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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS-FV-14-0100; FV15-925-1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Revision to the Administrative Rules and Regulations for Shipments to Charitable Organizations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the California Desert Grape Administrative Committee (Committee) to revise the administrative rules and regulations of the Federal marketing order for grapes grown in a designated area of southeastern California (order) and the table grape import regulation. The Committee is responsible for the local administration of the order. This proposal would allow handlers and importers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations. Any such grapes would not be used for resale. This proposal also announces the

Agricultural Marketing Service's (AMS) intention to seek the Office of Management and Budget's (OMB) approval on a new form that would revise the currently approved information collection issued under the order.

The import regulation is authorized under section 608e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. The proposal would provide an additional outlet for grapes regulated under the order and would assist USDA's efforts to reduce food waste in support of the U.S. Food Waste Challenge.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Kathie.Notoro@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 608e (8e) of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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 no later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule invites comments on revising the order's administrative rules and regulations and the import regulations to allow handlers and importers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations.

Any such grapes would not be used for resale. This action would provide an additional outlet for grapes regulated under the order and would support USDA's efforts to reduce food waste under the U.S. Food Waste Challenge. The change in the import regulation is required under section 8e of the Act. These proposed actions were unanimously recommended by the Committee following deliberations at public meetings held on November 5, 2013, and a required new Food Donation Form (CDGAC Form No.8) was subsequently approved at a meeting held on October 30, 2014.

Section 925.54 of the order provides that regulations in effect pursuant to § 925.41, § 925.52, or § 925.55 may be modified, suspended, or terminated to facilitate handling of grapes for purposes which may be recommended by the Committee and approved by the Secretary, and that rules, regulations, and safeguards shall be prescribed to prevent grapes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section.

This proposed rule would amend § 925.304 of the administrative rules and regulations to provide an outlet for grapes failing to meet inspection and quality requirements. The proposal would allow handlers to donate

such grapes to charitable organizations. Any such grapes would not be used for resale.

Accordingly, to prohibit such donated grapes from being sold, and to prevent other unauthorized distribution of such shipments, the Committee recommended that CDGAC Form No. 8 be developed with signatures required that would track the shipment of these grapes and verify their receipt by the intended charitable organization. Therefore, this proposal also announces the Agricultural Marketing Service's (AMS) intent to request a revision to the current OMB-approved information collection which would add a new form and reporting requirement.

Section 925.60 of the order provides authority for the Committee, with the approval of USDA, to require handlers to furnish reports and information to the Committee as needed to enable the Committee to perform its duties under the order. This proposal would revise § 925.160 (c) of the order's administrative rules and regulations. It would require handlers donating grapes to a charitable organization to ensure CDGAC Form No.8 is completed, signed, and furnished to the Committee within two days of receipt by the intended charity.

These proposed actions were unanimously recommended by

the Committee following deliberations at public meetings held on November 5, 2013, and the proposed new form was subsequently approved at a meeting held on October 30, 2014. This proposed action would provide handlers and importers with an outlet for grapes that do not meet minimum quality requirements, and supports the U.S. Secretary of Agriculture's initiative to reduce, recover, and recycle food in conjunction with the U.S. Food Waste Challenge.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation) and safeguard procedures for certain commodities exempt from these requirements are established under § 944.350. A change in the California Desert Grape Regulation 6, § 925.304, that would allow table grapes to be donated to charitable organizations, would require a corresponding change to the requirements for imported table grapes. Similar to the domestic industry, this proposed action would allow importers to donate table grapes to charitable organizations. Sections 944.350(a)(1) and 944.503 (d) and (e) would be revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule 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 businesses 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.

There are approximately 14 handlers of southeastern California table grapes who are subject to regulation under the marketing order and approximately 41 grape producers in the production area. In addition, there are about 102 importers of grapes. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201).

