

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

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2004, an assessment rate of \$0.195 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.258 is revised to read as follows:

§ 917.258 Assessment rate.

On and after March 1, 2004, an assessment rate of \$0.19 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-18616 Filed 8-13-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV04-925-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim final rule which established 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 enables 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 will continue to be reduced because the submission of end-of-season grape shipment reports is expected to be less costly and less time consuming than yearly handler audits.

DATES: Effective Date: September 15, 2004.

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.

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."

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 end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee enables 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. Handler costs will continue to be reduced 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.

Prior to publication of the interim final rule (69 FR 21689, April 22, 2004), the Committee obtained data on grape shipments during handler audits at the end of the season. These handler audits were time consuming and expensive for both the Committee staff and grape handlers. Detailed information follows on these burdens in the Final Regulatory Flexibility Analysis section of this document.

Therefore, at its January 15, 2004, meeting and as clarified at its February 5, 2004, meeting, the Committee unanimously recommended and USDA subsequently approved establishment of § 925.160 under the order's rules and regulations. Section 925.160 reads 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 and subsequently approved by the USDA 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 will 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 continue to 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 continue to 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 nine in favor, zero opposed, and zero abstained. This revision does not impact the grape import regulation.

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 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 continues in effect end-of-season reporting requirements authorized under the California grape order. Requiring handlers to file end-of-season grape shipment reports with the Committee enables 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. Handler costs will continue to be reduced 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 925.60(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.

Prior to issuance of the interim final rule, the Committee obtained 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 and as further clarified at the Committee's February 5, 2004, meeting,

the Committee unanimously recommended and USDA subsequently approved establishing § 925.160 under the order's rules and regulations. Section 925.160 reads 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 and subsequently approved by the USDA 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 × 30 minutes = 10 hours).

The Committee believes that handler costs will continue to be reduced 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. Prior to issuance of the interim final rule, the 20 grape handlers regulated under the order paid approximately \$5,283 and expended approximately 126 man-hours annually for the yearly audits. Approximately 1/3 of the handler audits will continue to be conducted by the Committee for order compliance purposes each year. Therefore, the Committee continues to estimate 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 continue to affect the reduction in the number of hours of Committee staff time and administrative costs incurred by the Committee in conducting handler audits. Prior to issuance of the interim final rule, the Committee, in conducting audits of all industry handlers, annually spent 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 nine in favor, zero opposed, and zero 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.

An interim final rule concerning this action was published in the **Federal Register** on April 22, 2004. Copies of the rule were mailed, e-mailed or faxed by the Committee 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 and USDA. That rule provided for a 60-day comment period which ended June 21, 2004. No comments were received.

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 continues to impose some additional reporting and recordkeeping on both small and large grape handlers. This action continues to require one new Committee form. The information collection requirements are discussed below. 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 final approval by OMB, 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 and the USDA subsequently approved the establishment of § 925.160 under the order's rules and regulations, as further clarified by the Committee at its February 5, 2004, meeting. Section 925.160 requires 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 assists 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.

No comments were submitted on this information collection. 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 final approval by OMB, this collection will be merged with the forms currently approved for use under OMB No. 0581-0189 "Generic OMB Fruit Crops."

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 21689, April 22, 2004) 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 69 FR 21689 on April 22, 2004, is adopted as a final rule without change.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-18609 Filed 8-13-04; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV04-956-1 FIR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Special Purpose Shipping Regulations and Modification of Reporting Requirements

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 that established procedures to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area established under the Walla Walla sweet onion marketing order, and modified handler reporting requirements. The marketing order regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). Allowing sweet onion market preparation to occur outside the production area increases the marketing options for Walla Walla sweet onions and may reduce marketing costs. Modification of the reporting requirements contributes to the efficient operation of the program and enhances compliance with the special purpose shipment procedures established in this rule.

EFFECTIVE DATE: September 15, 2004.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue,

Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724; Fax: (503) 326-7440; or e-mail:

Barry.Broadbent@usda.gov; 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*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, 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 the 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 the 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 the 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.

Minimum grade, size, maturity, container, and pack requirements are authorized under the order, but currently only container markings are regulated. This rule continues in effect the implementation of procedures and safeguard requirements that allow grading, packing, or storing of Walla Walla sweet onions outside the production area, but within the States of Oregon and Washington. Persons desiring to ship, as well as those desiring to receive Walla Walla sweet onions for grading, packing, or storing outside the production area must apply and report to the Committee on forms provided by the Committee. This rule also continues in effect the additional requirement that handlers must submit a preseason registration form as well as provide additional information on the handler's shipment statement.

Section 956.63 of the order provides authority for the USDA to issue special regulations to facilitate the shipping of Walla Walla sweet onions for grading, packing, or storing outside the production area. Further, § 956.66 provides authority for the establishment of such safeguards as may be necessary to ensure that Walla Walla sweet onions are shipped for the purpose so authorized. Reporting requirements are authorized in § 956.80.

The Committee met on December 8, 2003, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area. At that meeting, the Committee also unanimously recommended expanding the current handler reporting requirements to include a preseason registration form. The Committee met again on February 10, 2004, and made a unanimous recommendation to broaden the scope of the handler shipment statement to include a listing of producers whose product was handled and the quantity handled for each producer. Committee members believe that this rule will: (1) Allow shippers to use grading, packing, or storing facilities that will be most beneficial to their individual circumstances; (2) contribute to the efficient operation of the program by improving Committee information; and (3) enhance compliance with the provisions of the order.

The grading, packing, and storing costs associated with preparing Walla Walla sweet onions for market may vary between onion packing facilities inside and outside the production area. There may also be differences in the type and variety of packaging options, the transportation alternatives available, or