

# Rules and Regulations

Federal Register

Vol. 71, No. 183

Thursday, September 21, 2006

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 305 and 319

[Docket No. APHIS–2006–0025]

#### Importation of Table Grapes From Namibia

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes must undergo cold treatment and fumigation with methyl bromide and must be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes will also be subject to inspection at the port of first arrival. This action allows for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* October 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into

the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On June 26, 2006, we published in the **Federal Register** (71 FR 36221–36225, Docket No. APHIS–2006–0025) a proposal<sup>1</sup> to amend the fruits and vegetables regulations to allow the importation of fresh table grapes, in commercial shipments only, from Namibia into the United States under certain conditions. As a condition of entry, we proposed that the grapes would be subject to a combined treatment of cold treatment in accordance with schedule T107–e and methyl bromide fumigation in accordance with schedule T104–a–1. In addition, because the cold and methyl bromide treatments would not effectively mitigate the pest risk posed by the mealybugs *Maconellicoccus hirsutus*, *Nipaecoccus vastator*, and *Rastrococcus iceryoides* or the mollusks *Cochlicella ventricosa* and *Theba pisana*, we proposed that the National Plant Protection Organization of Namibia would be required to conduct phytosanitary inspections for those pests and that each shipment of grapes would have to be accompanied by a phytosanitary certificate bearing the additional declaration: “The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus*, *Nipaecoccus vastator*, *Rastrococcus iceryoides*, *Cochlicella ventricosa* and *Theba pisana*.”

We solicited comments concerning our proposal for 60 days ending August 25, 2006. We received two comments by that date. The first comment was from a producer who was in favor of the importation of table grapes from Namibia. The second comment was from an industry group that expressed concern that the pest *Scirtothrips dorsalis* was not included in the preamble of the proposed rule on the list of pests that can be addressed by methyl bromide treatment. This was an inadvertent omission; the risks associated with *Scirtothrips dorsalis* were addressed within the pest risk

assessment and risk mitigation documents associated with the proposed rule and the pest was cited specifically in the regulatory text of proposed § 319.56–2ss(b) as a pest for which treatment is required.

The commenter also expressed concern that Namibian table grapes would be shipped into the United States during a time period when they would be in direct competition with domestic table grapes (October and November) and that the economic analysis provided in the proposed rule focused too much on grapes intended for processed utilization (i.e., wine, juice, or raisins) rather than on grapes grown for the fresh market. Therefore, the commenter disagreed that the competitive impact of Namibian table grapes on domestic producers would be minimal. As stated in the proposed rule, grapes in Namibia mature in November, however, given that the grapes will be transported to the United States by cargo ship with a transit time of approximately 4 weeks, most grape shipments from Namibia would arrive from mid to late December until the end of January, well after peak harvest for domestic table grapes. The economic analysis in this final rule has been updated to reflect the additional information provided by the commenter regarding domestic grape production; however, that information did not affect the conclusions of our analysis. The impact of this rule on domestic table grape producers is still expected to be minimal.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes will be subject to both cold treatment and fumigation with methyl bromide and will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0025, then click on “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

has been inspected and found free of the specified pests. In addition, the grapes will also be subject to inspection at the port of first arrival. This action will allow for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

According to the Trade Law Center for Southern Africa, 7 grape companies in Namibia are currently cultivating 1,300 hectares, irrigated by water from the Orange River, and another 2,000 hectares are expected to be put to cultivation soon. Because of the climate in Namibia, grapes mature in November, which gives producers there a competitive advantage over producers in other southern hemisphere countries where the grape harvest begins in December. Imports of Namibian table grapes into the United States in the first year are expected to reach 22.5 40-foot containers (approximately 744,000 pounds), which would account for less than one-tenth of 1 percent of fresh table grape imports into the United States and less than one-tenth of 1 percent of total domestic utilized production of fresh table grapes. Total domestic utilized production accounted for approximately 50 percent of the total domestic consumption of fresh table grapes in 2004.<sup>2</sup> Gross revenue of utilized production of fresh table grapes produced in the United States was approximately \$794 million.<sup>3</sup> Any displacement resulting from imports of Namibian fresh table grapes is likely to result in a reduction of less than one-tenth of 1 percent in gross revenue for producers, with at least part of the loss borne by foreign suppliers that share the same shipping season as Namibia, such as Chile.