Eleven of the 14 handlers subject to regulation have annual grape sales of less than \$7,000,000 according to USDA Market News Service and Committee data. Based on information from the Committee and USDA's Market News Service, it is estimated that at least 10 of the 41 producers have annual receipts of less than \$750,000. Thus, it may be concluded that a majority of grape handlers regulated under the order and about 10 of the producers could be classified as small entities under the SBA definitions.

Mexico, Chile, and Peru are the major countries that export table grapes to the United States. According to 2014 data from USDA's Foreign Agricultural Service (FAS), shipments of table grapes imported into the United States from Mexico totaled 17,042,386 18-pound lugs, from Chile totaled 38,466,540 18-pound lugs, and from Peru totaled 5,065,653 18-pound lugs. According to FAS data, the total value of table grapes imported into the United States in 2014 was \$1,189,848,000. It is estimated that the average importer received \$11.7 million in revenue from the sale of table grapes in 2014. Based on this information, it may be concluded that the average table grape importer is not classified as a small entity.

This proposal would revise § 925.160 of the administrative rules and regulations under the order to require handlers to report to the Committee any grapes donated to charitable organizations. It would also revise § 925.304 of the order's administrative rules and regulations to allow grapes that do not meet minimum quality requirements, yet are still desirable for human consumption, to be donated to charitable organizations. These changes would allow the industry to participate in the U.S. Food Waste Challenge while ensuring that donated grapes are only distributed as authorized. Authority for permitting Special Purchase Shipments is provided in § 925.54. The requirement for handlers to report this information to the Committee is provided in § 925.60 of the order.

The Committee's proposal to authorize donation of grapes to charitable organizations was unanimously recommended at a public meeting on November 5, 2013. The Committee presented the Food Donation Form CDGAC No. 8 at its meeting on October 30, 2014, and subsequently submitted it to AMS for further approval. There would be no direct financial effects on producers or handlers. Authority for the change to the table grape import regulation is provided

in section 8e of the Act.

The Committee believes this change would be beneficial to industry and to the recipients of this donated food product. Very little impact is expected if the amendment is approved because the change in the regulatory requirements on handlers would be minimal. There would be one new form added to track and ensure that grapes not meeting the minimum grade and size requirements are donated to a charitable organization and not used for resale. This proposed change does not contain any assessment or funding implications. There would be no change in financial costs if the proposal is approved.

Alternatives to the proposal, include making no changes at this time, were considered. However, the Committee believes it would be beneficial to allow these grapes to be donated to charitable organizations to reduce, recover, and recycle edible food product in support of the U.S. Food Waste Challenge.

This proposed action would impose minimal additional reporting and recordkeeping burden on domestic handlers who elect to donate grapes to charitable organizations using the proposed CDGAC Form 8. All 14 handlers are in support of using this form as a potential option for diverting

grapes into non-retail channels. Any such handler would be required to submit the form to the Committee within two days of receipt by the charitable organization. It is estimated that it would take 10 minutes to complete each form. Thus, the additional annual burden should total no more than 2.34 hours for the industry. The information would be collected on CDGAC Form No. 8. That form is being submitted to OMB for approval under OMB Control No. 0581-0189, Generic OMB Fruit Crops. As with all Federal marketing order programs, 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 proposed rule.

Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Grapes are included under section 8e, and thus importers of table grapes are required to have such grapes inspected. A change that would allow certain domestic table grapes to be donated to

charitable organizations would require corresponding changes to the requirements for imported table grapes.

Importers already complete the Imports Exempt Commodity Form (FV-6), which provides for certain authorized imported commodities to be diverted to alternative channels such as processing, animal feed, and charities. Currently, table grapes are not an authorized commodity for donation; however, with this proposed change, sections 944.350(a)(1) and 944.503 (d) and (e) would be revised to allow for imported grapes to be donated for consumption by charitable organizations. This action would not change the format of the FV-6 form, nor would it affect the burden. It is unlikely to impose additional reporting and recordkeeping burden on importers who elect to donate grapes to charitable organizations. Importers will not be required to complete the proposed CDGAC Form 8. CDGAC Form 8 is only intended to cover deliveries of domestically produced grapes to charitable organizations by domestic grape handlers.

The Committee's meetings were widely publicized throughout the California table grape production area. All interested persons were invited to attend both meetings and encouraged to participate in Committee deliberations. Like

all Committee meetings, the November 5, 2013, and the October 30, 2014, meetings were public, and all entities, both large and small, were encouraged to express their views on the proposal.

Finally, interested persons are invited to submit comments on this proposed rule, including comments on the regulatory and informational impacts of this proposed 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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at his previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intent to request a revision to a currently approved information collection for fruit marketing orders, which includes the Federal marketing order for grapes grown in a designated area of Southeastern California.

Title: Generic OMB Fruit Crops.

OMB Number: 0581-0189.

Expiration Date of Approval: December 31, 2016.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The information collection requirements in this request 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, which has been operating since promulgation in 1980 and as amended in 1992.

On November 5, 2013, the Committee unanimously recommended revising the order's administrative rules and regulations to allow handlers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations. On October 30, 2014, to prevent such grapes from being resold, the Committee unanimously recommended requiring handlers who ship such grapes to report such donations on a new form, CDGAC Form No. 8. This notice concerns this report, in addition to the accompanying regulation previously discussed regarding requiring this report be submitted by handlers to the Committee.

The proposal would allow handlers and importers to

donate fruit to charities in support of the U.S. Secretary of Agriculture's initiative of reducing, recovering, and recycling food, and the U.S. Food Waste Challenge.

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

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Handlers who donate grapes grown in a designated area of southeastern California.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.34 hours.

Comments: Comments are invited on: (1) Whether the proposed 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. 0581-0189 Generic OMB Fruit Crops, and be sent to the USDA in care of the Docket Clerk at the address above. All comments 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 also become a matter of public record.

AMS is committed to compliance 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.

A 60-day comment period is provided to allow interested persons to respond to the proposal.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this 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 proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 925 and 944 continues to read as follows:

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

2. Amend § 925.160 by adding paragraph (c) to read as follows:

§ 925.160 Reports.

*** * * * ***

(c) Handlers that donate grapes to charitable organizations pursuant to § 925.304(c) shall submit a completed Food Donation Form (CDGAC Form 8) to the Committee within 2 days of receipt by the charitable organization. Such form shall include the following: The name of the producer; the name of the handler; loading

location and date; inspection location and date; Variety(s)
Federal State Inspection Service (FSIS) Certificate
number(s); lug weight (pounds); number of lugs; label;
signature of person responsible for loading at handling
facility; recipient charity name; how many lugs received;
signature of responsible charity recipient and date
received. Any such grapes shall not be used for resale.

3. Amend § 925.304 by redesignating paragraphs (c),
(d), (e), (f), and (g) as paragraphs (d), (e), (f), (g),
and (h), and adding a new paragraph (c) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(c) Donation to charitable organizations. Handlers of
grapes failing to meet the requirements of § 925.55 and
paragraph (a) of this section may donate such grapes to
charitable organizations. Any such grapes shall not be
used for resale. Handlers donating such grapes to a
charitable organization shall submit a completed Food
Donation Form, CDGAC Form No.8, as required in § 925.160
(c), within 2 days of receipt by the intended charity.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.350, revise paragraph (a) (1) to read as

follows:

§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, olives, oranges, prune variety plums (fresh prunes), and table grapes, exempt from grade, size, quality, and maturity requirements.

(a)* * *

(1) Avocados, grapefruit, kiwifruit, olives, oranges, prune variety plums (fresh prunes) and table grapes for consumption by charitable institutions or distribution by relief agencies;

* * * * *

5. Revise paragraphs (d) and (e) of § 944.503 to read as follows:

§944.503 Table Grape Import Regulation 4.

* * * * *

(d) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of processing or donation to charitable organizations, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) The grade, size, quality, and maturity

requirements of this section shall not be applicable to grapes imported for processing or donation to charitable organizations, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: September 25, 2015

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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