

Proposed Rules

Federal Register

Vol. 76, No. 27

Wednesday, February 9, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS-FV-10-0104; FV11-925-1 PR]

Grapes Grown in 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 2011 and subsequent fiscal periods from \$0.01 to \$0.0125 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 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 would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by March 11, 2011.

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: Jerry L. Simmons, 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:* Jerry.Simmons@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or *E-mail:* Antoinette.Carter@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, grape handlers in a designated area of southeastern California 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, 2011, 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 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 2011 and subsequent fiscal periods from \$0.01 to \$0.0125 per 18-pound lug of grapes.

The grape 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 grapes grown in a designated area of southeastern California. 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 2009 and subsequent fiscal periods, the Committee recommended, and the 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 October 21, 2010, and unanimously recommended 2011 expenditures of \$89,616 and an assessment rate of \$0.0125 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were \$73,666. The proposed assessment rate of \$0.0125 is \$0.0025 higher than the rate currently in effect. The Committee recommended a higher assessment rate to offset the 2011 budget increases in research, general office expenses, management and compliance expenses, as well as a decreased crop estimate. The Committee estimated a decreased

2011 crop of 6,000,000 18-pound lugs of grapes handled, which is about 604,951 18-pound lugs fewer than the 6,604,951 18-pound lugs handled during the 2010 fiscal period. Based on increases in expenses and a decreased crop estimate, the Committee unanimously recommended that the assessment rate of \$0.01 currently in effect be increased by \$0.0025. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011 fiscal period include \$10,000 for research, \$15,616 for general office expenses, and \$64,000 for management and compliance expenses. The \$10,000 research project is for a new vine study proposed by the University of California Riverside. In comparison, major expenditures for the 2010 fiscal period included no funds for research, \$13,666 for general office expenses, and \$60,000 management and compliance expenses.

The assessment rate recommended by the Committee was derived by the following formula: Anticipated 2011 expenses (\$89,616) plus the desired 2011 ending reserve (\$88,384), minus the 2011 beginning reserve (\$103,000), divided by the estimated 2011 shipments (6,000,000 18-pound lugs) equals \$0.0125 per lug.

Income generated through the \$0.0125 assessment (\$75,000) plus carry-in reserve funds (\$103,000) should be sufficient to meet anticipated expenses (\$89,616). Reserve funds by the end of 2011 are projected at \$88,384 or about one fiscal period's expenses. Section 925.41 of the order permits the Committee to maintain about one fiscal period's expenses in reserve.

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 the 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 2011 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) (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 and the Committee, the crop value for the 2010 season was about \$38,139,629. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about \$762,793. However, according to the Committee, at least ten of 50 producers would be considered small businesses under the Small Business Administration threshold of \$750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and at least ten of the producers could be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2011 and subsequent fiscal periods from \$0.01 to \$0.0125 per 18-pound lug of grapes. The Committee unanimously recommended 2011 expenditures of \$89,616 and an assessment rate of \$0.0125 per 18-pound lug of grapes handled. The proposed assessment rate of \$0.0125 is \$0.0025 higher than the 2010 rate currently in

effect. The Committee recommended the higher assessment rate of \$0.0125 to offset the 2011 budget increases in research, general office expenses, management and compliance expenses, and a decreased crop estimate. The number of assessable grapes is estimated at 6 million 18-pound lugs of grapes. Thus, income generated through the \$0.0125 assessment (\$75,000) plus reserve funds (\$103,000) should be sufficient to meet anticipated expenses (\$89,616). Reserve funds by the end of 2011 are projected at \$88,384 or about one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2011 fiscal period include \$10,000 for research, \$15,616 for general office expenses, and \$64,000 for management and compliance expenses. The \$10,000 research project is for a new vine study proposed by the University of California Riverside. In comparison, major expenditures for the 2010 fiscal period included no funds for research, \$13,666 for general office expenses, and \$60,000 management and compliance expenses.

The assessment rate recommended by the Committee was derived based on the Committee's estimates of the available beginning reserve (\$103,000), projected decreased crop size (6 million 18-pound lugs), anticipated assessment income (\$75,000), anticipated expenses (\$89,616), and the ending 2011 reserve (\$88,384).

The Committee reviewed and unanimously recommended 2011 expenditures of \$89,616, which included increases in research, general office expenses, and management and compliance expenses. Prior to arriving at this budget, the Committee considered alternative expenditures and assessment rates, to include not increasing the \$0.01 assessment rate currently in effect. Based on a decreased 2011 estimate crop of 6 million 18-pound lugs, the Committee ultimately determined that increasing the assessment rate to \$0.0125 combined with funds generated from the reserve would adequately cover increased expenses and provide an adequate 2011 ending reserve.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2011 season could average about \$5.77 per 18-pound lug of grapes handled for California grapes. To calculate the percentage of grower revenue represented by the assessment rate for 2010, the assessment rate of \$0.01 per 18-pound lug is divided by the estimated average grower price

(\$5.77 per 18-pound lug). NASS data for 2011 is not yet available. However, applying these same calculations above using the 2010 grower price would result in an estimated assessment revenue as a percentage of total grower revenue of 0.216 percent for the 2011 season (\$0.0125 divided by \$5.77 per 18-pound lug). Thus, the assessment revenue should be well below the 1 percent of estimated grower revenue in 2011.

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 order. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the October 21, 2010, 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 proposed rule, including 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 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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter 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

2011 fiscal period begins on January 1, 2011, and the 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 or after January 1, 2011, an assessment rate of \$0.0125 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: February 3, 2011.

David R. Ship,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–2875 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC28

Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury
ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a system of records from certain provisions of the Privacy Act.

DATES: Comments must be received no later than March 11, 2011.

ADDRESSES: Written comments should be sent to the Department of the Treasury, ATTN: Supervisory Fraud Specialist, Office of Financial Stability (OFS), 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990 (not a toll-free line). You may also submit comments through the Federal rulemaking portal at <http://www.regulations.gov> (follow the instructions for submitting comments). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–9219 (fax) or via electronic mail at Brian.Bressman@do.treas.gov.

SUPPLEMENTARY INFORMATION: The Department is establishing the Troubled Asset Relief Program (TARP) Fraud Investigation Information System to assist in carrying out its responsibilities under the Emergency Economic Stabilization Act of 2008 (EESA). The TARP Fraud Investigation Information System maintains information relevant to background inquiries conducted on individuals who seek, receive or are entrusted with TARP funds, and to complaints received and collected as part of investigations pertaining to alleged fraud, waste, and/or abuse committed against the TARP programs. Information in the system will assist investigators in determining whether to: (a) Refer matters to the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) for further investigation and resolution; (b) refer matters to OFS Financial Agents and others for compliance review; or (c) close matters with no further action to be taken. The Department of the Treasury is publishing separately in the **Federal Register** a notice of the new system of records.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement