grapes in the marketplace. Poor condition grapes can cause a dampening effect on demand for all grapes in the marketplace. Thus, the proposed change would benefit both domestic shippers and importers of grapes.

Studies of table grape importer storage behavior performed by SURRES, a division of Applied Technology Corporation, and the College of Business and Management, University of Maryland, indicate that importers use their storage capability extensively during the March–April time frames and that storage periods in the 30–60 day range are not uncommon at this time of year.

According to information from USDA Grape Market News, low quality imported grapes are in the U.S. market, from coast to coast, consistently during May, the same time as table grapes that have met the standards of the marketing order. On average, 60.0 million 18-pound lugs of grapes (2000, 2001, 2002, and 2003) were imported into the United States at all ports during the January–December period.

Further, on average, the Philadelphia Port receives 11 varieties of table grapes that are exempted under the import requirements. During the period April 1–19, 2000, 2001, 2002, 2003, and 2004 approximately 6 million 18-pound lugs of Chilean grapes were imported into the United States. On average, 1.8 million of these 18-pound lugs are exempted under the import requirements during this period. It is estimated that approximately 5.4 million 18-pound lugs of imported Chilean grapes would remain exempt from import requirements if the regulatory period is changed to April 1–July 10.

During the 2000–2004 period, after April 20—the current effective date of the order requirements and the table grape import regulation—there was a significant decrease in imports. The League pointed out that approximately 230,000 18-pound lugs of Chilean grapes on average (2000, 2001, 2002, 2003, and 2004) were imported into the United States the week following April 20, a significant decrease from the previous week's, on average, 3.3 million 18-pound lugs. Of these approximately 230,000 18-pound lugs of Chilean table grapes, 140,000 lugs were non-exempt varieties and subject to inspection for grade, size, quality, and maturity requirements under the table grape import regulations.

USDA Market News Service Reports and Sermaco reports on arrivals of imported grapes indicate that imported table grapes are in the domestic market during May and June, that many of those grapes are in fair, ordinary, and poor condition, and that they compete with domestic and imported grapes that are required to be inspected and certified as meeting minimum quality requirements. The USDA Fresh Products Branch data on voluntary inspections for 2000 and 2001 indicates a relatively high failure rate for imported Chilean grapes for the period April 1 through 19, increasing somewhat as the April 20 effective date nears. The inspection data provided further indicates that less than half of one percent (approximately 137,000 18-pound lugs on average) of imported regulated Chilean grapes during the last three years were subject to inspection during the period April 20 through the end of the Chilean shipping season, July 14. Limited quantities of Chilean grapes are imported after the import regulation takes effect. The majority of imports from Mexico is imported during the May–July period, and is inspected under the import regulation.

USDA Economic Research Service (ERS) studies indicate that low quality commodities can adversely affect the market for shippers of acceptable quality products. Quality requirements are typically used to cultivate a positive image of a consistent and reliable supplier of high-quality product. This results in consumer good will that strengthens demand and boosts producer prices. (USDA, Economic Research Service, Agricultural Economic Report Number 629, ''Federal Marketing Orders for Fruits, Vegetables, Nuts, and Specialty Crops'' by Nicholas J. Powers, March 1990; USDA, Economic Research Service, ''Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nuts, and Specialty Commodities'' by Leo C. Polopolus, Hoy F. Carman, Edward V. Jesse, and James D. Shaffer, December 1986).

The presence of lower quality grapes in the marketplace weakens demand for all grapes. Market research and experience show that consumers often purchase other commodities in place of the commodity with which they had a bad quality experience, which has a negative effect on grower, handler, exporter, and importer returns.

The ERS report also discusses the purposes of quality standards. The basic rationale for such standards is that only satisfied customers are repeat customers. When consumers have a good quality experience, they make repeat purchases. Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality.

Given the marketing of uninspected imported grapes during May 2000, 2001, 2002, 2003, and 2004 and June 2000, 2001, and 2004 it is in the interest of producers and importers that demand not be adversely affected by the marketing of lower quality/condition grapes. There is an obvious need to maintain consumer confidence through good-quality product.

The per capita consumption of fresh grapes has increased from 3.97 pounds in 1980 to 8.59 pounds in 2002. Changing the regulatory period for imports to April 1 would help better maintain quality and consumer acceptance in the marketplace, and could further increase per capita consumption.

According to the League, table grapes from some countries exporting to the United States must meet minimum inspection requirements on a year-round basis in both the European Union and in Canada. Hence, a change in the effective date to April 1 should not affect the availability of imported table grapes because quality table grapes could easily be diverted to the U.S. market. During April 1–19, 2004, FOB prices for imported grapes in U.S. markets ranged from $8 to $26 per package, depending on the month, condition, and size of the grapes. In comparison, Canadian FOB prices for imported grapes ranged from $12.03 to $33.98 and European Union prices ranged from $8 to $22 during April 2004 depending on condition and size of the grapes.

Better quality grapes yield more revenue, which could offset the added inspection costs of 2.5 cents per box for imported grapes checked at dockside. In 2000, 2001, 2002, 2003 and 2004, less than 1 percent of Chilean grapes required mandatory inspection. However, if inspection in these years had been mandatory as of April 1, about 15 percent would have had to be inspected. Thus, consumers would have been assured of receiving fewer lower quality grapes. It is anticipated that the price would be slightly higher as higher quality fruit would be sold to consumers.

Inspection fees would be applicable to grapes imported during the April 1–19 period. These fees vary, depending on such factors as the location of the inspection, the size of the load to be inspected, and whether there are multiple commodities to be inspected. Current inspection fees for imported grapes are 2.5 cents per package when inspected at dockside. When the inspection is performed at a location other than dockside, the fees range from $76 to $99 per car lot, depending on the number of packages in the load. (See *http://www.ams.usda.gov/fv/fpboverview.htm* for inspection fee information). A carlot usually contains 45,000 pounds of grapes.

During the October 2003–April 2004 period, FOB prices for imported grapes ranged from $6 to mostly $44 per package, depending on the month, condition, and size of the grapes. In April 2004, prices per package ranged from $8 to $26 per package. Therefore, inspection fees would be less than 1 percent of the value of the grapes imported during this period of time.

The benefit of changing the regulatory periods when grade, size, quality, and maturity requirements apply to grapes grown in a designated area of southeastern California and to imported grapes under the grape import regulation is not expected to be disproportionately larger or smaller for small importers than for large importers, nor for small handlers or producers than for larger entities.

While earlier beginning dates for the regulatory period for imported grapes are authorized by statute, which provides that the additional period of time may not exceed 35 days, April 1 is less restrictive than the 35 days for importers, and one that could improve the quality of imported and domestic grapes, lessen the chances of circumvention of the grape marketing order's grade, size, quality, and maturity requirements by low quality/condition grape imports, and be in the interest of handlers, producers, importers, and consumers.

This rule would 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 proposed rule.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on changing the ending date from August 15 to July 10. In addition, the World Trade Organization, the

Chilean Technical Barriers to Trade (TBT) 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 will be notified of the proposed action. Finally, interested persons are invited to submit information on 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/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

2. The introductory text to § 925.304 is proposed to be revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 1 through July 10 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.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.503, paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(3) are proposed to be 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 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.''

(i) * * *

(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 meets or exceeds 16.5 percent soluble solids, or 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 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

* * * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 1 through July 10.

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Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–10440 Filed 5–24–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH28

2004 Dairy Disaster Assistance Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a new program, the 2004 Dairy Disaster Assistance Payment Program, as authorized by the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005. The proposed program will provide up to $10 million in assistance for producers in counties declared a disaster by the President in 2004 due to hurricanes. Payments would be made for losses in the three month period, August–October 2004, only. This action is designed to provide financial assistance to producers who suffered dairy production and milk spoilage losses due to hurricanes in 2004.

DATES: Comments on this rule must be received on or before June 24, 2005, in order to be assured consideration.

ADDRESSES: The agencies invite interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *Danielle_Cooke@wdc.usda.gov.*
- Fax: Submit comments by facsimile transmission to: (202) 690–1536.
- Mail: Submit comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd/.*

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, phone: (202) 720–1919;