

DEPARTMENT OF FOOD AND AGRICULTURE

CALIFORNIA CODE OF REGULATIONS

TITLE 3. FOOD AND AGRICULTURE

DIVISION 3. ECONOMICS

CHAPTER 2. MARKETS

ARTICLE 1. REPORTS BY GRAPE PROCESSORS

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR), Division 3, Chapter 2, Article 1, Section 1700.

**PROBLEM STATEMENT**

The Department, through a cooperative agreement with USDA's National Agricultural Statistics Service (NASS), annually conducts a grape crush survey to fulfill the reporting requirements of Section 55601.5 of the Food and Agriculture Code (FAC). The FAC section 55601.5 (a) requires every processor who crushes grapes to furnish the Secretary, prior to January 10 each year, all grape tonnage purchased or crushed in California during the crop year season within each grape pricing district, broken down by variety and price, including any bonuses or allowances, and sugar calculations. Under FAC section 55601.5 (e), the final Grape Crush Report released by the Secretary includes all grape tonnage crushed during a crop season, including purchased tonnage and pricing information for grapes with final prices prior to January 10. Details of the crushed tonnage, degrees Brix, and weighted average prices are reported by grape type and variety within grape pricing districts. Grape Pricing Districts are defined in Section 55601.5 (i)(3) of the FAC as districts used by the federal-state cooperative market news services, as provided in Section 58231 of the FAC. Seventeen Grape Pricing Districts exist in California.

On August 27, 2019, the Department received a petition from the Suisun Valley Vintners and Growers Association (Association). The Association's petition requested a change to section 1700 of the CCR to shift the eastern boundary of District 5 at the southwestern tip of Ryer Island north to the Solano Yolo County line using Hwy 84 as the new eastern boundary of District 5. This boundary change will result in the transfer of the Ryer Island area into Grape Pricing District 17 (see attachments A & B).

According to the petitioner, the change in Grape Price District boundaries is necessary to remedy bifurcated and regionally disparate District 5 market data, which presents an inequity in annual average price reports within District 5. These price reports are published annually as part of the Grape Crush Report.

The Grape Crush Report and District 5 grape variety weighted average prices, with produced tons, are used by commercial wineries in California and elsewhere to initiate contracting or reset contracted rates with producer growers, as well as determine crop insurance and land valuation. The Ryer Island area of District 5 is subject to significant geographic, geologic, and climate differences that result in significantly lower market prices than the primary western viticulture region of District 5. Due to the averaging of prices in the Grape Crush Report, this has caused negative economic impacts within the western viticultural areas of District 5 with continued potential to result in ongoing unfair price discovery by both producers and processors. The Ryer Island region is adjacent to the District 17 grape pricing district and market rates in that region are in line with District 17 average rates.

Additionally, in March 2022, a final ruling of the Expansion of the Clarksburg Viticultural Area was announced in the Federal Register. American Viticultural Areas (AVAs) are federal designations of specific grape-growing areas based upon defining unique physical elements such as soils, climate, topography, and more. The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. AVAs do not serve the same purpose or needs of Grape Pricing Districts. However, their implications and alignments can impact Grape Pricing Districts and positively or negatively affect price discovery as well as factors into the insurable values set by crop insurers. This expansion of approximately 27,945 acres included the Ryer Island area, which was not previously in any other established AVA. The Clarksburg AVA lies mostly in District 17 of the Grape Pricing Districts. The areas west of the Ryer Island region of District 5 are part of the North Coast American Viticultural Area, the wine appellation that includes all of Sonoma County and parts of Napa, Mendocino, Lake and Marin counties. Grapes from the North Coast American Viticultural Area are considered a higher quality and therefore tend to receive a higher price in the market.

Since Section 55601.5 of the FAC was first enacted in 1976, the industry has greatly expanded in scope and economic importance, leading to several regions petitioning for boundary changes. To date, three amendments to the original code have resulted in 17 current Districts. (There were originally 11 districts.) Upon review of the Association's petition, the Department began a preliminary rulemaking process, including a workshop on December 17, 2019, to encourage industry discussion and receive public input on the merits of the petition. After review of the information provided in the petition and comments received during the workshop, the Department determined that a formal rulemaking process to consider an amendment to the Grape Pricing Districts was appropriate. Factors considered in making the decision included the reasonableness and economic soundness of the proposed Grape Pricing District boundary changes, the level of support, or opposition, of the proposed Grape Pricing District boundary changes, and input from experts in local real estate values and crop insurance. Since the initiation of preliminary rulemaking and the Department's decision to initiate formal rulemaking, support has increased for redrawing the District 5 and District 17 boundaries, in part due to AVA boundary changes since 2019.

## **BENEFITS**

The effect of this amendment will be to move the Ryer Island region from District 5 to District 17. This will result in grape lots received at market pricing every year to be tabulated by NASS in the data of District 17 and removed from the data of District 5. Doing such will remedy the price discovery in each District, providing a fair and transparent level playing field for those utilizing the Grape Crush Report averages to set grape contracting rates, crop insurance and land valuation. The main beneficiaries of the proposed regulation are grape growers in the redrawn District 5. Based on data provided in the 2018 Grape Crush Report, NASS estimates that grape prices for these growers would increase by about 25% if the boundaries were redrawn. The same data shows that grape growers in the proposed redrawn District 17 would not be worse off by the change in boundaries and their grape prices would, on average, remain unchanged.

