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**SUPPLEMENTARY INFORMATION:** This termination order is governed by the provisions of 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This termination order is issued under Marketing Order No. 926 (7 CFR part 926), as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California, hereinafter referred to as the "order."

This termination order is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this termination order in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This order is not intended to have retroactive effect. This termination order will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this order.

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 the Secretary 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 the Secretary 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 a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

In recent seasons, 15 California Tokay grape growers within the production area and 3 handlers have been subject to regulation under the marketing order. There are no known importers of Tokay grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of the Tokay grape handlers and growers may be classified as small entities.

Marketing Order No. 926 has been in effect since August 20, 1940. The marketing order provides for the establishment of grade, size, quality, maturity, volume, pack and container requirements. In addition, the order authorizes marketing research and development projects.

This order terminates the provisions of the marketing order regulating the handling of Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder.

In recent years, it has been difficult for Tokay grape handlers to find a market for their inventory. Lack of demand and increasing production costs have left growers with few outlets and little incentive to produce Tokay grapes. Acreage has declined due to the lack of a market for fresh shipments of Tokay grapes thereby resulting in vines continually being pulled or re-grafted with other varieties. Wineries are less inclined to use Tokay grapes due to competition from other varietal grapes. The number of handlers and growers has also declined.

The Industry Committee (committee), which is responsible for local administration of the order, held a

public meeting on October 21, 1994. Growers and handlers were informed of the time, place and date of the meeting. At the meeting, attendees signed a petition requesting that the marketing order be terminated. The industry recommended that the marketing order be terminated at the end of the 1994-95 fiscal period which is March 31, 1995. The industry recommended terminating the marketing order because only three handlers were shipping to the fresh market. The decline in the number of handlers, increased difficulty in finding outlets for their inventory and increased production costs, led to the request.

All of the 15 growers who signed the petition at the October 21, 1994, public meeting, favored termination. This was 100 percent of the growers who produced for market in 1994. As all known growers in the industry participated in the public meeting, there was 100 percent representation.

Given the high level of grower participation at the public meeting, as well as the demonstrated lack of grower support for the order, these results are a reliable indicator of industry sentiment, and clearly demonstrate that growers do not favor continuation of the order.

Section 926.78(b) of the order provides that the Secretary may terminate or suspend the operation of any or all of the provisions of the order whenever he/she finds that any such provision obstructs or does not tend to effectuate the declared policy of the Act.

Therefore, based on the foregoing considerations, pursuant to section 608c(16)(A)(i) of the Act, and § 926.78(b) of the marketing order, it is found that Marketing Order No. 926, covering Tokay grapes grown in San Joaquin County, California, no longer tends to effectuate the declared policy of the Act and is hereby terminated.

Section 8c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on February 24, 1995.

This rule also terminates all regulations in effect under the order pertaining to Tokay grapes grown in San Joaquin County, California which are shipped to domestic and foreign markets. These regulations cover grade, size, quality, maturity, volume, pack and container requirements.

Based on the unanimous recommendation of the industry, the Secretary has determined that all members of the Industry Committee will serve as trustees in order to oversee the administrative affairs of the order.

The trustees will be responsible for completing the order's unfinished