



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 925**

**[Doc. No. AMS-FV-14-0049; FV14-925-3]**

**Grapes Grown in a Designated Area of Southeastern California; Proposed Amendments to Marketing Order and Referendum Order**

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This rulemaking proposes three amendments to Marketing Order No. 925 (order), which regulates the handling of table grapes grown in a designated area of southeastern California. Two amendments are based on proposals made by the California Desert Grape Administrative Committee (Committee), which is responsible for the local administration of the order. These two amendments would increase term lengths for Committee members and alternates from one to four fiscal periods and would allow new members and alternates to agree to accept their nominations prior to selection. The amendments are intended to increase the Committee's effectiveness and

bolster industry participation in Committee activities.

In addition to the Committee's two amendments, the Agricultural Marketing Service (AMS) would amend the order to add authority for periodic continuance referenda which would allow producers to indicate whether or not there is continuing support for the order.

**DATES:** The referendum will be conducted from January 21, 2016 through February 4, 2016. The representative period for the purpose of the referendum is January 1, 2015 through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, 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: Geronimo.Quinones@ams.usda.gov or Michelle.Sharrow@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 proposal is issued under Marketing Order No. 925, as amended (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." Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendments of the order through this informal rulemaking action.

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. This rulemaking shall not be deemed to preclude, preempt, or supersede any State program covering table grapes grown in southeastern California.

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 entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing

agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposals are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Initial Regulatory Flexibility Analysis" section of this proposed rule.

Two amendments were unanimously recommended by the Committee following deliberations at a public meeting held on November 5, 2013. In addition to these amendments, AMS would amend the order to add authority to provide for periodic continuance referenda.

A proposed rule soliciting comments on the proposed amendments was issued on June 1, 2015, and published in the Federal Register on June 5, 2015 (80 FR 32043). No comments were received. AMS will conduct a producer referendum to determine support for the proposed

amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers in the referendum.

The Committee's proposed amendments would amend the marketing order by: (1) increasing the length of the term of office for Committee members and alternates from one to four fiscal periods, and (2) allowing new members and alternates to agree to accept their nominations prior to selection.

In addition to these proposed amendments, AMS proposes to add authority to provide for periodic continuance referenda. AMS has determined that continuance referenda are an effective means to allow the industry to indicate whether or not there exists continuing support for the marketing order. AMS would also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to the industry.

#### Proposal Number 1 - Term of Office

This proposal would amend § 925.21 by increasing the length of the term of office for Committee members and alternates from one to four fiscal periods. The change would provide more time for new members and alternates to

learn the details of the Committee's operations and business during their tenure. In addition, longer terms would eliminate the annual turnover of the Committee and the perennial need for new members and alternates. If this amendment is adopted, members and alternate members would be selected for a four-year term of office beginning with the first term after the amendments become effective.

For the reasons stated above, it is proposed that § 925.21 be modified to increase the length of the term of office for Committee members and alternates from one to four fiscal periods.

#### Proposal Number 2 - Qualification and Acceptance

This proposal would modify § 925.25 to allow new members and alternates to agree to accept their nominations prior to selection for the Committee by the Secretary.

Committee members and alternates are nominated by their peers to serve and are then selected by the Secretary. After the selections are made, Committee members and alternates are required to formally accept the appointment by signing and submitting an acceptance letter indicating they are willing to serve. The Committee believes this final step in the selection process is redundant and not efficient. The order would be revised to

specify that before a person is selected as a member or alternate member of the Committee, that person must complete a questionnaire outlining their qualifications. This would eliminate the requirement to complete and submit a separate acceptance letter after being nominated. Because the nominee qualifications questionnaire already includes a statement indicating the person is willing to serve on the Committee, if selected by the Secretary, AMS modified the proposed regulatory text originally submitted by the Committee.

For the reasons stated above, it is proposed that § 925.25 be revised to remove the requirement to file a written acceptance with the Secretary after being notified of selection.

#### Proposal Number 3 - Continuance Referenda

AMS would amend § 925.63, Termination, to require that continuance referenda be conducted every six years to gauge industry support for the order. Currently, there is no provision in the marketing order that requires periodic continuance referenda. Continuance referenda provide an industry with a means to measure grower support for the marketing order program. Since marketing orders benefit growers, it follows that they should be afforded the

opportunity to express whether they support the programs on a periodic basis. Under this proposal, the Department would consider termination of the order if less than two-thirds of the producers voting in the referendum or producers of less than two-thirds of the volume of table grapes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA would not only consider the results of the referendum. The Department would also consider all other relevant information concerning the operation of the order and its relative benefits and disadvantages in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

For the reasons stated above, it is proposed that § 925.63 - Termination, be amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to provide that a continuance referendum shall be conducted six years after the amendment becomes effective and every six years thereafter. The new paragraph (c) in this proposed rule and referendum order has been corrected to require a continuance referendum six years after the new paragraph becomes effective, not six years after part 925 becomes effective. The new paragraph (c) of § 925.63 would

further specify that the Department may terminate the order if continuance is not favored by two-thirds of the growers participating in the referendum, or voters representing two-thirds of the production volume represented in the referendum.

