

**§ 755.10 Death, incompetence, or disappearance.**

(a) In the case of the death, incompetency, or disappearance of a person or the dissolution of an entity that is eligible to receive a payment in accordance with this part, such alternate person or persons specified in part 707 of this chapter may receive such payment, as determined appropriate by FSA.

(b) Payments may be made to an otherwise eligible producer who is now deceased or to a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority over the deceased producer's estate or a dissolved entity must be provided.

(c) If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must be identified in the application for payment.

**§ 755.11 Maintaining records.**

Persons applying for payment under this part must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment to the producer under this part.

**§ 755.12 Refunds; joint and several liability.**

(a) Any producer that receives excess payment, payment as the result of erroneous information provided by any person, or payment resulting from a failure to comply with any requirement or condition for payment under this part, must refund the amount of that payment to FSA.

(b) Any refund required will be due from the date of the disbursement by the agency with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this title.

(c) Each producer that has an interest in the agricultural operation will be jointly and severally liable for any refund and related charges found to be due to FSA.

(d) Interest will be applicable to any refunds to FSA required in accordance with parts 792 and 1403 of this title except as otherwise specified in this part. Such interest will be charged at the rate that the U.S. Department of the Treasury charges FSA for funds, and will accrue from the date FSA made the

payment to the date the refund is repaid.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous payment was not due to any action of the person or entity, or was beyond the control of the person or entity committing the violation. Any waiver is at the discretion of FSA alone.

**§ 755.13 Miscellaneous provisions and appeals.**

(a) *Offset.* FSA may offset or withhold any amount due to FSA from any benefit provided under this part in accordance with the provisions of part 1403 of this title.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this title.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the eligible reimbursable costs thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of part 1404 of this title.

(e) *Violations regarding controlled substances.* The provisions of § 718.6 of this chapter, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

(f) *Appeals.* The appeal regulations specified in parts 11 and 780 of this chapter apply to determinations made under this part.

Signed in Washington, DC on June 9, 2010.

**Jonathan W. Koppess,**  
Administrator, Farm Service Agency.  
[FR Doc. 2010-14427 Filed 6-16-10; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 925 and 944**

**[Doc. No. AMS-FV-09-0085; FV10-925-1 FIR]**

**Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements**

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The interim rule relaxed the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in consumer packages holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters of at least five berries each. This action continues the relaxation that was prescribed on a one-year test basis in 2009 and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

**DATES:** Effective June 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule 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, 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 rule is also issued under section 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 Order 12866.

The shipping of table grapes produced in a designated area of southeastern California is regulated by 7 CFR part 925. The regulations specify that bunches of grapes must weigh a minimum of one-quarter pound to meet requirements of U.S. No. 1 Table grade grapes. In response to a marketing opportunity, the industry experimented with a new container during the 2009 season. The experimental container's small capacity makes it difficult to completely fill with grape bunches of one-quarter pound or larger. Therefore, for the 2009 season, the minimum bunch size requirement was relaxed for U.S. No. 1 table grade grapes packed in these containers. The 2009 experimental period was successful and the Committee recommended continuing these handling requirements for the 2010 and subsequent seasons.

Imported table grapes are subject to regulations specified in 7 CFR part 944. Under those regulations, imported grapes must meet the same minimum size requirement as specified for domestic grapes under the order. Therefore, the minimum bunch size requirement was also relaxed for imported grapes packed in small consumer packages containing 2 pounds net weight or less.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 8, 2010, (75 FR 17031, Doc. No. AMS-FV-09-0085, FV10-925-1 IFR), §§ 925.304 and 944.503 were amended by relaxing the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container (individual consumer packages) may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

#### 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 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 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 about 15 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are about 100 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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. Four of the 15 handlers subject to regulation have annual grape sales of more than \$7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the crop value for 2009 was about \$55,000,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of \$1,100,000, this is above the SBA threshold of \$750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. It is estimated that the average importer receives \$3,200,000 in revenue from the sale of grapes. Therefore, it may be concluded that the majority of importers may be classified as small entities.

This rule continues in effect the action that revised § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This rule continues in effect the action that relaxed the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each consumer package weighing two pounds or less may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

There is general agreement in the industry for the need to continue to relax the minimum bunch size requirement for grapes packed in these consumer packages to allow for more packaging options. No additional alternatives were considered because the 2009 one-year test relaxation produced the desired results with no identified problems. The committee unanimously agreed that the relaxation for grapes packed in consumer packages containing 2 pounds net weight or less was appropriate to prescribe for the 2010 and subsequent seasons.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to continue to respond to an ongoing marketing opportunity to meet consumer needs. This marketing opportunity initially existed in the 2009 season, and the minimum bunch size regulations were relaxed accordingly for one year on a test basis. As in 2009, handlers and importers will be able to provide buyers in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packages, which would have a positive impact on producers, handlers, and importers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. 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 November 12, 2009, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S.-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were also notified of this action.

Comments on the interim rule were required to be received on or before May 5, 2010. One comment was received. That comment was in support of the relaxation of the handling requirements providing a larger tolerance margin for

smaller bunches in consumer packages holding 2 pounds net weight or less. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480acfcb7>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

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

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 17031, April 5, 2010) will tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 925

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

##### 7 CFR Part 944

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

#### PARTS 925 and 944—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR parts 925 and 944 and that was published at 75 FR 17031 on April 5, 2010, is adopted as a final rule, without change.

Dated: June 11, 2010.

**David R. Shipman,**

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010-14572 Filed 6-16-10; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

##### 7 CFR Part 956

[Doc. No. AMS-FV-10-0020; FV10-956-1 FR]

#### Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Changes to Reporting and Assessment Due Dates

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes the reporting and assessment date requirements prescribed under the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. The marketing order is administered locally by the Walla Walla Sweet Onion Marketing Committee (hereinafter referred to as the "Committee"). This rule revises the submission due date for certain handler reports and assessment payments from September 1 to September 30. This change allows handlers additional time to compile requisite information and submit it to the Committee. It is expected that this action will improve handler compliance with the administrative requirements of the marketing order.

**DATES: Effective Date:** July 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, 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 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.

This final rule revises the due date prescribed in the order's administrative rules for certain reports and assessment payments. Specifically, the submission due date for handler shipment statements and assessment payments for Walla Walla sweet onions shipped prior to September 1 (hereinafter referred to as "regular season") is changed from September 1 to September 30. The due date change will allow handlers the needed time to compile information, file reports, and pay assessments. It is expected that this action will improve handler compliance with the order's reporting and assessment requirements. The rule was unanimously recommended by the Committee at its February 2, 2010, meeting.

Section 956.80 of the order provides that, upon request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties. In addition, § 956.42(a) provides that each person who first handles Walla Walla sweet onions shall pay assessments to the Committee upon demand.

Section 956.180(b) of the order's administrative rules prescribes that each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments*. Prior to this final rule, for Walla Walla sweet onions handled prior to September 1, such report was required to be furnished to the Committee by September 1. In addition, § 956.142 of the order provided that, for Walla Walla Sweet Onions handled prior to September 1, annual assessment payments were also due September 1.

At its meeting on February 2, 2010, the Committee recommended that the order's reporting and assessment due date for regular season shipments be changed from September 1 to September 30 to allow handlers additional time to