## **PURPOSE**

This regulatory action is intended to amend the current Grape Pricing District 5 eastern boundary at the southwestern tip of Ryer Island north to the Solano Yolo County line using Hwy 84 as the new eastern boundary of District 5. This boundary change will result in the transfer of the Ryer Island area into Grape Pricing District 17. As mentioned above, Grape Pricing Districts are used to report data that fulfills the reporting requirements of Section 55601.5 of the FAC. Data is reported as weighted averages for each Grape Pricing District and are intended to be an accurate reflection of the grape prices received by producer growers in each district. Many grape pricing districts have variable levels of market-driven price within their boundaries. However, they are generally composed of the same growing parameters, quality, and yield standards. The resulting averaged price in the Grape Crush Report is thus usually a reasonable average. In District 5, as the industry has developed, the boundaries set when Section 55601.5 of the FAC was enacted in 1976 do not reflect common economic conditions and growing practices throughout the District. The Ryer Island area is differentiated by geographic, geologic and climate variances that result in lower market prices than the western parts of District 5. Therefore, the resulting averaged price listed for District 5 in the Grape Crush Report does not accurately reflect grape prices for similar quality and yield standards. Separating the two regions will result in better accuracy of grape market pricing averages.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Department relied on the Petition submitted to the Department by the Association on August 27, 2019 in addition to comments received at the subsequent workshop conducted by the Department to collect further feedback on the petition from the public. NASS provided statistical data on the grape pricing districts at that workshop, which was also used by the Department. Finally, the Federal Register/ Vol. 87, No. 46 / Wednesday, March 9, 2022 / Rules and Regulations was used to inform the Department on the TTB's decision to expand the Clarksburg AVA.

- Suisan Valley Vintners & Growers Association Petition to change District 5 Boundary, dated August 26, 2019:  
<https://www.cdfa.ca.gov/mkt/mkt/pdf/GrapeCrushPetition-Combined.pdf>
- Public Workshop to Consider an Amendment to the Grape Pricing Districts Associated with the Grape Crush Report, December 17, 2019, Workshop Power Point Presentation: <https://www.cdfa.ca.gov/mkt/pdf/WorkshopPresentationPPT-12172019.pdf>
- Federal Register / Vol. 87, No. 46 / Wednesday, March 9, 2022 / Rules and Regulations: <https://www.govinfo.gov/content/pkg/FR-2022-03-09/pdf/FR-2022-03-09.pdf>
- Memorandum of Understanding between the United States Department of Agriculture National Agricultural Statistics Service and California Department of Food and Agriculture, NASS Agreement #58-3AEU-3-009M, 11/17/22, included as attachment C. The MOU has been in place for more than 40 years and is updated each five years.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The number of wine grape growers in District 5 has been relatively stable over the past several years. The Department does not anticipate that the number will change significantly because of this proposed regulation.

The reasonable range of direct costs that a representative private person or business will necessarily incur in reasonable compliance with the proposed action will not change. Grape producers are assessed ten cents (\$0.10) per ton for the Grape Crush Report regardless of which Grape Pricing District they are located in.

Although not definite, the amendment will likely create some new jobs due to wine grape growers potentially receiving higher prices for grapes. This could result in the financial security to hire additional workers to help with wine grape production. Therefore, it is anticipated that these regulations may affect the creation of jobs, but not the elimination of jobs within California.

There is no reason to believe that this regulation will increase or reduce the number of wine grape growers doing business. However, it is possible that this will cause small shift in business decisions, such as perhaps changing the variety grown in a certain region to obtain better prices or stimulating local wine tourism.

This regulation may have a minimal effect on small business. Many wine grape producers and processors are classified as small businesses, and an increase of grape prices would have an impact for such businesses, allowing them to have greater outreach and promotion of their wines or further investment in their businesses.

It seems likely that this proposal will encourage some businesses to expand their business. If growers do receive higher prices for their grapes, it is likely they will either expand or invest in their business for future growth and stability.

It is anticipated that this proposal will not have an impact on the general public or protection of public health and safety. The use of Grape Pricing Districts to determine grape pricing is already a mandated practice in the industry; the proposed change would only impact a small geographical area and a small number of businesses and does not have any associated economic impact to the health and welfare of California's residents.

The Department concludes that it is:

- (1) Unlikely that this proposal will eliminate any jobs for wine grape producers or processors in Grape Pricing Districts 5 or 17.
- (2) Likely that the proposal may create an unknown number of jobs in the wine industry in these districts.
- (3) Unlikely that the proposal would create new businesses within these Districts of the state.
- (4) Unlikely that this proposal will eliminate any existing businesses.
- (5) Likely that the proposal will expand businesses currently doing business in the state.
- (6) Unlikely that the proposal will have an impact on the general public or protection of public health and safety

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

Although the proposed action will directly affect businesses in the state, including small businesses, the Department concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant. The Grape Pricing Districts 5 and 17 are not large in terms of cash receipts and even significant changes in grape pricing for the producers in these regions would have only a minor effect on the economic impact of the state as a whole. Therefore, the proposed regulations will not have a significant statewide adverse economic impact.

#### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of the law. The alternative to not pursue this regulatory action would result in the continued inaccuracy of average pricing in Grape Pricing Districts 5. This would result in a negative

financial impact to wine grape producers in District 5, and potential loss of crop insurance. The adoption of a different boundary than the one proposed does not have merit when compared to federal AVAs and would not be based on appropriate geographical, geological or market data driven information.

**DUPLICATE OR CONFLICT WITH FEDERAL REGULATIONS**

The proposed regulation does not duplicate or conflict with federal regulations.