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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 925

[Docket No. FV98-925-2 FIR]

#### Grapes Grown in a Designated Area of Southeastern California; Revision to Container Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which revised the container requirements prescribed under the California grape marketing order. This rule continues in effect revised dimensions for three containers currently authorized for use by grape handlers regulated under the marketing order, the addition of two new containers, and several conforming and formatting changes to the container requirements. The revised container requirements conform with those recently adopted by the State of California, address the marketing and shipping needs of the grape industry, are expected to improve returns for handlers and producers, and are in the interest of consumers.

**EFFECTIVE DATE:** May 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906, or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-

2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The marketing 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 Department is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect language in § 925.304 of the order's rules and regulations which revised dimensions for three containers authorized for use by grape handlers, added two containers, and made several conforming and formatting changes to the grape container requirements. The

revision to container requirements in § 925.304(b) brought the requirements into conformity with those recently adopted by the State of California, addressed the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule also continues in effect a change to paragraphs (a), (b), and (f) of § 925.304 wherein a California Department of Food and Agriculture (CDFA) reference was changed from "California Administrative Code (Title 3)" to "Title 3: California Code of Regulations" (CCR), continues in effect the removal of an incorrect CCR section number referenced in § 925.304(b), and the addition of the correct CCR section number in § 925.304(b) of the order's rules and regulations.

Section 925.52(a)(4) of the grape marketing order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Prior to the publication of the interim final rule (63 FR 655, January 7, 1998), § 925.304(b)(1) of the order's rules and regulations required grapes handled under the marketing order to meet the requirements of §§ 1380.19 (14), 1436.37, and 1436.38 of the California Administrative Code (Title 3); section 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorized eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers and also authorized the Committee to approve other types of containers for experimental or research purposes; and § 925.304(f) stated that certain container and pack requirements cited in the container regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference, and that notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of

California at Kearney Agricultural Center at Parlier. Dr. Shorey looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. He monitored numerous shipments from the field to the grocery store. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48×40-inch pallets and that container minimum net weights should be reduced by 2 pounds.

Based on these conclusions, the Committee recommended and the Secretary approved in March 1996 (61 FR 11129, March 19, 1996) reducing the minimum net weight requirements, and adding the 38S and 38T containers to enhance the deliverability of grapes.

Since that time, the CDFA changed the name of the California Administrative Code (Title 3) to Title 3: California Code of Regulations (CCR), and published several amendments to the CCR which added the 38U and 38V containers. It was noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) did not conform to those adopted by the State of California and that conforming changes were needed in those subparagraphs.

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's rules and regulations. The Committee recommended the following changes to § 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19½ inches (outside) to 19½ to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6⅝ to 7½ inches (inside) to 5½ to 7½ inches (inside), that the width be expanded from 13⅝ inches (outside) to 13⅝ to 13⅝ inches (outside), and that the length be expanded from 15⅝ inches (outside) to 15 5/16 to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several conforming and formatting changes be made to clarify which sections of the CCR pertain to grapes, and make the regulations more reader friendly.

Specifically, the conforming and formatting recommendations included removing § 1380.19(14) because no such section existed in the CCR; adding CCR §§ 1380.14 and 1380.19(n) to the regulation to make the regulation consistent with the State of California's code; and listing the authorized containers and dimensions in chart form, rather than narrative form.

Imported grapes are not impacted by this action. Container and pack requirements are not required under the section 8e table grape import regulation (7 CFR part 944.503).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 27 handlers of California grapes subject to regulation under the order and approximately 80 grape producers in the production area. Small agricultural service firms are 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 have been defined as those having annual receipts of less than \$500,000. Ten of the 27 handlers subject to regulation have annual grape sales of at least \$5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least \$500,000, excluding receipts from any other sources, and the remaining 10 producers have annual sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers are classified as small entities.

This rule continues in effect modifications to language in § 925.304 of the order's rules and regulations which revised the dimensions of three containers authorized for use by grape handlers, added two containers, and made several conforming and formatting changes. The revision to container requirements in § 925.304(b) brought the container requirements into conformity

with those recently adopted by the State of California, addressed the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule continues in effect changes in paragraphs (a), (b), and (f) of § 925.304, wherein the term "California Administrative Code (Title 3)" was changed to "Title 3: California Code of Regulations" (CCR), continues in effect the removal of an incorrect CCR section number referenced in § 925.304(b), and the addition of the correct CCR section number in § 925.304(b) of the order's rules and regulations.

Section 925.52(a)(4) of the grape marketing order provides authority for size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Prior to the publication of an interim final rule (63 FR 655, January 7, 1998), § 925.304(b)(1) of the order's rules and regulations outlined container and pack requirements which required grapes to meet the requirements of §§ 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3). Section 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorized eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers and also authorized the Committee to approve other types of containers for experimental or research purposes. Section 925.304(f) stated that certain container and pack requirements cited in the container regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference, and that notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. Dr. Shorey looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. He monitored numerous shipments from the field to the grocery store. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48×40-inch pallets and that

container minimum net weights should be reduced by 2 pounds.

