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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–08–0107; FV09–925–2 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2009 and subsequent fiscal periods from $0.02 to $0.01 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. Assessments upon desert grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 25, 2009. Comments received by April 27, 2009, will be considered prior to issuance of a final rule.

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; 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.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, 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: *Jennifer.Garcia@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

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@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.''

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 issued herein will be applicable to all assessable grapes beginning on January 1, 2009, 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 decreases the assessment rate established for the Committee for the 2009 and subsequent fiscal periods from $0.02 to $0.01 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 2007 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year 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 14, 2008, and unanimously recommended 2009 expenditures of $77,692 and an assessment rate of $0.01 per 18-pound lug of grapes. In comparison, last year's budgeted expenditures were $133,254. The assessment rate of $0.01 is one-half of the rate currently in effect. The

Committee recommended a lower assessment rate due to a significant decrease in management and administrative expenses for 2009.

The major expenditures recommended by the Committee for the 2009 fiscal period include $10,500 for compliance activities, $53,000 for salaries and payroll expenses, and $14,192 for other administrative expenses. In comparison, budgeted expenses for these items in 2008 were $5,000 for compliance activities, $61,000 for salaries, $18,000 for research, and $49,254 for other administrative expenses. The assessment rate recommended by the Committee was derived by the following formula: Anticipated 2009 expenses ($77,692) plus the desired 2009 ending reserve ($88,534), minus the 2009 beginning reserve ($100,226) plus anticipated interest income ($1,000), divided by the estimated 2009 shipments (6.5 million 18-pound lugs).

Income generated through the $.01 assessment rate ($65,000) plus interest income ($1,000) and reserve funds ($11,692) should be sufficient to meet anticipated expenses of ($77,692). Reserve funds by the end of 2009 are projected at $88,534 or about $10,800 over the Committee's 2009 expenses. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve. The Committee plans to continue using reserve funds to help meet its expenses and bring the reserve to a level lower than its expenses.

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 is effective 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 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2009 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial 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 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.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (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. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7 million. Based on data from the National Agricultural Statistics Service (NASS) and the Committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which 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.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009 and subsequent fiscal periods from $0.02 to $0.01 per 18-pound lug of grapes. The Committee unanimously recommended expenditures of $77,692 and an assessment rate of $0.01 per 18-pound lug of grapes for the 2009 fiscal period. The assessment rate of $0.01 is one-half of the rate currently in effect. The number of assessable grapes is estimated at 6.5 million 18-pound lug of grapes. Thus, the $0.01 rate should provide $65,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009 fiscal period include $10,500 for compliance activities, $53,000 for salaries and payroll expenses, and $14,192 for other administrative expenses. In comparison, budgeted expenses for these items in 2008 were $5,000 for compliance activities, $61,000 for salaries, $18,000 for research, and $49,254 for other administrative expenses.

Decreases in management and administrative expenses are the result of management services, office rental fees and utilities being shared by the Committee and the California Date Administrative Committee (CDAC). In 2008, the Committee and the CDAC agreed to share management and administrative costs in order to streamline expenses for both programs. Additionally, the Committee recommended not renewing its budget for research in 2009 given that there were no pending research proposals at the time the budget was reviewed.

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: anticipated 2009 expenses ($77,692) plus the desired 2009 ending reserve ($88,534), minus the 2009 beginning reserve ($100,226) plus anticipated interest income ($1,000), divided by the estimated 2009 shipments (6.5 million 18-pound lugs).

This rate should provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $77,692 and result in a December 2009 ending reserve of $88,534. This figure is about $10,800 over the Committee's 2009 expenses. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve. The Committee plans to continue using reserve funds to help meet its expenses and bring the reserve to a level lower than its expenses.

To calculate the percentage of grower revenue represented by the assessment rate for 2008, the assessment rate of $0.02 per 18-pound lug is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2008 season as a percentage of grower revenue of .245 percent ($0.02 divided by $8.16 per 18-pound lug). NASS data for 2009 is not yet available. However, applying the same calculations above using the average grower price for 2006–08 would result in estimated assessment revenue as a percentage of total grower revenue of .13 percent for the 2009 season ($0.01 divided by $7.77 per 18-pound lug). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2009.

This action decreases 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, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 14, 2008, 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 comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large 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.

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.

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber 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, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2009 fiscal period began on January 1, 2009, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such period; (2) the action decreases the assessment rate for assessable grapes beginning with the 2009 fiscal period; (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; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

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, 2009, an assessment rate of $0.01 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: February 18, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–3850 Filed 2–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–08–0089; FV09–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2008–2009 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2008–2009 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven States (order). The percentages are 73 percent free and 27 percent restricted and will establish the proportion of cherries from the 2008 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* February 25, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; E-mail *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

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.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the