The small business size standard for grape farming without making wine, as identified by the Small Business Administration (SBA) based upon North American Industry Classification System code 111332, is \$750,000 or less in annual receipts.<sup>4</sup> While the available data do not provide the number of U.S. grape-producing entities according to size distribution as it relates to annual receipts, it is reasonable to assume that the majority of the operations are considered small businesses by SBA standards. According to the 2002 Census of Agriculture data, there were

23,856 grape farms in the United States in 2002.<sup>5</sup> It is estimated that approximately 93 percent of these grape farms had annual sales in 2002 of \$500,000 or less, and are considered to be small entities by SBA standards.

The United States is a net importer of fresh table grapes. In 2004, the United States imported 1,322.8 million pounds of fresh table grapes with approximately 79 and 19 percent arriving from Chile and Mexico, respectively. In that same year, the United States exported approximately 606.3 million pounds of table grapes. Canada is the largest importer of U.S. fresh grapes, accounting for 44 percent of U.S. exports. The second and third largest importers of U.S. fresh grapes are Malaysia and Mexico, accounting for approximately 9 and 7 percent of U.S. grape exports, respectively.<sup>6</sup> U.S. imports of table grapes experienced an average increase of 6.6 percent annually over the last decade while exports have increased an average of 3.4 percent.<sup>7</sup> Fresh utilization of U.S. grape production only accounts, on average, for 13 percent of total utilized U.S. grape production annually. U.S. wine production and raisin production account for an average of 60 percent and 25 percent, respectively, of U.S. grape utilization annually.<sup>8</sup>

Domestic consumers would benefit because Namibian table grapes mature a month earlier than table grapes from other countries in the southern hemisphere, providing access to an increased supply of fresh table grapes for a longer period of time. The negative impact of imports from Namibia is expected to be minimal for domestic producers. Utilized production of fresh table grapes accounted for approximately 50 percent of total domestic consumption in 2004. Total gross revenue associated with the estimated quantity of Namibian imports is equivalent to less than one-tenth of 1 percent of the total gross revenue generated by U.S. fresh table grapes in 2004. In addition, any displacement of existing U.S. table grape supplies by Namibian imports is likely to be borne at least in part by foreign suppliers such as Chile, which shares the same shipping season as Namibia.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule allows fresh table grapes to be imported into the United States from Namibia. State and local laws and regulations regarding table grapes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh table grapes are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Use of Methyl Bromide

Under this rule, table grapes imported into the United States from Namibia must be fumigated with methyl bromide in accordance with schedule T104-a-1 to kill external feeder insects. We estimate that between 1 and 22.5 40-foot containers of fresh table grapes will be imported from Namibia during the first shipping season. Importations may increase in future years. Fumigation using schedule T104-a-1 would require no more than 10 pounds of methyl bromide per container. No alternative treatment is currently available for these pests.

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and preshipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use

<sup>2</sup> USDA ERS Briefing Room, Fruit and Tree Nut Yearbook, 2005.

<sup>3</sup> Gross revenue of fresh table grape utilization is derived assuming a grower price of \$0.45 per pound (ERS).

<sup>4</sup> Based upon 2002 Census of Agriculture—State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter 1.

<sup>5</sup> The number of grape farms in the United States, as reported by the 2002 Census of Agriculture, is the total number of grape-producing operations, which also include grapes produced for processed utilization.

<sup>6</sup> Source: Global Trade Atlas.

<sup>7</sup> Source: USDA FAS, PS&D Online. "Table Grapes: Production, Supply and Distribution in Selected Countries," [http://www.fas.usda.gov/psd/complete\\_tables/HTP-table6-104.htm](http://www.fas.usda.gov/psd/complete_tables/HTP-table6-104.htm).

<sup>8</sup> USDA ERS Briefing Room, Fruit and Tree Nut Yearbook, 2005.

methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions.

### National Environmental Policy Act

An environmental assessment was prepared for, and made available for public comment through, the proposed rule for this rulemaking. No comments regarding the environmental assessment were received during the comment period for the proposed rule. The environmental assessment provides a basis for the conclusion that the importation of fresh table grapes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the

Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>9</sup> Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0300.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government

information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

### List of Subjects

#### 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

#### 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

### PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, paragraph (h)(2)(i), the table is amended by adding, in alphabetical order, an entry for Namibia to read as follows:

#### § 305.2 Approved treatments.

*	*	*	*	*
(h)	*	*	*	*
(2)	*	*	*	*
(i)	*	*	*	*

Location	Commodity	Pest	Treatment schedule
Namibia	Grape	External feeders <i>Cryptophlebia leucotreta</i> , <i>Ceratit</i> <i>rosa</i> , <i>Epichoristodes acerbella</i> .	MB T104–a-1. CT T107–e.

\* \* \* \* \*

### PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. A new § 319.56–2ss is added to read as follows:

#### § 319.56–2ss Conditions governing the entry of grapes from Namibia.

Grapes (*Vitis vinifera*) may be imported into the United States from Namibia only under the following conditions:

(a) The grapes must be cold treated for *Cryptophlebia leucotreta*, *Ceratit* *capitata*, *Ceratit* *rosa*, and *Epichoristodes acerbella* in accordance with part 305 of this chapter.

(b) The grapes must be fumigated for *Aleurocanthus spiniferus*, *Apate monachus*, *Bustomus setulosus*, *Ceroplastes rusci*, *Cryptoblabe gnidiella*, *Dischista cincta*, *Empoasca*

<sup>9</sup>Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2006–0025,

click on "Submit," then click on the Docket ID link in the search results page. The environmental

assessment and finding of no significant impact will appear in the resulting list of documents.

*lybica*, *Eremnus atratus*, *Eremnus cerealis*, *Eremnus setulosus*, *Eutetranychus orientalis*, *Helicoverpa armigera*, *Icerya seychellarum*, *Macchiademus diplopterus*, *Oxycarenus hyalinipennis*, *Pachnoda sinuata*, *Phlyctinus callosus*, *Scirtothrips aurantii*, *Scirtothrips dorsalis*, *Spodoptera littoralis*, and *Tanyrhynchus carinatus* in accordance with part 305 of this chapter.

(c) Each shipment of grapes must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Namibia bearing the following additional declaration: "The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus*, *Nipaecoccus vastator*, *Rastrococcus iceryoides*, *Cochlicella ventricosa*, and *Theba pisana*."

(d) The grapes may be imported in commercial shipments only.

(Approved by the Office of Management and Budget under control number 0579-0300)

Done in Washington, DC, this 18th day of September 2006.

**W. Ron DeHaven,**

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06-7891 Filed 9-20-06; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV06-916/917-1 FIR]

#### Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, with a change, an interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and pack requirements for fresh shipments of these fruits, beginning with 2006 season shipments. This rule also continues in effect the authorization for continued shipments of "CA Utility" quality nectarines and peaches, the establishment of weight-count standards for Peento type nectarines in volume-filled containers, and the elimination of the varietal container marking requirements. The marketing orders

regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

**DATES:** *Effective Date:* October 23, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Laurel May, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, 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 e-mail:

[Laurel.May@usda.gov](mailto:Laurel.May@usda.gov) or

[Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect: (1) Revisions to the nectarine and peach grade, size, maturity, and pack requirements to better reflect current industry operating and marketing practices; (2) authorization for continued shipments of "CA Utility" quality nectarines and peaches during the 2006 and subsequent seasons to meet buyer needs; (3) establishment of weight-count standards for Peento type nectarines packed in volume-filled containers to assure pack uniformity; and (4) elimination of the varietal container marking requirements for nectarines and peaches to provide handlers more marketing flexibility.

Sections 916.52 and 917.41 of the orders provide authority for regulating the handling of fresh California nectarines and peaches. The regulations include grade, size, maturity, quality, pack, and container marking requirements. Such regulations are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, meet prior to and during each season to review the regulations. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The committees held such meetings on February 3, 2006, and unanimously recommended that the handling requirements be revised for the 2006 season, which was expected to begin at the end of March. No official crop estimates were available at the time of the committees' February meetings because the nectarine and peach trees were dormant. The committees subsequently met on April 27, 2006, and recommended 2006 crop estimates of 17,824,000 containers of nectarines and 20,242,000 containers of peaches. The 2006 nectarine crop is expected to be slightly smaller than the 2005 crop, which totaled approximately 18,618,000 containers. The 2006 peach crop is