

For reasons set forth in the preamble, it is proposed that 7 CFR part 97 be amended as follows.

## PART 97—PLANT VARIETY PROTECTION

1. The authority citation for part 97 would be revised to read as follows:

**Authority:** Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*

### § 97.2 [Amended]

2. Section 97.2 is amended by:

(a) Revising the word “Division” to read “Programs” in the definition of the term *Office or Plant Variety Protection Office*.

(b) Adding the words “and developed” after the word “discovered” in the definition of term *Owner*.

3. In § 97.5, paragraph (c) is revised to read as follows:

### § 97.5 General Requirements.

\* \* \* \* \*

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, National Agricultural Library, Room 401, 10301 Baltimore Avenue, Beltsville, MD 20705-2351).

\* \* \* \* \*

### § 97.6 [Amended]

4. Section 97.6 is amended by:

(a) Adding the words “, unless a waiver has been granted for good cause” immediately following the word “variety” in paragraph (d)(1).

(b) Removing the words “verification that a viable cell culture has been deposited” and adding the words “a declaration that a viable cell culture will be deposited” in their place in paragraph (d)(2).

(c) Removing the words “verification that a plot of vegetable material for each parent has been established” and adding the words “a declaration that a plot of vegetative material for each parent will be established” in their place in paragraph (d)(3).

### § 97.104 [Amended]

5. In § 97.104, paragraph (b) the words “and shall pay the handling fee for replenishment” are added following the words “sample of the variety”.

### § 97.107 [Amended]

6. § 97.107, the words “within 60 days from the date of denial, in accordance with §§ 97.300—97.303” are removed.

### § 97.108 [Amended]

7. In § 97.108, paragraph (b) the words “to carry into effect a recommendation under § 97.302(b)” are removed and the

words “in accordance with the decision” are added in their place.

### § 97.158 [Removed]

8. Section 97.158 is removed.

### § 97.175 [Revised]

9. Section 97.175 is revised to read as follows:

(a) Filing the application and notifying the public of filing—\$432.00.

(b) Search or examination—\$3,220.00

(c) Submission of new application data, after notice of allowance, prior to issuance of certificate—\$432.00.

(d) Allowance and issuance of certificate and notifying public of issuance—\$682.00.

(e) Revived an abandoned application—\$432.00

(f) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)—\$1.50.

(g) Authentication (each page)—\$1.50.

(h) Correcting or re-issuance of a certificate—\$432.00

(i) Recording an assignment, any revision of an assignment, or withdrawal or revocation of an assignment (per certificate or application)—\$38.00.

(j) Copies of 8 × 10 photographs in color—\$38.00.

(k) Additional fee for reconsideration—\$432.00.

(l) Additional fee for late payment—\$38.00.

(m) Fee for handling replenishment seed sample (applicable only for certificates issued after [insert the effective date of the final rule])—\$38.00.

(n) Additional fee for late replenishment of seed—\$38.00.

(o) Filing a petition for protest proceeding—\$4,118.00.

(p) Appeal to Secretary (refundable if appeal overturns the Commissioner’s decision)—\$4,118.00.

(q) Granting of extensions for responding to a request—\$74.00.

(r) Field inspection or other services requiring travel by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, salary, and administrative costs) in accordance with Standardized Government Travel Regulation.

(s) Any other service not covered in this section will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed \$89.00 per employee-hour. Charges will also be made for materials, space, and administrative costs.

### §§ 97.205–97.222 [Removed]

10. Sections 97.205 through 97.222 are removed.

Dated: January 5, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–472 Filed 1–10–05; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 925

[Docket No. FV05–925–1 PR]

### Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the California Desert Grape Administrative Committee (committee) for the 2005 and subsequent fiscal periods from \$0.015 to \$0.0175 per 18-pound lug of grapes handled. The committee locally administers the marketing order which regulates the handling of grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by February 10, 2005.

**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; e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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:** Toni Sasselli, Program Analyst or Terry Vawter, Marketing Specialist, Marketing Field Office, 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 925, both 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."

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, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable grapes beginning on January 1, 2005, and continue until amended, suspended, or terminated. 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. Such 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 would increase the assessment rate established for the committee for the 2005 and subsequent fiscal periods from \$0.015 to \$0.0175 per 18-pound lug of grapes.

