

include a discussion of any comments we receive and any amendments we are making to the rule.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Oriental fruit fly regulations by removing a portion of Orange County, CA, from the list of quarantined areas.

County records indicated there are 9 growers, 4 nurseries, 24 mobile vendors, 3 farmers markets, 8 fruit sellers, 1 distributor, 2 haulers, 2 processors, 1 swap meet, and 34 yard and tree maintenance firms within the quarantined portion of Orange County that could be affected by the lifting of the quarantine in this interim rule.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Orange County, CA, had little effect on the small entities in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no

retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under sec. 203, title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.93–3, paragraph (c) is revised to read as follows:

##### **§ 301.93–3 Quarantined areas.**

\* \* \* \* \*

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 2nd day of March 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05–4350 Filed 3–7–05; 8:45 am]

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#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 925**

[Docket No. FV05–925–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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 began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** March 9, 2005.

**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 issued herein will 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 increases 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 handled.

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 in effect during the 2004 fiscal period. The income from the increased assessment rate, together with

interest income and reserve funds is necessary 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 period.

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), leaving a 2005 ending reserve of \$16,359.

Based on this calculation, assessment income, interest income, and funds from the committee's reserve will provide sufficient income to meet the 2005 anticipated expenses of \$210,691, and will also leave an adequate December 2005 ending reserve of \$16,359. At this level, the December 2005 ending reserve will be within the maximum permitted by the order of one fiscal period's expenses (\$925.41).

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 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 2005 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

### Final 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 final 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 of less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, 8 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 increases 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 assessment rate of \$0.0175 is \$0.0025 higher than the 2004 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 of \$16,359.

This increased assessment rate will 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. This reserve fund level is within the maximum permitted by the order of 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 approximately 0.2 and 0.4 percent.

This action increases 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 are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California grape industry 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.

This rule imposes no additional reporting or recordkeeping requirements on either small or large desert 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 proposed rule concerning this action was published in the **Federal Register** on January 11, 2005 (70 FR 1837). Copies of the proposed rule were also mailed or sent via facsimile to all desert grape handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending on February 10, 2005, was provided for interested persons to respond to the proposal. No comments were received.

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.

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 also found and determined 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 committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2005 fiscal period began on January 1, 2005, and the order requires that the rate of assessment for each fiscal period apply to all assessable desert grapes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

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

Dated: March 2, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 955**

[Docket No. FV05–955–1 IFR]

#### **Vidalia Onions Grown in Georgia; Increased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate and changes the assessable unit established for the Vidalia Onion Committee (Committee) for the 2005 and subsequent fiscal periods from \$0.12 per 50-pound bag or equivalent to \$0.10 per 40-pound carton of Vidalia onions. The assessment rate of \$0.10 per 40-pound carton is \$0.0001 per pound more than the assessment rate previously in effect. The Committee locally administers the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** March 9, 2005. Comments received by May 9, 2005, 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; E-mail: