



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 925**

**[Doc. No. AMS-FV-14-0049; FV14-925-3]**

**Grapes Grown in a Designated Area of Southeastern California; Order Amending Marketing Order 925**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Agreement and Order No. 925 (order), which regulates the handling of table grapes grown in a designated area of southeastern California. The amendments approved by producers in the referendum were proposed by the California Desert Grape Administrative Committee (Committee), which is responsible for the local administration of the order. The new amendments to the order will increase term lengths for Committee members and alternates from one to four fiscal periods and allow new members and alternates to agree to accept their nominations prior to selection by the Secretary. These amendments are intended to increase the Committee's effectiveness and bolster industry participation in Committee activities. The amendment proposed by the Agricultural Marketing Service (AMS) that

would add authority for periodic continuance referenda was not approved in the referendum.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Geronimo.Quinones@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of table 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." The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering table grapes grown in southeastern California.

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.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR Part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on November 5, 2013.

A proposed rule soliciting comments on the proposed amendments was issued on June 1, 2015, and published in the **Federal Register** on June 5, 2015 (80 FR 32043). No comments were received. A proposed rule and referendum order was issued on October 1, 2015, and published in the **Federal Register** on October 7, 2015 (80 FR 60570). This document directed that a referendum among table grape producers be conducted during the period of January 21, 2016 through February 4, 2016, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of table grapes represented by voters in the

referendum. The amendments to increase the length of the term of office for members and to allow members to accept their nominations prior to selection, which were recommended by the Committee were favored by 100 percent of the growers voting in the referendum. The number of votes on the third amendment, which was proposed by AMS, were exactly split 50 percent in favor and 50 percent opposed.

The amendments included in this final rule will: (1) increase the length of the term of office for Committee members and alternates from one to four fiscal periods, and (2) allow new members and alternates to agree to accept their nominations prior to selection by the Secretary.

The third amendment recommended by AMS concerning periodic continuance referenda was not approved by producers in referendum.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are approximately 12 handlers of southeastern California table grapes who are subject to regulation under the marketing order and approximately 38 table grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000 and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

Seven of the 12 handlers subject to regulation have annual table grape sales of less than \$7,500,000 according to USDA Market News Service and Committee data. Based on information from the Committee and USDA's Market News Service, it is estimated that at least 9 of the 38 producers have annual receipts of less than \$750,000.

Thus, it may be concluded that a majority of table grape handlers regulated under the order and about 9 of the producers could be classified as small entities under SBA definitions.

The amendments will provide the Committee with authority to increase the term length for members and alternates from one to four fiscal periods and allow new members and alternates of the Committee to agree to accept their nominations before the selection process begins.

The Committee's proposed amendments were unanimously recommended at a public meeting on November 5, 2013.

The Committee believes these changes represent the needs of the Committee and industry. No economic impact is expected from these amendments because they do not establish any regulatory requirements on handlers, nor do they contain any assessment or funding implications. There is no change in financial costs, reporting, or recordkeeping requirements.

Alternatives to these proposals included making no changes at this time. However, the changes are necessary to improve administration of the order to reflect current business practices. Also, streamlining the nomination and

selection process reduces the time required for completing the process annually, which would provide new members and alternates the opportunity to learn the details of the Committee's operations and business during their tenure.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the termination of the Letter of Acceptance was previously submitted to and approved by the Office of Management and Budget (OMB). As a result, the current number of hours associated with OMB No. 0581-0189, Generic Fruit Crops, will remain the same: 7,786.71 hours.

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 rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities

for citizen access to Government information and services, and for other purposes.

The Committee's meetings, at which these proposals were discussed, were widely publicized throughout the California table grape industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. The Committee meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on June 5, 2015 (80 FR 32043). Copies of the rule were mailed or sent via facsimile to all committee members and grape handlers. Finally, the rule was made available through the internet by USDA and the Office of the **Federal Register**. A 30-day comment period ending August 4, 2015, was provided to allow interested persons to respond to the proposals. No comments were received in response to the proposed order amendments.

A proposed rule and referendum order was then issued on October 1, 2015, and published in the **Federal Register** on October 7, 2015 (80 FR 60570). This document directed

that a referendum among table grape producers be conducted during the period January 21, 2016, through February 4, 2016, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of table grapes represented by voters in the referendum. Both of the Committee's proposed amendments were favored by 100 percent of those voting in the referendum. The number of votes on the third amendment were exactly split 50 percent in favor of and 50 percent opposed. However, voters representing over two thirds of the volume voted in the referendum, did not favor the third proposed amendment.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

**Order Amending the Order Regulating the Handling of  
Grapes Grown in a Designated Area of Southeastern  
California**

(a) Findings and Determinations Upon the Basis of the  
Rulemaking Record.

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby further amended, regulates the handling of table grapes grown in a Designated Area of Southeastern California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, is limited in

application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of table grapes produced or packed in the production area; and

5. All handling of table grapes produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings.

The effective date for the amendments shall be 30 days after publication in the **Federal Register**.

(c) Determinations. It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of table grapes covered under the order) who

during the period January 1, 2015, through December 31, 2015, handled not less than 50 percent of the volume of such table grapes covered by said order, as hereby amended, have executed Marketing Agreements in support of Marketing Order 925, as amended.

2. The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of January 1, 2015, through December 31, 2015, have been engaged within the production area in the production of such table grapes, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of table grapes in the production area pursuant to the declared policy of the Act.

**Order Relative to Handling**

It is therefore ordered, That on and after the effective date hereof, all handling of table grapes grown in a designated area of southeastern California shall be in

conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Associate Administrator on June 1, 2015, and published in the **Federal Register** on June 5, 2015 (80 FR 32043), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

**PART 925 - GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA**

1. The authority citation for part 925 continues to read as follows:

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

2. Revise the first sentence of § 925.21 to read as follows:

**§ 925.21 Term of office.**

The term of office of the members and alternates shall be four fiscal periods.\* \* \*

3. Revise § 925.25 to read as follows:

**§ 925.25 Qualification and acceptance.**

Any person selected as a member or alternate member of the Committee shall, prior to such selection, qualify by filing a qualifications questionnaire advising the Secretary that he or she agrees to serve in the position for which nominated.

Dated: July 5, 2016.

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Elanor Starmer  
Administrator  
Agricultural Marketing Service  
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