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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 FR]

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: Final rule.

SUMMARY: This rule implements 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 locally administers the order and is comprised of producers and handlers of grapes grown in the production area. This rule allows 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 shall not be used for resale. 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. This final rule provides an additional outlet for grapes regulated under the order and assists USDA's efforts to reduce food waste in support of the U.S. Food Waste Challenge.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops 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 Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final 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 final 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 rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 not 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 final rule revises 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 shall not be used for resale. This action provides an additional outlet for grapes regulated under the order and supports 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 actions were

unanimously recommended by the Committee following deliberations at a public meeting 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 final rule amends § 925.304 of the administrative rules and regulations to provide an outlet for grapes failing to meet inspection and quality requirements. The final rule allows handlers to donate such grapes to charitable organizations. Any such grapes may 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 developed CDGAC Form No. 8

to track the shipment of these grapes and verify their receipt by the intended charitable organization.

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 rule revises § 925.160(c) of the order's administrative rules and regulations. It requires 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 actions were unanimously recommended by the Committee following deliberations at a public meeting held on November 5, 2013, and the new form was subsequently approved at a meeting held on October 30, 2014. This action provides 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 allows table grapes to be donated to charitable organizations requires a corresponding change to the requirements for imported table grapes. Similar to the domestic industry, this action allows importers to donate table grapes to charitable organizations. Sections 944.350(a)(1) and 944.503(d) and (e) are revised accordingly.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 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 13 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 135 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Ten of the 13 handlers subject to regulation have annual grape sales of less than \$7,500,000 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

2015 U.S. Census Bureau Trade Data, shipments of table grapes imported into the United States from Mexico totaled 18,004,062 18-pound lugs, from Chile totaled 41,974,714 18-pound lugs, and from Peru totaled 4,829,483 18-pound lugs. According to USDA's Foreign Agricultural Service data, the total value of table grapes imported into the United States in 2015 was \$1,220,169,475. It is estimated that the average importer received \$9.0 million in revenue from the sale of table grapes in 2015. Based on this information, it may be concluded that the average table grape importer is not classified as a small entity.

This final rule revises § 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 also revises § 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 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 is no direct financial effect 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 is beneficial to the industry and to the recipients of this donated food product. Very little impact is expected because the change in the regulatory requirements on handlers is minimal. There is 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 change does not contain any assessment or funding implications. There is no change in financial costs.

Alternatives to the proposal, including making no changes at this time, were considered. However, the

Committee believes it is 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.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic OMB Fruit Crops. However, as a result of this action, CDGAC Form No. 8 has been submitted to OMB for approval and temporarily assigned OMB No. 0581-0290.

This action imposes minimal additional reporting and recordkeeping burden on domestic handlers who elect to donate grapes to charitable organizations using the CDGAC Form No. 8. It is estimated that the annual reporting burden for the industry will increase by 2.34 hours. All 14 handlers are in support of using this form to document the delivery of grapes to charitable organizations.

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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

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 allows certain domestic table grapes to be donated to charitable organizations requires corresponding changes to the requirements for imported table grapes.

Importers already complete the Importer's 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. With this change, §§ 944.350(a)(1) and 944.503(d) and (e) are revised to allow for imported grapes to be donated for consumption by charitable organizations.

This action does not change the format of the FV-6 form nor does 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 are not required to complete the CDGAC Form No. 8. CDGAC Form No. 8 is only intended to cover deliveries of domestically produced grapes to charitable organizations by domestic grape handlers.

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 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 this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 1, 2015 (80 FR 59077).

Copies of the rule were mailed or sent via e-mail to all Committee members and grape handlers. The rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending November 30, 2015, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in favor of the proposal. One comment simply stated that the commenter liked the proposal. The other commenter was also in favor of the proposal and recommended that the donated grapes be "rechecked" by the receiving charitable organization to ensure edibility. Table grapes that do not meet minimum grade and size requirements can still be wholesome and safe to eat. The regulations contain safeguards to ensure that table grapes donated to charitable organizations are accepted by those organizations for their intended use (food distribution) through the use of the new CDGAC Form No. 8 (for domestic grapes) and Form FV-6 (for imported grapes). The Committee and USDA believe this change helps reduce food waste by providing an outlet for wholesome and edible table grapes. No comments were received on the proposed information collection.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter 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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are amended as follows:

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

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

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

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 No. 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), respectively, 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.

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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. In § 944.503, revise paragraphs (d) and (e) 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: April 20, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service

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