The grape marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California grapes. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002 and subsequent fiscal periods, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on November 9, 2004, and unanimously recommended expenditures of \$210,691 and an assessment rate of \$0.0175 per 18-pound lug of grapes for the 2005 fiscal period. In comparison, last year's budgeted expenditures were \$188,091. The assessment rate of \$0.0175 is \$0.0025 higher than the rate currently in effect. The increased assessment rate together with interest income and reserve funds is needed to ensure that sufficient funds are available to offset an increase in salaries and research programs in 2005, and ensure that an adequate carryover of reserve funds is available for the 2006 fiscal year.

The expenditures recommended by the committee for the 2005 fiscal period include \$125,000 for research, \$5,000 for compliance activities, \$45,500 for salaries and payroll expenses, and \$32,191 for other expenses. Budgeted expenses for these items in 2004 were \$100,000 for research, \$10,000 for compliance activities, \$43,500 for salaries, and \$34,591 for other expenses.

The assessment rate recommended by the committee was derived using the following formula: Total shipments (8.5 million 18-pound lugs) times the recommended assessment rate (\$0.0175 per 18-pound lug), plus anticipated

interest income (\$300) and the 2005 beginning reserve (\$78,000), minus the anticipated expenses (\$210,691), leave a 2005 ending reserve (\$16,359).

Based on this calculation, the \$0.0175 assessment rate, interest income, and reserve funds would provide sufficient income to meet the 2005 anticipated expenses of \$210,691 and would fund an adequate December 2005 ending reserve of \$16,359. The December 2005 ending reserve would be within the maximum permitted by the order. The maximum permitted is approximately one fiscal period's expenses (\$ 925.41 of the order).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2005 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### 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 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 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 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order.

Small agricultural producers are defined by the Small Business Administration (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, eight of the 20 handlers subject to regulation had annual grape sales of at least \$5,000,000. In addition, 10 of the 50 producers had annual sales of at least \$750,000. Therefore, a majority of handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the committee and collected from handlers for the 2005 and subsequent fiscal periods from \$0.015 to \$0.0175 per 18-pound lug of grapes. The committee unanimously recommended expenditures of \$210,691 and an assessment rate of \$0.0175 per 18-pound lug of grapes for the 2005 fiscal period. The proposed assessment rate of \$0.0175 is \$0.0025 higher than the 2005 rate. The number of assessable grapes is estimated at 8.5 million 18-pound lugs. Thus, the \$0.0175 rate should provide \$148,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized carry-in reserves should be adequate to cover budgeted expenses in 2005.

The expenditures recommended by the committee for the 2005 fiscal period include \$125,000 for research, \$5,000 for compliance activities, \$45,500 for salaries and payroll expenses, and \$32,191 for other expenses. Budgeted expenses for these items in 2004 were \$100,000 for research, \$10,000 for compliance activities, \$43,500 for salaries, and \$34,591 for other expenses.

The committee reviewed and unanimously recommended 2005 expenditures of \$210,691 which included increases in salaries and research programs. Prior to arriving at this budget, the committee considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: Total shipments (8.5 million 18-pound lugs) times the recommended assessment rate (\$0.0175 per 18-pound lug), plus the anticipated interest income (\$300) and the 2005 beginning reserve (\$78,000), minus the anticipated expenses (\$210,691), results in a 2005 ending reserve (\$16,359).

This rule would provide sufficient funds in combination with interest and reserve funds to meet the anticipated

expenses of \$210,691 and result in a December 2005 ending reserve of \$16,359, which is acceptable to the committee. The December 2005 ending reserve would be within the maximum permitted by the order. As required under § 925.41 of the order, the ending reserve must be kept within approximately one fiscal period's expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the on-vine grower price for the 2005 season could range between \$5.00 and \$9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2005 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.4 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the November 9, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area 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.

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

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is

deemed appropriate because: (1) The 2005 fiscal period begins on January 1, 2005, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years.

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

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the 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. Section 925.215 is revised to read as follows:

##### **§ 925.215 Assessment rate.**

On and after January 1, 2005, an assessment rate of \$0.0175 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: January 5, 2005.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 05–470 Filed 1–10–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 982**

**[Docket No. FV05–982–2]**

#### **Hazelnuts Grown in Oregon and Washington; Continuance Referendum**

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

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible growers of hazelnuts in Oregon and Washington, to determine whether they favor continuance of the marketing order regulating the handling of hazelnuts grown in the production area.