

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 925

[Docket No. FV04-925-1 IFR]

#### Grapes Grown in a Designated Area of Southeastern California; Establishment of Reporting Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes end-of-season reporting requirements authorized under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler. Handler costs also are expected to be reduced because the submission of end-of-season grape shipment reports will be less costly and less time consuming than yearly handler audits.

**DATES:** Effective April 23, 2004; comments received by June 21, 2004, will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by June 21, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov) or [www.regulations.gov](http://www.regulations.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, 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 George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in 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 Department of Agriculture (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 establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler each year. This action also is expected to reduce handler costs because submission of end-of-season grape shipment reports is expected to be less costly and less time consuming than yearly handler audits. This action is in the best interest of producers and handlers.

Section 925.41 of the grape order provides authority to assess each person who first handles grapes a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 925.215 of the order's rules and regulations establishes an assessment rate of \$0.015 per 18-pound lug for grapes grown in a designated area of southeastern California.

Section 925.60(b) of the grape order provides authority for establishing reporting requirements. Under the marketing order, the Committee may, with the approval of the Secretary, establish reporting requirements to collect necessary information or data. The Committee needs data on grape shipments to provide an accurate basis for handler assessments and for the next season's marketing decisions.

Currently, the Committee obtains data on grape shipments during handler audits at the end of the season. These

handler audits are time consuming and expensive for both the Committee staff and grape handlers. Detailed information follows on these burdens in the Initial Regulatory Flexibility Analysis section of this document.

Therefore, at its January 15, 2004, meeting the Committee unanimously recommended establishing § 925.160 under the order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will read as follows: "Section 925.160 Reports. When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC-3) to the Committee no later than 10 days after the last day of shipment for the season or such later time as the Committee deems appropriate. Such reports shall show the reporting period (the date of the handler's first shipment and the date of the handler's last shipment), the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state or country), and the number of lugs shipped (pounds)."

The end-of-season grape shipment reporting requirements recommended by the Committee are similar to those required by the California Table Grape Commission (Commission) under a State of California program under which grape research and promotion activities are implemented. Because the Commission is prohibited from sharing confidential handler information, the Committee recommended that an end-of-season grape shipment report be developed for Committee use. Grape shipment data already compiled by handlers for the Commission may be attached to the Committee form to meet the new reporting requirements. Thus, handlers will not be duplicating their efforts and both agencies will receive necessary shipment data for respective program purposes.

The Committee estimates that this action will impact 20 handlers of grapes and further estimates that, on average, each handler will expend approximately 30 minutes per year to prepare and submit this report and accompanying information to the Committee. The Committee believes that this action will reduce handler costs, because the execution and submission of the end-of-season grape shipment report to the Committee is expected to be less costly and time consuming than yearly audits. The Committee vote was unanimous with 9 in favor, 0 opposed, and 0

abstained. This change does not impact the grape import regulation.

#### Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the 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 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. Eight of the 20 handlers subject to regulation have annual grape sales of at least \$5,000,000. In addition, 10 of the 50 producers have annual sales of at least \$750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This rule establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler each season. This action also is expected to reduce handler costs, because the preparation and submission of end-of-season grape shipment reports is expected to be less costly and less time consuming than yearly handler audits. This action is in the best interest of producers and handlers.

Section 925.41 of the grape order provides authority to assess each person who first handles grapes a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 925.215 of the order's rules and regulations establishes an assessment rate of \$0.015 per 18-pound

lug for grapes grown in a designated area of southeastern California.

Section 925.60(b) of the grape order provides authority for establishing reporting requirements. Under the marketing order, the Committee may, with the approval of the Secretary, establish reporting requirements to collect necessary information or data. The Committee needs data on grape shipments to provide an accurate basis for handler assessments and for the next season's marketing decisions.

Currently, the Committee obtains data on grape shipments during handler audits at the end of the season. These handler audits are time consuming and expensive for both the Committee staff and grape handlers.

Therefore, at its January 15, 2004, meeting the Committee unanimously recommended establishing § 925.160 under the order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will read as follows: "Section 925.160 Reports. When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC-3) to the Committee no later than 10 days after the last day of shipment for the season or such later time as the Committee deems appropriate. Such reports shall show the reporting period (the date of the handler's first shipment and the date of the handler's last shipment), the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state), and the number of lugs shipped (pounds)."

The end-of-season reporting requirements recommended by the Committee are similar to those now required by the California Table Grape Commission (Commission). The Commission administers a State of California research and promotion program for grapes produced in California. Because the Commission is prohibited from sharing confidential handler information, the Committee recommended that an end-of-season grape shipment report be developed for Committee use. Shipment data currently compiled by handlers for the Commission will be able to be attached to the newly developed Committee form to meet the Committee's shipment information needs. Thus, handlers will not be duplicating their efforts and both agencies will receive necessary shipment data for program activities. The Committee estimates that 20 grape handlers will be affected by this action with a total annual industry burden of

approximately 10 hours (20 handlers  $\times$  30 minutes = 10 hours).

The Committee believes that this action will reduce handler costs because the preparation and submission of the end-of-season grape shipment report to the Committee is expected to be less costly and time consuming than yearly audits. Currently, the 20 grape handlers regulated under the order pay approximately \$5,283 and expend approximately 126 man-hours annually for the yearly audits. Approximately  $\frac{1}{3}$  of the handler audits will continue to be conducted by the Committee for order compliance purposes. Therefore, the Committee estimates that an annual savings of \$3,698 and 88 man-hours for handlers will be realized through the use of the end-of-season shipment reports.

Additionally, this rule is expected to reduce the number of hours of Committee staff time and administrative costs currently incurred by the Committee in conducting handler audits. In conducting audits of all industry handlers, the Committee annually spends about \$3,600 and about 300 man-hours. If only one-third of the handlers are audited each year, the Committee expects to save about \$2,400 and about 200 hours of Committee time. Thus, actual Committee costs using the new shipment form should be about \$1,200 and 100 man-hours.

The Committee discussed alternatives to this change, including requiring handlers to submit the end-of-season grape shipment report 5 days after the end of the season. The Committee rejected the 5-day requirement, as they believe handlers need at least 10 days to complete end-of-season handler activities. Additionally, the Committee considered not establishing an end-of-season grape shipment report, but concluded, as previously mentioned, that adding an end-of-season grape shipment reporting requirement will significantly reduce handler costs, as submission of this report will be less costly and less time consuming than yearly handler audits. The Committee vote was unanimous with 9 in favor, 0 opposed, and 0 abstained. This rule is in the interest of handlers and producers. These revisions do not impact the grape import regulation.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the January 15, 2004, and February 5, 2004, meetings were public meetings and all entities,

both large and small, were able to express their views on these issues.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

As previously mentioned, this rule will impose some additional reporting and recordkeeping on both small and large grape handlers. This action requires one new Committee form. The information collection requirements are discussed later in this document. 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.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS has requested and obtained emergency approval from the Office of Management and Budget (OMB) for a new information collection request for Marketing Order No. 925, regulating the handling of grapes grown in a designated area of Southeastern California. This emergency approval was assigned OMB No. 0581-0220. The emergency request was necessary because insufficient time was available to follow normal clearance channels. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

**Title:** Grapes Grown in a Designated Area of Southeastern California; Marketing Order No. 925.

**OMB Number:** 0581-0220.

**Type of Request:** New collection.

**Abstract:** These information collection requirements are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California Desert Grape marketing order program, which has been operating since 1980.

On January 15, 2004, the Committee unanimously recommended the establishment of § 925.160 under the

order's rules and regulations and further clarified this recommendation at its February 5, 2004, meeting. Section 925.160 will require handlers to furnish an end-of-season grape shipment report (CDGAC-3) to the Committee staff no later than 10 days after the last day of shipment for the season, or such later time, as the Committee deems appropriate. Any handler who ships grapes during the season will be required to report total shipments, and related information, to the Committee. The information requirements created by this action will be reported using one new Committee form, and by attaching shipment information required under the State of California research and promotion program to that form. The new reporting requirement will assist the Committee in obtaining accurate shipment data for assessment billing and for the next season's marketing decisions.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

#### *End of Season Shipment Report, CDGAC Form No. 3*

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 30 minutes per response.

**Respondents:** Persons who ship California grapes from a designated area of Southeastern California.

**Estimated Number of Respondents:** 20.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Total Annual Burden on Respondents:** 10 hours.

**Comments:** Comments are invited on:

- (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0220 and the Marketing Order for Grapes Grown in a Designated Area of Southeastern California and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments timely received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation was needed, AMS has obtained emergency approval from OMB for the use of this form for the 2004 regulation period, which began April 2004. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

In summary, this rule establishes end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee will enable the Committee to obtain accurate shipment data for assessment billing and for the next season's marketing decisions without incurring the expense of auditing every handler. This action also is expected to reduce the handler costs, because the submission of end-of-season grape shipment reports should be less costly and less time consuming than yearly handler audits. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action adds end-of-season grape shipment reporting requirements to facilitate handler and committee staff operations and to reduce costs; (2) the Committee unanimously recommended the end-of-season reporting requirement at a public

meeting and interested parties had an opportunity to provide input; (3) California grape shipments are expected to begin approximately April 20, 2004, and this rule should be in effect as soon as possible; (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

Grapes, Marketing agreements and orders, 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 7 CFR part 925 continues to read as follows:

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

■ 2. Section 925.160 is added to Subpart—Rules and Regulations to read as follows:

##### § 925.160 Reports.

When requested by the California Desert Grape Administrative Committee, each shipper who ships grapes, shall furnish an end-of-season grape shipment report (CDGAC-3) to the Committee no later than 10 days after the last day of shipment for the season or such later time the Committee deems appropriate. Such reports shall show the reporting period, the name and other identification of the shipper and grower, the invoice number, shipping date, varietal name, shipment destination (city and state), and the number of lugs shipped (pounds).

Dated: April 16, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-9097 Filed 4-21-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04-981-1 FIR]

#### Almonds Grown in California; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a

final rule, without change, an interim final rule, which decreased the assessment rate established for the Almond Board of California (Board) for the 2003-04 and subsequent crop years from \$0.025 to \$0.020 per pound of almonds received. The Board locally administers the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** May 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Martin Engeler, Assistant 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 George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in 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."

USDA 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, California almond 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 almonds