### **Final 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 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 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.

Based on Committee data, there are approximately 15 handlers of southeastern California table grapes who are subject to regulation under the marketing order and approximately 41 grape producers in the production area. Small agricultural service firms are defined by the Small

Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

Ten of the 15 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 SBA definitions.

The amendments proposed by the Committee would provide authority to increase the term length for members and alternates from one to four fiscal periods under the Federal marketing order for California table grapes. They also would allow new members and alternates of the Committee to agree to accept their nominations before the selection process begins. An amendment proposed by AMS would provide for continuance referenda every six years.

The Committee's proposed amendments were unanimously recommended at a public meeting on November 5, 2013.

If these proposals are approved in referendum, there would be no direct financial effects on producers or handlers. Eliminating the need to complete the election process every year would save considerable amounts of time and reduce expenses for the industry and the Committee. In addition, eliminating the acceptance letter improves the efficiency of the nomination and appointment process.

The Committee believes these changes represent the needs of the Committee and industry. No economic impact is expected if the amendments are approved because they would not establish any regulatory requirements on handlers, nor do they contain any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if either of these proposals is approved.

AMS' proposal to add a provision for continuance referenda is expected to afford producers the opportunity to indicate continuing support for the order and its programs. Support for the program is expected to benefit all producers and handlers by ensuring that the program continues to meet the industry's needs.

Alternatives to these proposals, including making no changes at this time, were considered. However, the Committee believes it would be beneficial to streamline the nomination and selection process to reduce the costs required for completing the process annually and to provide new members and alternates with more time to learn the details of the Committee's operations and business during their tenure.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the termination of the Letter of Acceptance was previously submitted to and approved by the Office of Management and Budget (OMB). As a result, the current number of hours associated with OMB No. 0581-0189, Generic Fruit Crops, would remain the same: 7,786.71 hours.

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 proposed rule.

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.

The Committee's meeting was widely publicized throughout the California table grape production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2013, meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the Federal Register on June 5, 2015 (80 FR 32043). Copies of the rule were mailed or sent via facsimile to all Committee members and table grape handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 4, 2015, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the proposed amendments.

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.

### **Findings and Conclusions**

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the June 5, 2015, issue of the Federal Register are hereby approved and adopted.

### **Marketing Order**

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of table grapes grown in a designated area of southeastern California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire proposed rule be published in the Federal Register.

### **Referendum Order**

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400-407) to determine whether the annexed order amending the order regulating the handling of

table grapes grown in a designated area of southeastern California is approved by growers, as defined under the terms of the order, who during the representative period were engaged in the production of table grapes in the production area. The representative period for the conduct of such referendum is hereby determined to be January 1, 2015 through December 31, 2015.

The agents of the Secretary to conduct such referendum are designated to be Rose Aguayo and Kathie Notoro, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, or E-mail: Rose.Aguayo@ams.usda.gov or Kathie.Notoro@ams.usda.gov, respectively.

**Order Amending the Order Regulating the Handling of  
Table Grapes Grown in a Designated Area of Southeastern  
California<sup>1</sup>**

**Findings and Determinations**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously

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<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of table grapes grown in a designated area of Southeastern California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of table grapes produced in the production area; and

5. All handling of table grapes produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**Order Relative to Handling**

It is therefore ordered, that on and after the effective date hereof, all handling of table grapes grown in a designated area of southeastern California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on June 1, 2015, and published in the Federal Register (80 FR 32043) on June 5, 2015, will be and

are the terms and provisions of this order amending the order and are set forth in full herein.

**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 - 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. Revise the first sentence of 925.21 to read as follows:

**§ 925.21 Term of office.**

The term of office of the members and alternates shall be four fiscal periods.\* \* \*

3. Revise 925.25 to read as follows:

**§ 925.25 Qualification and acceptance.**

Any person selected as a member or alternate member of the Committee shall, prior to such selection, qualify by filing a qualifications questionnaire advising the

Secretary that he or she agrees to serve in the position for which nominated.

4. Amend 925.63 by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

**§ 925.63 Termination.**

\* \* \* \* \*

(c) Within six years of the effective date of this paragraph the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds majority of voting producers, or a two thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of table grapes in the production area. Such termination shall be announced on or before the end of the production year.

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Dated: October 1, 2015.

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Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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