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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02-925-2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Revision to Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises container and pack requirements prescribed 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). This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allows reusable plastic containers (RPCs) in shipping grapes, revises lot stamping requirements for RPCs, exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the order, and revises marking and minimum net weight requirements for clarity. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns.

DATES: April 29, 2002; comments received by June 25, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail:

moab.docketclerk@usda.gov. All comments should reference the docket 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: <http://www.ams.usda.gov/fv/moab.html>.

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), as amended, 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."

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 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 revises container and pack requirements prescribed under the California grape order. The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the Committee. This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allows RPCs in shipping grapes, revises lot stamping requirements for RPCs, and exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the order. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes at its February 12, 2002, meeting and clarified via a fax vote on February 21, 2002.

Addition of Four New Containers and Usage of RPCs

Section 925.52(a)(4) of the grape order provides authority to regulate size, capacity, weight, dimensions, marking, materials, and pack of containers, which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to be packed in containers which are new and clean and which otherwise meet the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of Title 3: California Code of Regulations (CA Code of Regulations).

Currently, § 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and

regulations authorize ten containers (28, 39J, 39K, 38Q, 38R, 38S, 38T, 38U, 38V, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were last revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the CA Code of Regulations, but has not yet been added to the list of approved containers under the Federal order. The 38L grape lug is defined as any container with an inside depth of 7⁵/₈ inches, an outside width of

13¹/₁₆ inches, and an outside length of 16 inches.

Since that time, many retailers have asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Recently, the Grape and Tree Fruit League (League) petitioned the California Department of Food and Agriculture (CDFA) to add the 38M grape lug to the list of standardized containers in the CA Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted

by the retail trade. The CDFA expects the 38M grape lug to be standardized in the CA Code of Regulations by May 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended adding most of the containers previously approved as experimental containers, including the 38M grape lug, to the list of containers authorized under the order's rules and regulations. In reviewing container dimensions, the Committee concluded that the depth, width, and length dimensions for the 38L, 38M, CP, and CP1 grape lug's encompass the dimensions of the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, that the following four containers be added to the list of containers authorized in the order's rules and regulations:

Container	Depth inside	Width outside	Length outside
38L Grape Lug	7 ⁵ / ₈	13 ¹ / ₁₆	16
38M Grape Lug	4 ¹ / ₄ -5 ³ / ₄	15 ³ / ₈ -16	23 ¹ / ₂ -24
CP Grape Lug	3 ¹ / ₁₆ -4 ³ / ₄	15 ³ / ₄ -15 ⁹ / ₁₆	23 ¹ / ₂ -23 ³ / ₄
CP1 Grape Lug	4 ³ / ₄ -5	19 ¹ / ₂ -20	23 ³ / ₄ -24

These containers may be constructed of several different materials (e.g., plastic or fiberboard) but should conform to the range of dimensions listed above.

These containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in these containers. This, in turn, helps ensure that the grapes are fresh when they arrive at destination. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Section 925.304(b)(1) of the rules and regulations requires grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. Grapes packed in RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing RPCs to be reused is expected to reduce

the burden on handlers as they will not have to apply and obtain Committee approval annually to utilize them.

Adding these four containers to the rules and regulations will enable handlers to meet their customer requirements this season. This action will help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact the grape import requirements.

Lot Stamping Requirements

Section 925.55 of the order requires inspection and certification of grapes, handled by handlers.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration.

Each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate.

During the 2001 season, the Committee approved the use of RPCs for

experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs. However, it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that workers needed to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118

degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately \$0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the box. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that the lot numbers be stamped on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers. The pallets will be wrapped with clear plastic immediately after inspection, ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by \$950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate. This action will not affect imports.

Minimum Net Weight Requirements

Section 925.52(a)(4) of the grape order provides authority to fix the size, capacity, weight, dimensions, markings, materials, and pack of the container, which may be used in the handling of grapes.

Section 925.304(b)(2) specifies that the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper, and experimental containers, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Section 925.340(b)(2) further specifies that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current

practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and USDA approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. The minimum net weight of grapes in 20-pound containers is based on the average net weight of grapes in a representative sample of containers. The minimum net weight of grapes for the 18-pound containers also is based on an average net weight of grapes in a representative sample of containers. The language in § 925.304(b)(2) is changed to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds causes confusion in the marketplace and impacts on handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 and 20 pounds, respectively. To address this issue, the text of this interim final rule provides that containers other than master containers containing individual consumer packages are to be marked with the net weight of 18 or 20 pounds, as appropriate.

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed the best means of allowing handlers to meet orders for master containers containing individual consumer packages that had different minimum net weight requirements. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages and unanimously recommended revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds. These revisions will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. These revisions do not impact the grape import regulation.

Initial 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 initial 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 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts of less than \$750,000. Therefore, the majority of handlers and

producers of grapes may be classified as small entities.

