

that is specifically prohibited by law or required by Executive order to be kept secret in the interest of national defense or foreign affairs, unless such information is disclosed to Congress, the Special Counsel, the Inspector General of an agency, or an employee designated by the head of the agency to receive it.

(c) *Other protected activity* means any of the following:

(1) The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of 5 U.S.C. 2302(b)(8), i.e., retaliation for whistleblowing;

(2) Testifying for or otherwise lawfully assisting any individual in the exercise of any right granted by any law, rule, or regulation;

(3) Cooperating with or disclosing information to Congress, the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(4) Refusing to obey an order that would require the individual to violate a law.

\* \* \* \* \*

(f) *Reasonable belief*. An employee or applicant may be said to have a reasonable belief when a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence the violation, mismanagement, waste, abuse, or danger in question.

■ 17. Section 1209.6 is amended by revising paragraphs (a)(4) and (a)(5)(ii) to read as follows:

**§ 1209.6 Content of appeal; right to hearing.**

(a) \* \* \*

(4) A description of each disclosure evidencing whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and

(5) \* \* \*

(ii) The personnel action was or will be based wholly or in part on the whistleblowing disclosure or other protected activity, as described in § 1209.4(b) of this part.

\* \* \* \* \*

■ 18. Section 1209.7 is revised to read as follows:

**§ 1209.7 Burden and degree of proof.**

(a) Subject to the exception stated in paragraph (b) of this section, in any case involving a prohibited personnel practice described in 5 U.S.C. 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D), the Board will order appropriate corrective action if the appellant shows by a

preponderance of the evidence that the disclosure or other protected activity was a contributing factor in the personnel action that was threatened, proposed, taken, or not taken against the appellant.

(b) However, even where the appellant meets the burden stated in paragraph (a) of this section, the Board will not order corrective action if the agency shows by clear and convincing evidence that it would have threatened, proposed, taken, or not taken the same personnel action in the absence of the disclosure or other protected activity.

■ 19. Section 1209.9 is amended by revising paragraph (a)(6)(ii) to read as follows:

**§ 1209.9 Content of stay request and response.**

(a) \* \* \*

(6) \* \* \*

(ii) The action complained of was based on whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and

\* \* \* \* \*

■ 20. Section 1209.13 is revised to read as follows:

**§ 1209.13 Referral of findings to the Special Counsel.**

When the Board determines in a proceeding under this part that there is reason to believe that a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C. 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D), the Board will refer the matter to the Special Counsel to investigate and take appropriate action under 5 U.S.C. 1215.

William D. Spencer,  
*Clerk of the Board.*

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 253**

[FNS-2009-0006]

RIN 0584-AD95

**Food Distribution Program on Indian Reservations: Amendments Related to the Food, Conservation, and Energy Act of 2008; Approval of Information Collection Request**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; Notice of Approval of Information Collection Request (ICR).

**SUMMARY:** The final rule entitled Food Distribution Program on Indian Reservations: Amendments Related to the Food, Conservation, and Energy Act of 2008 was published on April 6, 2011. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on December 20, 2011. This document announces approval of the ICR.

**DATES:** The ICR associated with the final rule published in the **Federal Register** on April 6, 2011, at 76 FR 18861, was approved by OMB on December 20, 2011, under OMB Control Number 0584-0293.

**FOR FURTHER INFORMATION CONTACT:** Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, by phone at (703) 305-2662, or via email at [Dana.Rasmussen@fns.usda.gov](mailto:Dana.Rasmussen@fns.usda.gov).

Dated: June 25, 2013.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013-15634 Filed 7-1-13; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 925**

[Doc. No. AMS-FV-13-0005; FV13-925-1 FR]

**Grapes Grown in 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 2013 and subsequent fiscal periods from \$0.0150 to \$0.0165 per 18-pound lug of grapes handled. The Committee locally administers the marketing order that 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 will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Effective July 3, 2013.