Rules and Regulations

Federal Register
Vol. 72, No. 131
Tuesday, July 10, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. AMS–FV–07–0029; FV07–925–2 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 2007 and subsequent fiscal periods from $0.0175 to $0.0200 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 began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, 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: *Toni.Sasselli@usda.gov* or *Kurt.Kimmel@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 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, 2007, 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 2007 and subsequent fiscal periods from $0.0175 to $0.0200 per 18-pound lug of grapes.

The California 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 2005 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 February 6, 2007, and unanimously recommended expenditures of $160,768 and an assessment rate of $0.0200 per 18-pound lug of grapes for the 2007 fiscal period. In comparison, last year's budgeted expenditures were $131,318. The assessment rate of $0.0200 is $0.0025 higher than the rate currently in effect. The increased assessment rate is needed to permit the committee to fund a research project on Vineyard Mealy Bugs and to ensure that an adequate carryover of reserve funds is available for the 2008 fiscal year.

The major expenditures recommended by the committee for the 2007 fiscal period include $18,000 for research, $5,000 for compliance activities, $109,068 for salaries and payroll expenses, and $28,700 for other expenses. In comparison, budgeted expenses for these items in 2006 were $5,000 for compliance activities, $103,668 for salaries and payroll expenses, and $22,650 for other expenses. The committee did not budget for research projects in 2006.

The assessment rate recommended by the committee was derived by subtracting the committee's total available funds from their anticipated 2007 expenses and dividing the remainder by the estimated 2007 shipments. The total anticipated 2007

expenses are $160,768, and the desired ending reserve is $39,432. The available carry-in funds are $70,000, and the anticipated interest income is $200. The 2007 estimated shipments are 6.5 million 18-pound lugs.

Based on this calculation, (($160,768 + $39,432) − ($70,000 + $200)) ÷ 6.5 million = $0.0200, the $0.0200 assessment rate will provide sufficient funds to meet anticipated expenses of $160,768 and will allow for an adequate December 2007 ending reserve of $39,432. Thus, the December 2007 ending reserve will be kept within the maximum permitted by the order, approximately one fiscal period's expenses, as required under 925.41 of the order. It will also be adequate to cover early-season (2008) expenses before assessment income is received.

The assessment rate 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 2007 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.

There are approximately 50 producers of grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Last year, six of the 20 handlers subject to regulation had annual grape sales of at least $6,500,000. 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 2007 and subsequent fiscal periods from $0.0175 to $0.0200 per 18-pound lug of grapes. The committee unanimously recommended expenditures of $160,768 and an assessment rate of $0.0200 per 18-pound lug of grapes for the 2007 fiscal period. The proposed assessment rate of $0.0200 is $0.0025 higher than the 2006 rate. The number of assessable grapes is estimated at 6.5 million 18-pound lugs. Thus, the $0.0200 rate should provide $130,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized carry-in reserve should be adequate to cover budgeted expenses.

The major expenditures recommended by the committee for the 2007 fiscal period include $18,000 for research, $5,000 for compliance activities, $109,068 for salaries and payroll expenses, and $28,700 for other expenses. In comparison, budgeted expenses for these items in 2006 were $5,000 for compliance activities, $103,668 for salaries and payroll expenses, and $22,650 for other expenses. The committee did not budget for research projects in 2006.

The committee reviewed and unanimously recommended 2007 expenditures of $160,768, which included an increase due to a new research project. 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 expenses ($160,768) plus desired 2007 ending reserve ($39,432), minus the 2007 beginning reserve ($70,000) and the anticipated interest income ($200), divided by total shipments (6.5 million 18-pound lugs), equals the recommended assessment rate ($0.0200 per 18-pound lug).

This rate will provide sufficient funds in combination with interest and reserve funds to meet the anticipated expenses of $160,768 and result in a December 2007 ending reserve of $39,432, which is acceptable to the committee. Thus, the December 2007 ending reserve will be kept within the maximum permitted by the order, approximately one fiscal period's expense, as required under § 925.41 of the order.

A review of historical information and preliminary information pertaining to the 2007 fiscal period indicates that the on-vine grower price for the season could range between $5.00 and $9.00 per 18-pound lug of grapes. Therefore, the estimated assessment revenue for the 2007 fiscal period as a percentage of total grower revenue could range between 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 will 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 February 6, 2007, 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 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.

The 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 proposed rule concerning this action was published in the **Federal Register** on May 3, 2007 (72 FR 24551). Copies of the proposed rule were provided to all grape handlers, and handlers were invited to submit

comments at a California Desert Grape Administrative Committee meeting on May 9, 2007. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 4, 2007, 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 2007 fiscal period began on January 1, 2007, 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 industry has been shipping grapes since April 2007; (3) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) 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. Also, a 30-day comment period was provided for in the proposed 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, 2007, an assessment rate of $0.0200 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: July 5, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–13342 Filed 7–9–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM359; Special Conditions No. 25–358–SC]

Special Conditions: Boeing Model 737 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 737 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: The effective date of these special conditions is August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195; facsimile (425) 227–1232; electronic mail *alan.sinclair@faa.gov*.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure a level playing field for the aviation industry.

Background

On August 8, 2005, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a design change to Type Certificate No. A16WE for installation of seats that include non-traditional, large, non-metallic panels in Boeing Model 737–700 series airplanes. The Boeing Model 737 series airplanes, currently approved under Type Certificate No. A16WE, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single aisle, medium sized transport category airplanes.

The applicable regulations for airplanes currently approved under Type Certificate No. A16WE do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 737 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable