

§ 911.329 [Amended]

3. In § 911.329, paragraph (a) is amended by removing the words "No handler" and adding in its place the words "From January 1 through May 31 of each season, no handler".

§ 911.344 [Amended]

4. In § 911.344, paragraph (a), is introductory text, is amended by removing the words "No handler" and adding in its place the words "From January 1 through May 31 of each season, no handler".

PART 944—FRUITS, IMPORT REGULATIONS

5. In § 944.209, paragraph (a) is revised to read as follows:

§ 944.209 Lime Import Regulation 10.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States from January 1 through May 31 of any limes is prohibited unless such limes meet the minimum grade and size requirements specified in § 911.344 Florida Lime Regulation 43.

* * * * *

Dated: May 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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BILLING CODE 3410-02-P

7 CFR Parts 924 and 944

[Docket No. FV95-924-1PR]

Fresh Prunes Grown in Washington and Oregon: Proposed Handling Requirement Revision; Fruits; Import Regulations; Proposed Fresh Prune Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the effective period of the handling regulations in effect for shipments of fresh prunes grown in specified counties of Washington and in Umatilla County, Oregon under Marketing Order No. 924 to coincide with the domestic shipping season. This proposed rule would also establish grade, size, and quality requirements for prune variety plums (fresh prunes) imported into the United States. The proposed import requirements would be issued pursuant to the authority in section 8e of the amended Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by June 7, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456 or by FAX at (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Britthany E. Beadle, Marketing Order Administration Branch, AMS, USDA, PO Box 96456, room 2526-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2725.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 924 (7 CFR part 924), as amended, regulating the handling of fresh prunes grown in specified counties of Washington and in Umatilla County, Oregon, 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 plums or fresh prunes, 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 Secretary has determined that the minimum grade, quality, and size requirements for fresh prunes imported into the United States should be the same as those established for fresh prunes grown in Washington and Umatilla County, Oregon, under Marketing Order No. 924.

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

This proposed rule has been reviewed under Executive Order 12778, 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.

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 in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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.

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 5 handlers subject to regulation under the order and about 350 producers of Washington-Oregon fresh prunes. There are no known importers of fresh prunes. Small agricultural service firms, which include fresh prune handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities.

Most of the prune variety plums (fresh prunes) grown in the United States are produced in certain counties in Washington and in Umatilla County, Oregon. Such fresh prunes are regulated under the order which establishes

minimum grade, size, and quality requirements for fresh prunes. There is no other Federal marketing order regulating plums or fresh prunes. The Washington and Oregon fresh prune industry ships throughout the United States. Between 1990 and 1994, shipments of fresh prunes from Washington and Oregon ranged from 8.4 to 22.6 million pounds.

The grade, size, and quality of fresh prunes grown in Washington and Oregon are regulated under the order. These handling requirements do not change substantially from season to season, and they have been issued on a continuing basis subject to amendment, modification, or suspension as may be determined by the Secretary. Currently, the handling regulations under the order are effective throughout the entire year. This proposed rule would change the effective dates of the handling regulations to July 15 through September 30 each year, so that the regulatory period more closely coincides with the marketing season for fresh prunes grown in Washington and Oregon. This proposed period includes additional time after the last day of harvest when some lots of fruit may be kept in cold storage prior to shipment.

Fresh prunes offered for importation into the United States would be regulated based on the requirements under the order and during the same period of time when Washington and Oregon fresh prunes are regulated. However, fresh prunes are not, at this time, being imported into the United States.

This rule proposes that, from July 15 through September 30 each year, fresh prunes imported into the United States be required to meet the same minimum grade, size, and quality requirements as those for fresh prunes under the order.

This proposed rule would add a new § 944.700 under 7 CFR part 944—Fruits; Import Regulations to require that fresh prunes imported into the United States, except for the Brooks and President varieties, meet modified requirements of the U.S. No. 1 grade as set forth in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538), and a minimum size requirement of 1¼ inches in diameter. The modifications to the U.S. No. 1 standard would be as follows: (1) At least two-thirds of the surface must be purplish in color; and (2) there cannot be more than 15 percent total defects in any lot. These defects, by count, cannot exceed the following tolerances: (a) A maximum of 10 percent of the defects may not meet color requirements; (b) a maximum of 10 percent of the defects may not meet the minimum diameter

requirements; and (c) a maximum of 10 percent of the defects may be in the remaining grade requirements (misshapen and dirty fresh prunes). However, not more than 5 percent of the remaining grade requirements may constitute serious damage, including a maximum of 1 percent for decay.