This rule invites comments on revisions to container and pack requirements prescribed under the California grape order. This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, which covers grapes grown in a designated area of Southeastern California. This rule also allows handlers to ship grapes in RPCs, revises lot stamping requirements for RPCs, and exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the grape order. Additionally, this rule clarifies marking requirements for 18 and 20 pound containers and removes obsolete language contained in §§ 925.304(a) and 925.304(b)(iii) that was applicable to the period June 1, 1998, through August 15, 1998.

The order regulates the handling of grapes grown in California and is administered locally by the Committee. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes. Authority for these actions is provided in §§ 925.52 and 925.55 of the order.

Addition of Four New Containers and Usage of RPCs

Section 925.304(b)(1) of the order's rules and regulations outlines container

and pack requirements for grapes and requires such grapes to be packed in containers which are new and clean and which otherwise meet the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of the Code of Regulations.

Currently § 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and regulations authorize ten containers (28, 39J, 39K, 38Q, 38R, 38S, 38T, 38U, 38V, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were last revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the Code of Regulations, but has not yet been added to the list of approved containers under the order. The 38L grape lug is defined as any container with an inside depth of 7⁵/₈ inches, an outside width of 13¹¹/₁₆ inches, and an outside length of 16 inches.

Since that time, many retailers have asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and

each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Recently, the League petitioned the CDFR to add the 38M grape lug to its list of standardized containers in the Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted by the retail trade.

The range of dimensions allowed for the 38M grape lug encompasses the dimensions of many of the containers used experimentally during previous seasons, including some RPCs. The CDFR expects the 38M grape lug to be standardized in the Code of Regulations by May 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended adding most of the containers previously approved as experimental containers during the 2001 season, including the 38M grape lug, to the list of containers authorized under the rules and regulations. In reviewing container dimensions, the Committee concluded that the 38L, 38M, CP, and CP1 grape lugs' depth, width, and length dimensions will encompass the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, that the following four containers be added to the list of containers authorized in the order's rules and regulations:

Container	Depth inside	Width outside	Length outside
38L Grape Lug	7 ⁵ / ₈	13 ¹¹ / ₁₆	16
38M Grape Lug	4 ¹ / ₄ –5 ³ / ₄	15 ³ / ₈ –16	23 ¹ / ₂ –24
CP Grape Lug	3 ¹⁵ / ₁₆ –4 ³ / ₄	15 ³ / ₄ –15 ⁹ / ₁₆	23 ¹ / ₂ –23 ³ / ₄
CP1 Grape Lug	4 ³ / ₄ –5	19 ¹ / ₂ –20	23 ³ / ₄ –24

These containers may be constructed of several different materials (e.g., plastic or fiberboard), but should conform to the range of dimensions listed above.

The Committee discussed alternatives to this change, including making no changes to the list of containers authorized under the grape order's rules and regulations. The Committee determined that the 38L, 38M, CP, and CP1 grape lugs should be added to the rules and regulations as these containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in them,

helping to ensure freshness. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Section 925.304(b)(1) of the rules and regulations requires such grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. Grapes packed in RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended

that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing cleaned RPCs to be reused is expected to help handlers better meet buyer needs.

Adding these four containers to the rules and regulations will enable handlers to meet their customer's requirements this season. This action will help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact grape imports.

Lot Stamping Requirements

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier in a 3 box by 3 box pallet configuration.

Each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate.

During the 2001 season, the Committee approved usage of RPCs for experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and the label was placed on the RPCs. However, manufacturers found that it was difficult to remove in the wash cycle. Additionally, handlers found that workers need to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118 degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately \$0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection

service, and the manufacturer. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that the lot numbers be stamped on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers. The pallets will be wrapped with clear plastic immediately after inspection ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by \$950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate. This action will not affect imports.

The Committee discussed alternatives to this change, including making no changes to the lot stamp-numbering requirement. The Committee believed that relaxing the lot stamp numbering requirement under the rules and regulations will result in better quality grapes being shipped to consumers, a reduction in handler costs, and improved producer returns. Thus, the Committee recommended revising § 925.304(b)(4) to require the number be stamped on two USDA-approved pallet tags for RPCs, and that the pallet tags be placed on opposite sides of each pallet. This action will not affect imports.

Minimum Net Weight Requirements

Section 925.52(a)(4) of the grape order provides authority to fix the size, capacity, weight, dimensions, markings, materials, and pack of the container which may be used in the handling of grapes.

Section 925.304(b)(2) specifies the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper. It specifies that approved experimental containers shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Section 925.340(b)(2) further specifies that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and the Secretary approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds causes confusion in the marketplace and impacts on handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002 meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 or 20 pounds, as appropriate. To address this issue, § 925.304(b)(2) is revised to provide that containers other than master containers containing individual consumer packages are to be marked with the minimum net weight of 18 or 20 pounds, as appropriate.

The Committee discussed alternatives to this change. The Committee believes that allowing markings other than 18 or 20-pound markings could cause confusion in the marketplace and may not address the mislabeling concerns as grapes lose moisture and shrink during shipment. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that the container marking requirements in § 925.304(b)(2) be revised as provided in this interim final rule.

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed alternatives to this change, including making no change to the minimum net weight requirement for master containers containing individual consumer packages, but believes that providing this exception for master containers is in the best interest of handlers. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages. The 2002 crop is estimated to be 9.5 million lugs. Allowing master containers containing individual consumer packages will enable handlers to market an additional 190,000 lugs of grapes. Therefore, The Committee unanimously recommended revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds.

Finally, the language in § 925.304(b)(2) is changed for clarity to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

These revisions will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. Imported grapes will not be affected by this action.

Removal of Obsolete Language

This rule also makes minor changes to remove obsolete language in paragraphs (a) and (b)(1)(iii) of § 925.304. These paragraphs include references to the period June 1, 1998, through August 15, 1998, which marked the trial usage of the "DGAC Consumer No. 1 Institutional" (DGAC) grade. This rule removes those two obsolete references.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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.

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

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 12, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. A fax vote was conducted to clarify the recommendation regarding the number and dimensions of containers to be added to the list currently authorized under the grape order. All handlers were provided information on the number and dimensions of containers to be added to the order.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this 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/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.

This rule invites comments on adding four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, which covers grapes grown in a designated area of Southeastern California, allowing reusable plastic containers (RPCs) in shipping grapes, revising lot stamping requirements for RPCs, and exempting master containers containing individual consumer packages from the minimum net weight requirements specified under the order. Additionally, this rule revises marking and minimum net weight requirements for 18 and 20-pound containers for clarity, and removes obsolete language contained in §§ 925.304(a) and 925.304(b)(iii) that was applicable to the period June 1, 1998, through August 15, 1998. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other

information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements currently in effect for grapes grown in designated areas of southeastern California; (2) The Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments begin approximately April 20, 2002, and this rule should be in effect as soon as possible, so handlers can take advantage of these changes; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is 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. Section 925.304 is amended by removing the last two sentences in paragraph (a) and revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(iii), (b)(2), and (b)(4) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(b) *Container and pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and otherwise meet the requirements of sections 1380.14, and 1380.19(n), 1436.37, and 1436.38 of Title 3: California Code of Regulations, except that reusable plastic containers may be reused if such containers are clean:

CONTAINER DESCRIPTIONS IN INCHES

Container	Depth	Width	Length
28 Sawdust Pack	7¾ (inside)	14 ¹⁵ / ₁₆ (inside)	18 ⁵ / ₈ (inside)
38J Polystyrene Lug	6¾ (inside)	12½ (inside)	15 ³ / ₈ (inside)
38K Standard Grape	4½–8½ (inside)	13½–14½ (outside)	16 ⁵ / ₈ –17½ (outside)
38L Grape Lug	7 ⁵ / ₈ (inside)	13 ¹ / ₁₆ (outside)	16 (outside)
38M Grape Lug	4¼–5¾ (inside)	15 ³ / ₈ –16 (outside)	23½–24 (outside)
38Q Polystyrene Lug	6¼–8¼ (inside)	11¼ (inside)	18 ¹ / ₈ (inside)
38R Grape Lug	4–7 (inside)	15¾–16 (outside)	19 ¹ / ₁₆ –20 (outside)
38S Grape Lug	5–9 (inside)	11 ¹ / ₁₆ –12 (outside)	19 ¹ / ₁₆ –20 (outside)
38T Grape Lug	5½–7½ (inside)	13 ¹ / ₈ –13 ¹⁵ / ₁₆ (outside)	15 ⁵ / ₁₆ –16 (outside)
38U Grape Lug	6 ³ / ₁₆ –7 (inside)	13 ¹ / ₁₆ (outside)	20½ (outside)
38 V Grape Lug	5¾ (inside)	14 (outside)	16 (outside)
CP Grape Lug	3 ¹⁵ / ₁₆ –4¾ (inside)	15 ³ / ₄ –15 ⁹ / ₁₆ (outside)	23½–23¾ (outside)
CP1 Grape Lug	4¾–5 (inside)	19½–20 (outside)	23¾–24 (outside)

* * * * *

(iii) Such other types and sizes of containers as may be approved by the Committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, or packed in bags or wrapped in plastic or paper, and containers authorized in paragraph (b)(1)(iii) of this section, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers. Grapes in any such containers packed in bags, or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight of 18 pounds based on the average net weight of grapes in a representative sample of containers: *Provided*, That grapes packed in master containers containing individual consumer packages are exempt from container marking requirements and minimum net weight requirements. Containers of grapes other than master containers containing individual consumer packages shall be marked with the minimum net weight of 20 or 18 pounds.

* * * * *

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by 3 box pallet configuration: *Provided*, That pallets of reusable plastic containers shall have the lot stamp number stamped on two USDA-approved pallet tags, each affixed to opposite sides of the pallet of containers, in addition to other required information on the cards of the individual containers, as provided in

sections 1460.30 and 1359 of Title 3: California Code of Regulations.

* * * * *

Dated: April 19, 2002.

A.J. Yates,
Administrator, Agricultural Marketing Service.

[FR Doc. 02–10298 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0012 to \$0.00175 per pound. It also increases the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.0006 to \$0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates will

remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: This final rule becomes effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; 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, or 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. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” The marketing agreement and order are 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. Under the marketing order now in effect, tart cherry handlers are subject