Amendments to the Marketing Order of Grapes Grown in a Southeastern California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This rule invites comments on proposed amendments to Marketing Order No. 925, which regulates the handling of grapes grown in a designated area of southeastern California. Proposed amendments would change the California Desert Grape Administrative Committee’s (Committee) size, and its quorum and voting requirements.

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

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; or submitted to internet: https://www.regulations.gov. All comments should reference the document number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk.
during regular business hours, or can be viewed at: https://www.regulations.gov. All comments submitted in response to this proposed rule 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: Pushpa Kathir, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, MarketOrderComment@usda.gov.

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as 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 Committee locally administers the Order and is comprised of grape producers and handlers operating within the area of production, and a public member.

Section 8c(17) of the Act (7 U.S.C 608c (17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule and, based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed amendments. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health
and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposal has also been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering grapes grown in a designated area of Southeastern California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), 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 8c(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 8c(17) of the Act and 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 depending upon the nature and complexity of proposed amendments, potential regulatory and economic impacts on affected entities, and any other relevant matters.
AMS has considered these factors and has determined that amendments proposed herein are not unduly complex and the nature of 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.

The Committee unanimously recommended amendments following deliberations at the public meeting held on April 13, 2021. Proposals would amend the Order by changing the Committee’s size, as well as its quorum and voting requirements.

Proposal 1 – Reduce Committee Size

§ 925.20 provides that the Committee consists of 12 members and, for each member of the Committee, there must be an alternate who has the same qualifications as the member. This proposal would amend § 925.20 by reducing the size of the Committee from 12 to 10 members. The requirement that each member has an alternate with the same qualifications as the member would remain unchanged. Four members and their alternates would be producers, officers, or employees of producers (producer members). Four members and their alternates would be handlers, officers, or employees of handlers (handler members). One member and alternate would be either a producer, handler, or officer
or employee thereof. One member and alternate would represent the public.

Since promulgation of the Order in 1980, the California table grape industry has seen reductions of about 55% of its producers and 58% of registered handlers. Natural industry consolidation and land development pressure have also contributed to this decline. Decreasing the Committee’s size from 12 members to 10 members would make Committee membership more reflective of today’s industry and enable the Committee to fill all its member positions without difficulty.

Proposal 2 – Revise Quorum and Voting Requirements

Currently, § 925.30 states that eight members of the Committee shall constitute a quorum, and any action of the committee shall require at least eight concurring votes.

The proposed change would modify § 925.30 to allow six members to constitute a quorum including at a minimum one producer member and one handler member, with six concurring votes required to pass any motion or approve any Committee action. The Committee is experiencing difficulties filling all seats and obtaining a quorum at meetings to conduct business activities. Adjusting current requirements would enable the Committee to operate fully mitigating the risk of not establishing a quorum during scheduled meetings and not having the required votes to pass any action. These
changes would help to streamline the Committee’s operations and increase its effectiveness.

**Initial Regulatory Flexibility Analysis**

Pursuant to 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 so that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of no more than $1,000,000. Small agricultural service firms (handlers) are defined as those with annual receipts of no more than $30,000,000.

Proposed amendments to the California desert grape marketing order would reduce the number of member and alternate seats on the California Desert Grape Administrative Committee from 12 to 10 and reduce quorum and voting requirements from 8 to 6 members. These amendments are necessary to reflect the industry’s consolidation. Since the promulgation of the marketing order in 1980, the California desert grape industry has lost roughly 55 percent of its producers and 58 percent of
The Committee reports that there are 21 producers and 10 handlers of table grapes in the marketing order production region. The Committee packout reports show that average annual packout for 2018 through 2020 was 3.2127 million 18-pound containers, equivalent to 28,914 tons. The 3-year average of California fresh table grape prices was $1,267 per ton. Multiplying quantity times price yields an annual average crop value estimate of $36.634 million. Dividing the average crop value estimate by the number of producers (21) yields an average crop value per producer of $1.744 million, moderately larger than the SBA small farm size threshold of $1,000,000. Therefore, using the estimated prices, packout volume, and number of producers, and assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as large businesses under the SBA definition.

Dividing the average crop value of $36.634 million by the number of handers (10) yields a per-handler estimate of $3.663 million, well below the SBA small business threshold of $30,000,000 in annual receipts. However, that computation measures handler annual receipts using producer-level crop value data, since AMS is unable to locate an estimate of a hander margin. A range of handler margin estimates would be 30 to 40 percent above the grower
Applying those two percentages, a range of handler annual receipts estimates would be $4.8 to $5.1 million, still well below $30,000,000. Therefore, using these estimated prices, utilization volume, handler margin estimates and number of handlers, and assuming a normal bell-curve distribution of receipts among handlers, AMS estimates that the majority of handlers would meet the SBA definition of small businesses.

AMS has determined that these proposed amendments would not have a significant impact on a substantial number of small businesses. Rather, large and small entities alike would be expected to benefit from the Committee’s improved ability to address important issues of interest to all on a timely basis. The proposed reduction in the number of seats on the Committee, and the reduced quorum and voting requirements, would not require any significant changes in producer or handler business operations, and no significant industry educational effort would be needed. Producers and handlers, large and small alike, would incur no additional costs. No small businesses would be unduly or disproportionately burdened.

**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 OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in
those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California table grape handlers. 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee’s meetings are widely publicized throughout the southeastern California table grape production area. All interested persons are invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the April 13, 2021 meeting was public, and all entities, both large and small, were encouraged to express their views on the proposals.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on
the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the Federal Register. A final rule would then be issued to effectuate any amendments favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: https://www.ams.usda.gov/rules-regulations/moa/small-businesses. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

General Findings

Findings hereinafter set forth are supplementary to findings and determinations that were previously made in connection with the issuance of Marketing Order 925; 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. Marketing Order 925, as hereby proposed to be amended, and all terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 925, as hereby proposed to be amended, regulates the handling of grapes grown in southeastern California and is applicable only to persons in respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 925, as hereby proposed to be 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 marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 925, as hereby proposed to be 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 grapes produced or packed in the production area; and

5. All handling of grapes produced or packed in the production area, as defined in Marketing Order 925, is in
the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on amendments proposed in this rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For 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. In § 925.20, revise paragraph (a) to read as follows:

   **§ 925.20 Establishment and membership.**

   (a) There is hereby established a California Desert Grape Committee consisting of 10 members, each of whom
shall have an alternate who shall have the same qualifications as the member. Four members and their alternates shall be producers, officers or employees of producers (producer members). Four members and their alternates shall be handlers, or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler, or an officer or employee thereof. One member and alternate shall represent the public.

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3. In § 925.30, revise paragraph (a) to read as follows:

§ 925.30 Procedure.

(a) Six members of the committee shall constitute a quorum, including at a minimum one producer representative and one handler representative, and any action of the committee shall require at least six concurring votes;

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Erin Morris, Associate Administrator.
Agricultural Marketing Service.

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