This proposed rule would also establish the period of time for the regulation of imported fresh prunes. From July 15 through September 30 of each year, fresh prunes imported into the United States would be subject to the minimum grade, size and quality requirements effective under the order. This is the same period that such requirements are proposed to be in effect for fresh prunes under the order. Imports arriving before the domestic commodity's shipping season begins or after the domestic commodity's shipping season ends would not be subject to the proposed import requirements.

Importers would be responsible for arranging for the required inspection and certification prior to importation. Importation is defined to mean release from custody of the United States Customs Service. Such inspection services are available on a fee-for-service basis. This action could therefore result in increased costs associated with importing fresh prunes. The additional costs should be offset, however, by the benefits accrued by ensuring that only acceptable quality fruit is present in the U.S. marketplace. Such quality assurance promotes buyer satisfaction and increased sales.

This proposed rule would also authorize limited quantity exemptions from the import requirements specified herein. Individual shipments of Stanley and Merton variety fresh prunes of less than 500 pounds, and individual shipments of other fresh prune varieties of less than 350 pounds, would be excluded from the proposed import requirements. Additionally, fresh prunes imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products would be exempt from the proposed import requirements. The marketing order provides similar exemptions.

To ensure that fresh prunes imported exempt from the grade, size and quality requirements are utilized in exempt outlets, this rule proposes that such fresh prunes be subject to the safeguard procedures for imported fruit established in § 944.350 (61 FR 13051, March 26, 1996).

Under these procedures, an importer wishing to import fresh prunes covered herein for exempt uses would complete

in triplicate, prior to importation, an "Importer's Exempt Commodity Form." One copy would be held by the importer or customs broker. The second copy would be sent to the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Division, AMS, within 2 days of the entry of the shipment. The third copy would accompany the exempt lot to the receiver.

The form could be obtained from the MOAB by calling (202) 720-6585 or sending a fax to (202) 720-5698. The form would be completed at the time the commodity enters the United States. Information called for on the "Importer's Exempt Commodity Form" would include:

- (1) The commodity and the variety (if known) being imported,
- (2) The date and place of inspection, if used to enter failing product or culls as exempt (including a copy of the inspection certificate),
- (3) Identifying marks or numbers on the containers,
- (4) Identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,
- (5) The name and address of the importer,
- (6) The place and date of entry,
- (7) The quantity imported (in pounds),
- (8) The name and address of the intended receiver (e.g., processor, charity, or other exempt receiver),
- (9) The intended use of the exempt commodity,
- (10) The U.S. Customs Service entry number and harmonized tariff code number, and
- (11) Such other information as may be necessary to ensure compliance with this regulation.

The third copy of the form would accompany the exempt lot to its intended destination. The exempt receiver would certify that the lot has been received and it will be utilized in an exempt outlet. After the certification is signed by the receiver, the form would be returned to MOAB by the receiver, within 2 days of receipt of the lot.

Lots that are exempt from the grade, size, and quality requirements of the fresh prune import regulation would not be subject to the inspection and certification requirements in such regulation. An imported lot intended for non-exempt uses, or any portion of such a lot, that fails established grade, size, and quality requirements, could be exported, disposed of in an exempt outlet following the procedure described above, or otherwise

destroyed, under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such fruit borne by the importer.

This proposed rule would also amend paragraph (a) of § 944.400 (7 CFR part 944). That paragraph designates the Federal or Federal-State Inspection Service of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture as the organization to perform inspection and certification of imported fresh fruits specified in section 8e of the Act. That paragraph also specifies procedures to be followed for obtaining the required inspections. This proposed rule would designate the Federal or Federal-State Inspection Service and Agriculture and Agri-Food Canada as the organizations authorized to inspect and certify foreign produced fresh prunes as meeting import requirements issued pursuant to section 8e.

Paragraphs (b), (c), and (d) of § 944.400, specifying additional procedures for obtaining inspection and certification of imported fruits listed in the section, would remain unchanged. These procedures are followed by importers to obtain inspection and certification of those fresh fruits specified in section 8e which are offered for importation into the United States.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), and have been assigned OMB number 0581-0167.

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

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day period is provided to allow interested persons to comment on this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 924

Marketing agreements, Plums, Prunes, 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 above, 7 CFR parts 924 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 924 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

2. In § 924.319, the introductory text of paragraph (a) is revised to read as follows:

§ 924.319 Prune Regulation 19.

(a) During the period beginning July 15 and ending September 30, no handler shall handle any lot of prunes, except prunes of the Brooks variety, unless:

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.350, the section heading and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, prune variety plums (fresh prunes), and table grapes, exempt from grade, size, quality, and maturity requirements.

(a) * * *

(1) Avocados, grapefruit, kiwifruit, limes, olives, oranges, and prune variety plums (fresh prunes) for consumption by charitable institutions or distribution by relief agencies;

(2) Avocados, grapefruit, kiwifruit, limes, oranges, prune variety plums (fresh prunes), and table grapes for processing;

* * * * *

4. Section 944.400 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, limes, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and

table grapes that are imported into the United States. Agriculture and Agri-Food Canada is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of prune variety plums (fresh prunes) only. Inspection by the Federal or Federal-State Inspection Service or the Agriculture and Agri-Food Canada, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes should make arrangements for inspection through the applicable one of the following offices, at least the specified number of the days prior to the time when the fruit will be imported:

* * * * *

5. A new § 944.700 is added to read as follows:

§ 944.700 Fresh prune import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any fresh prunes, other than the Brooks variety, during the period July 15 through September 30 of each year is prohibited unless such fresh prunes meet the following requirements:

(1) Such fresh prunes grade at least U.S. No. 1, except that at least two-thirds of the surface of the fresh prune is required to be purplish in color, and such fresh prunes measure not less than 1¼ inches in diameter as measured by a rigid ring: Provided, That the following tolerances, by count, of the fresh prunes in any lot shall apply in lieu of the tolerance for defects provided in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538): A total of not more than 15 percent for defects, including therein not more than the following percentage for the defect listed:

(i) 10 percent for fresh prunes which fail to meet the color requirement;

(ii) 10 percent for fresh prunes which fail to meet the minimum diameter requirement;

(iii) 10 percent for fresh prunes which fail to meet the remaining requirements of the grade: Provided, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in the latter amount not more than 1 percent for decay.

(2) [Reserved]

(b) The importation of any individual shipment which, in the aggregate, does not exceed 500 pounds net weight, of fresh prunes of the Stanley or Merton varieties, or 350 pounds net weight, of fresh prunes of any variety other than the Stanley or Merton varieties, is exempt from the requirements specified in this section.

(c) The grade, size and quality requirements of this section shall not be applicable to fresh prunes imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, but such prunes shall be subject to the safeguard provisions in § 944.350.

(d) The term *U.S. No. 1* shall have the same meaning as when used in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538); the term "purplish color" shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 28, 1978), and the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term "diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit.

(e) The term *Prunes* means all varieties of plums, classified botanically as *Prunus domestica*, except those of the President variety.

(f) The term *importation* means release from custody of the United States Customs Service.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of

such fresh prunes borne by the importer.

(i) It is determined that fresh prunes imported into the United States shall meet the same minimum grade, size and quality requirements as those established for fresh prunes under Marketing Order No. 924 (7 CFR part 924).

Dated: May 2, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96-11459 Filed 5-7-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1160

[DA-96-07]

Fluid Milk Promotion Order; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposal to amend the Fluid Milk Promotion Order to modify the term of the chairperson of the National Fluid Milk Processor Promotion Board. The proposal was submitted by the National Fluid Milk Processor Promotion Board which contends the action is necessary to enable it to operate more effectively.

DATES: Comments are due no later than May 15, 1996.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Promotion and Research Staff, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Eugene E. Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6909.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities. The proposed amendment would modify the term of the chairperson of the National Fluid Milk Processor Promotion Board and would not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion 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 the law and request a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling of the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093, except for Board members' nominee information sheets that were assigned OMB No. 0505-0001.

Statement of Consideration

Section 1160.209(a) of the Fluid Milk Promotion Order currently provides that the National Fluid Milk Processor Promotion Board meet at least once a year and elect from among its members a chairperson to serve a term of one year and not more than two consecutive terms. The proposed amendment would modify, from one year to a fiscal period, the term of the chairperson and provide that such chairperson may serve not more than two consecutive fiscal periods.

Currently, a term of office for the chairperson of the National Fluid Milk Processor Promotion Board is based on an annual period, which expires on July 27, 1996, rather than a fiscal period. The