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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–SC–20–0093; SC21–925–1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Desert Grape Administrative Committee (Committee) to increase the assessment rate established for the 2021 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 16, 2021.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: *BiancaM.Bertrand@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of grapes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, grape handlers in the production area are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable grapes for the 2021 fiscal period and continue until amended, suspended, or terminated.

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 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 no later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate from $0.020 per 18-pound lug of assessable grapes handled, the rate that was established for the 2018 and subsequent fiscal periods, to $0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods.

The Order authorizes 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 are familiar with the Committee's needs and with the costs of goods and services in their local area and are 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 2018 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.020 per 18-pound lug of assessable grapes handled. That assessment rate continued in effect from fiscal period to fiscal period until 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 4, 2020, and unanimously recommended expenditures of $85,500, and an assessment rate of $0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods. In comparison, the previous fiscal period's budgeted expenditures were $121,100. The assessment rate of $0.040 is $0.020

higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, as well as add funds to the contingency reserve. Funds in the reserve are expected to be approximately $50,100 at the end of the 2021 fiscal period, which is within the Order's requirement to carryover no more than approximately one fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2021 fiscal period include $50,000 for management and compliance expenses, $19,500 for direct office expenses, and $16,000 for shared office, facilities, and maintenance expenses.

Budgeted expenses for the 2020 fiscal period were $56,000 for management and compliance expenses, $28,500 for production research, $20,700 for direct office expenses, and $15,900 for shared office, facilities, and maintenance expenses.

In 2020, the Committee determined that the contingency reserve fund had grown too large, so the Committee used $37,100 from the reserve to help fund the 2020 budget rather than raise the assessment rate.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 2.5 million 18-pound lugs of assessable grapes, and the amount of funds available in the authorized contingency reserve. Income derived from handler assessments, calculated at $100,000 (2.5 million 18-pound lugs of assessable grapes multiplied by $0.040 assessment rate), is expected to be adequate to cover budgeted expenses of $85,500, as well as add a small amount of funds ($14,500) back into the contingency reserve. Funds in the reserve are estimated to be $50,100 at the end of the 2021 fiscal period.

The assessment rate established in this rule will 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 will be in effect for an indefinite period, the Committee will 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 will be available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will 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 2021 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

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 rule 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 businesses 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.

There are approximately 10 handlers subject to the regulation under the Order, and approximately 21 producers of grapes in the production area. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the Committee data, USDA Market News Shipping Point Data, and National Agricultural Statistics Service (NASS), the national average producer price data released in 2020 for the 2019 production year was approximately $10.62 per 18-pound lug. Assuming that the 2020 producer price remains the same as that for 2019 and using Committee data for the 2020 total grape production of 2,448,021 18-pound lugs, the total 2020 value of the grape crop was $25,997,983 (2,448,021 18-pound lugs times $10.62 per 18-pound lug equals $25,997,983). Dividing the total grape crop value by the estimated number of producers (21) yields an estimated average receipt per producer of $1,237,999, which is above the SBA threshold for small producers.

According to USDA Market News data, the reported terminal price for 2020 for grapes ranged between $18.95 to $24.95 per 18-pound lug. The average of this range is $21.95 ($18.95 plus $24.95 divided by 2). Multiplying the 2020 grape total production of 2,448,021 18-pound lugs by the estimated average price per 18-pound lug of $21.95 equals $53,734,061.

Dividing this figure by 10 regulated handlers yields estimated average annual handler receipts of $5,373,406, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, the majority of producers may be considered large entities while the majority of handlers in the production area may be classified as small entities.

Based upon information from NASS, the grower price reported for grapes in 2019 was $1,180 per ton ($10.62 per 18-pound lug) of grapes. In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate ($0.040 per 18-pound lug) times the estimated production (2,500,000 18-pound lugs), which equals the assessment revenue of $100,000.

The grower revenue is calculated by multiplying the grower price of $10.62 per 18-pound lug times the estimated production (2,500,000 18-pound lugs), which equals the grower revenue of $26,550,000.

In the final step, dividing the assessment revenue by the grower revenue indicates that, for the 2021 fiscal period, the estimated assessment revenue as a percentage of total grower revenue would be about 0.38 percent.

This rule increases the assessment rate collected from handlers for the 2021 and subsequent fiscal periods from $0.020 to $0.040 per 18-pound lug of assessable grapes handled. The Committee unanimously recommended 2021 expenditures of $85,500 and an assessment rate of $0.040 per 18-pound lug of assessable grapes handled. The assessment rate of $0.040 per 18-pound lug of assessable grapes handled is $0.020 higher than the rate currently in effect. The volume of assessable grapes for the 2021 fiscal period is estimated to be 2,500,000 18-pound lugs. Thus, the $0.040 per 18-pound lug of assessable grapes handled should provide $100,000 in assessment income (2,500,000 multiplied by $0.040). Therefore, income derived from handler assessments is expected to be adequate to cover budgeted expenses for the 2021 fiscal period.

The major expenditures recommended by the Committee for the 2021 fiscal period include $50,000 for management and compliance expenses, $19,500 for direct office expenses, and $16,000 for shared office, facilities, and maintenance expenses. Budgeted expenses for the 2020 fiscal period were $56,000 for management and compliance, $28,500 for production research, $20,700 for direct office, and $15,900 for shared office, facilities, and maintenance.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, while adding funds to its financial reserve. This action is expected to maintain the Committee's reserve balance at a level that the Committee believes is appropriate and meets the requirements of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.020 per 18-pound lug of assessable grapes handled, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate should fully fund budgeted expenses and add funds to the contingency reserve.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 4, 2020, meeting was a public meeting, and all entities, both large and small, had an opportunity to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

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

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 26, 2021 (86 FR 16085). Copies of the proposal were provided by the Committee to producers and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 45-day comment period ending May 10, 2021, was provided to allow interested persons to respond to the proposal. Seven comments were received.

Five of the comments received were in favor of the assessment rate increase and two were neither in favor nor opposed to the proposal.

Four of the five comments in favor were generally supportive of the assessment rate. The other comment in favor appeared to misunderstand the rule's merits, the parties affected, and its potential impact on the industry, but was nonetheless supportive of the action.

Two of the comments referenced the consideration of small businesses and the impact of this rule. One of the comments incorrectly assumed that small businesses would pay a lower assessment rate than their larger counterparts. The comment also believed that assessments were paid by ''producers/growers'' and suggested that such assessments be proportionate to their production.

As previously discussed in the rule, assessments are paid only by handlers and such assessments are applied uniformly regardless of the size of the handler based on the volume of product that they handle. As stated above, and in the proposed rule, some of the increased cost of assessment may be passed on to producers, but such costs are believed to be offset by the benefits derived by the operation of the Order. In addition, a RFA analysis was conducted by USDA in consideration of this action to ensure that the regulatory action fits the scale of businesses subject to the action and that small businesses will not be unduly or disproportionately burdened by it.

One comment raised questions regarding what grapes are assessable under this rule. Further, the comment requested clarity in the role of the Committee in recommending the assessment increase and the Committee's public outreach to ensure that all interested parties were able to provide input.

Under the Order, only grapes produced within the production area as defined in the Order are subject to assessment. Also prescribed by the Order, the Committee is the administrative body duly appointed by USDA to oversee the Order's operation. The Committee is made up of producers and handlers operating within the production area, and a public member. As such, Committee members are familiar with the program's needs and with the costs of goods and services in their local area. They are, therefore, in a position to formulate an appropriate budget and to recommend the assessment rate. Committee actions are recommended at public meetings where the meetings have been duly posted and promoted throughout the industry and all industry participants are encouraged to attend and provide input.

Two comments mistakenly associated the assessment rate increase with COVID–19 and California wildfire relief efforts that would provide economic stimulus for the desert grape industry.

This action is not correlated with any external event or events, nor any economic challenges that may have been precipitated by such events. The assessment rate increase is related only to the cost of the Committee's budgeted expenditures for the upcoming year and the projected size of the desert grape crop for that year.

One comment questioned why excess assessments collected are held over in a financial reserve fund and requested more information with regards to what happens with these funds.

Section 925.42 provides the authority for the Committee to hold excess funds as a reserve against future expenditures. The Committee may hold no more than approximately one fiscal period's expenses in reserve. Funds held in reserve are primarily to be used to: (1) Defray expenses, during any fiscal period, prior to the time the assessment income is sufficient to cover such expenses; and (2) cover deficits incurred during any fiscal period when assessment income is less than expenses.

Lastly, one comment suggested that the assessment rate should only be established for one year and that the rate should be reassessed at the end of that period. The commentor felt that one year would allow the Committee to collect data to assess the impact of the increase and determine whether it should be continued in the future.

As stated above and in the proposed rule, while the assessment rate is effective for an indefinite period of time, the Committee will 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. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Notice and comment rulemaking to adjust the assessment rate would be undertaken as necessary.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

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 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, 2021, an assessment rate of $0.040 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Bruce Summers,
Administrator, Agricultural Marketing Service.

[FR Doc. 2021–14731 Filed 7–14–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. FSIS–2019–0028]

RIN 0583–AD73

Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to define yak and include it among ‘‘exotic animals’’ eligible for voluntary inspection under 9 CFR part 352. This change is in response to a petition for rulemaking from a yak industry association, which FSIS granted in 2015. Additionally, FSIS is revising the definitions of antelope, bison, buffalo, catalo, deer, elk, reindeer, and water buffalo to make them more scientifically accurate. Moreover, FSIS is responding to comments on whether all farmed-raised species in the biological families Bovidae, Cervidae, and Camelidae, if not already subject to mandatory inspection, should be eligible for voluntary inspection, and whether any species in these families should be added to the list of amenable species requiring mandatory inspection.

DATES: Effective September 13, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2020, FSIS proposed to amend its regulations (9 CFR 352.1) to add yak to its list of ‘‘exotic animals’’ eligible for voluntary inspection (85 FR 33034, June 1, 2020). FSIS proposed to define yak as a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau. The proposed rule explained that while yak was not listed in the regulations as an ‘‘exotic animal,’’ the Agency has inspected yak under its voluntary program for several years.

As FSIS explained in the proposed rule, on September 3, 2014, the International Yak Association (IYAK) submitted a petition for rulemaking,[1] under 9 CFR part 392, requesting that FSIS amend 9 CFR 352.1(k) to include yak under the definition of an ‘‘exotic animal.’’ The petitioner stated that because FSIS had voluntarily inspected yak for many years, it had created an expectation among breeders and buyers that FSIS would continue to inspect yak. On November 21, 2014, IYAK submitted additional supporting data.[2] IYAK had surveyed United States yak producers and found that continued FSIS inspection of yak meat was critical to the industry as a whole.

After reviewing the petition and supporting data, FSIS decided to grant the petition, and stated that it would continue to voluntarily inspect yak while FSIS went through rulemaking to add yak to the list of exotic animals eligible for voluntary inspection.[3 4]

In the proposed rule, FSIS also requested comments on whether the regulations should be amended to list as eligible for voluntary inspection all farm-raised species in the biological families Cervidae (*e.g.,* moose, all deer and elk), all Bovidae not currently subject to mandatory inspection (*e.g.,* water buffalo and impalas), and Camelidae (*e.g.,* camel, llama, and alpaca). And, based on interest from stakeholders, FSIS requested comment as to whether any species in these families, if not currently subject to mandatory inspection, should be. FSIS already requires the inspection of some species of the biological family Bovidae under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(w)). These species include cattle, sheep, and goats.

After considering the comments received on the proposed rule, discussed below, FSIS is finalizing the proposed rule with some changes. In response to public comment, the final rule will also amend 9 CFR 352.1 to revise the definitions of antelope (9 CFR 352.1(c)), bison (9 CFR 352.1 (e)), buffalo (9 CFR 352.1(f)), catalo (9 CFR 352.1(g)), deer (9 CFR 352.1(j)), elk (9 CFR 352.1(l)), reindeer (9 CFR 352.1(x)), and water buffalo (9 CFR 352.1(aa)) to make them more taxonomically accurate.

Responses to Comments

FSIS received seven comments from individuals, a yak producer, and a llama

[1] See: *https://www.fsis.usda.gov/wps/wcm/connect/db2ac10c-7b92-4bb4-a0d3-885641738711/Petition-YAK-112014.pdf?MOD=AJPERES.*

[2] IYAK asked that the supporting data remain confidential because it contains proprietary information.

[3] See: *https://www.fsis.usda.gov/wps/wcm/connect/aa5f69d7-ddc6-44bc-9ff3-bc9489fcd338/IYAK-FSIS-response-120314.pdf?MOD=AJPERES.*

[4] See: *https://www.fsis.usda.gov/wps/wcm/connect/c109452f-4497-4144-815e-6a382b94a113/FSIS-Final-Response-IAK-080315.pdf?MOD=AJPERES.*