Based on these conclusions, the Committee recommended and the Secretary approved reducing the minimum net weight requirements, and adding the 38S and 38T containers in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, the CDFA changed the name of the California Administrative Code (Title 3) to Title 3: California Code of Regulations (CCR), and published several amendments to the CCR which added the 38U and 38V containers. It was noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) did not conform to those adopted by the State of California, and that the dimensions needed to conform with those requirements.

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's rules and regulations. The Committee recommended the following changes to § 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19½ inches (outside) to 19½ to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6⅝ to 7½ inches (inside) to 5½ to 7½ inches (inside), that the width be expanded from 13⅛ inches (outside) to 13⅛ to 13⅝ inches (outside), and that the length be expanded from 15⅞ inches (outside) to 15⅞ to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several conforming and formatting changes be made to clarify which sections of the CCR pertain to grapes and to make the regulations more reader friendly. Specifically, the conforming and formatting recommendations included removing § 1380.19(14) because no such section exists in the CCR; adding CCR §§ 1380.14 and 1380.19(n) to the marketing order regulation to make it consistent with the State of California's code; and listing the authorized containers and dimensions in chart form, rather than narrative form.

At the meeting, the Committee discussed the impact of these revisions on handlers and producers in terms of

cost. The new width and length dimensions for the 38R and 38T containers listed in the marketing order fit within the dimensions for the new 38R and 38T containers as defined in the CCR. Therefore, handlers and producers will be able to continue using their current supply of 38R and 38T containers or purchase the new containers. This will have minimal impact on the industry as the cost for the new containers is expected to be less than the 38R and 38T containers utilized last shipping season.

The 38Q container depth and width dimensions listed in the marketing order did not fit within the new depth and width dimensions for the new 38Q container as defined in the CCR. Therefore, handlers need to utilize new containers. The Committee surveyed handlers and determined that none have stocks of 38Q containers. According to industry members, the new 38Q containers will cost handlers \$0.20 less per container. This cost savings may be passed on to producers.

The Committee estimated that the 1998 crop will be approximately 8,000,000 lugs. It is estimated that 2 to 3 percent of the crop (160,000 to 240,000) lugs will be packed into 38Q containers. The Committee estimated that a minimal amount of grapes will be shipped in the new 38U and 38V containers this shipping season, but determined that handlers should have these containers available for use.

The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this revision, including not revising the dimensions for the 38Q, 38R, and 38T containers, and not adding the 38U and 38V containers, but determined that handlers and producers should benefit from this change. The new and revised containers, which conform to California state requirements, fit on the standard 48x40-inch pallet, address the marketing and shipping needs of the grape industry, and accommodate the reduced net weight requirements established by the industry in March 1996. Thus, the Committee members unanimously agreed that the 38Q, 38R, and 38T container dimensions should be revised, that the 38V and 38U containers should be added to containers authorized under the marketing order, and that conforming and formatting changes should be made to reflect the appropriate sections of the CCR, and to make the regulations more reader friendly.

This action imposes no additional reporting or recordkeeping requirements

on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 12 members, of which 8 are handlers and producers, 1 is a producer only, and 2 are handlers only. The twelfth Committee member is the public member. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 7, 1998. Copies of the rule were mailed by the Committee's staff to all Committee members and grape handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 9, 1998. One comment was received during the comment period in response to the interim final rule. The commenter, representing the California Grape and Tree Fruit League, expressed support for this action. Accordingly, no changes will be made to the rule as published, based on the comments received.

This action does not impact the importation of grapes. Container and pack requirements are not required under the section 8e table grape import regulation (7 CFR part 944.503).

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (63 FR 655, January 7, 1998) will tend to effectuate the declared policy of the Act.

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

Grapes, Marketing agreements and orders, reporting and recordkeeping requirements.

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

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 63 FR 655 on January 7, 1998, is adopted as a final rule without change.

Dated: March 30, 1998.

**Sharon Bomer Lauritsen,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-8785 Filed 4-2-98; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 959**

[Docket No. FV98-959-1 FIR]

**Onions Grown in South Texas;  
Decreased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1997-98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** May 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 1997, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 1997-98 and subsequent fiscal periods from \$0.07 per 50-pound container or equivalent to \$0.05 per 50-pound container or equivalent.

The Texas onion marketing order provides authority for the Committee, with the approval of the Department, to

formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997-98 administrative expenses of \$100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in July 1997. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 6, 1997, and unanimously recommended 1997-98 expenditures of \$245,000 and an assessment rate of \$0.05 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were \$448,000. The assessment rate of \$0.05 is \$0.02 less than the rate previously in effect. At the former rate of \$0.07 per 50-pound container or equivalent, the assessment income would have exceeded anticipated expenses by about \$35,000, and the projected reserve of \$220,000 on July 31, 1998, would have exceeded the level the Committee believes to be adequate to administer the program. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The reduced assessment rate is expected to bring assessment income closer to the amount necessary to administer the program for the 1997-98 fiscal period.

Major expenses recommended by the Committee for the 1997-98 fiscal period include \$80,912 for personnel and administrative expenses, \$45,000 for compliance, \$33,088 for promotion, and \$86,000 for onion breeding research. Budgeted expenses for these items in