

invoice or other billing statement if the electronic invoice or other billing statement containing the statement set forth in paragraph (f)(3)(i) is sent to the buyer and the electronic transmission can be verified. The licensee will be deemed to have given notice to the buyer of its intent to preserve trust benefits if the licensee can verify that the electronic invoice or other billing statement was sent to a third party electronic transaction vendor designated by the buyer. The licensee will have met the requirement of giving the buyer written notice of intent to preserve trust benefits using electronic means if it can verify that the electronic data invoice or other billing statement was transmitted to the buyer, or its designated electronic transaction vendor, irrespective of whether or not the buyer or third party vendor downloads or accepts the trust statement.

(5) If a buyer conducts its transactions in perishable agricultural commodities using an electronic system, the buyer or its third party electronic vendor must allow sufficient space for the seller to include the required trust statement of intent to preserve trust benefits in the buyer's electronic invoices or other billing statement forms. A buyer or its designated third party electronic vendor must accept a seller's notice of intent to preserve benefits under the trust using the required trust statement, whether in documentary or electronic form, as set forth in paragraphs (d) and (f) of this section. Any act or omission which is inconsistent with this responsibility is unlawful and in violation of Section 2 of the Act (7 U.S.C. 499b).

Dated: May 23, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-10262 Filed 5-29-07; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 925

[Docket No. AMS-FV-07-0028; FV07-925-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the reporting requirements established under the California desert grape marketing order,

which regulates the handling of grapes grown in a designated area of Southeastern California. The marketing order is administered locally by the California Desert Grape Administrative Committee (CDGAC or committee). This rule requires handlers to provide an annual report to the committee which lists the acreages devoted to grapes for fresh shipment, the owners and locations of the acreages, and varieties produced thereon that the handler will be handling during the upcoming season. This change allows the committee to collect information on the acreage and varieties of desert grapes regulated under the marketing order, thus improving data collection and the efficient operation of the program.

**EFFECTIVE DATES:** May 31, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@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 final rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of 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 Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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 final rule changes the reporting requirements under the order by requiring handlers to file an annual acreage survey which lists the acreages devoted to grapes, the locations and owners of the acreage, and varieties produced thereon for fresh shipment that the handler will be handling during the upcoming season. The form provides information necessary for the committee to estimate annual production, determine the necessary assessment rate, and establish an annual budget of expenses. This change was unanimously recommended by the committee at a meeting on February 6, 2007.

Section 925.60 provides authority for the committee, with the approval of USDA, to require handlers to furnish information to the committee. Currently, § 925.60(a) requires handlers to file reports of shipments of grapes. Under § 925.60(b), the committee is authorized, with the approval of USDA, to require handlers to furnish such other information as it may prescribe and may be necessary to enable the committee to perform its duties under the order.

The acreage survey is currently an approved form authorized for use by the committee. The form was initially included so that the committee could, at some future time, recommend requiring handlers to use the form if it were determined that aggregating information on grape acreage would provide a benefit to the industry.

The committee met on February 6, 2007, and discussed the grape acreage survey. At this time, the committee believes the report would provide valuable information and unanimously recommended that it be a mandatory report, such as those authorized under § 925.60. This change is intended to enhance the efficient operation of the program by permitting the committee to collect production data, which, in turn, would allow them to have more accurate information for establishing a crop estimate, determining an

assessment rate, and developing an annual budget of expenses.

### Final 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 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 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 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000 and defines small agricultural service firms as those whose annual receipts are less than \$6,500,000.

Last year, six of the 20 handlers subject to regulation had annual grape sales of at least \$6,500,000. In addition, 10 of the 50 producers had annual sales of at least \$750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This final rule revises § 925.160 of the order's rules and regulations to include the requirement that handlers file an annual grape acreage survey.

This final rule imposes minimal additional costs on handlers regulated under the order. The benefits of this proposed rule are not expected to be disproportionately greater or less for small handlers than for large entities.

At the meeting, the committee discussed an alternative to this change, which would be to ask handlers to voluntarily report grape acreage. However, under voluntary reporting it is possible that all handlers would not report the information, making it difficult for the committee to aggregate accurate information for the committee's crop estimate, assessment rate, and budget of expenses. The committee agreed that this alternative would not be in the best interest of the committee and the industry, and unanimously recommended mandating the report.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection

requirements that are contained in this rule are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581-0189, Generic OMB Fruit Crops.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The 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.

Further, the committee's meeting on February 6, 2007, was widely publicized throughout the desert grape industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations. Like all committee meetings, the February 6, 2007, meeting was a public meeting; and all entities, both large and small, were encouraged to express their views on this issue. All interested persons were invited to attend this meeting and encouraged to participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on April 16, 2007 (72 FR 18922). Copies of the rule were provided to all committee members and regulated handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending May 1, 2007, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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.

After consideration of all relevant matters presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the order regulations went into effect on April 20, 2007, and the committee needs to have the information during this crop year. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided in the proposed rule.

### 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 7 CFR part 925 continues to read as follows:

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

■ 2. In § 925.160, the current paragraph is redesignated as paragraph (a), and a new paragraph (b) is added to read as follows:

#### **§ 925.160 Reports.**

(a) \* \* \*

(b) When requested by the California Desert Grape Administrative Committee (CDGAC), each shipper who ships grapes shall furnish to the committee at such time as the committee shall require, an annual grape acreage survey (CDGAC Form 7), which shall include, but is not limited to, the following: The applicable year in which the report is requested; the names of the shipper (handler) who will handle the grapes and the grower who produces them; the location of each vineyard; the variety or varieties grown in each vineyard; and the bearing, non-bearing, and total acres of each vineyard.

Dated: May 23, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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