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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV97–927–1 FIR]

Winter Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1997–98, and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of winter pears grown in Oregon and Washington. Authorization to assess winter pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated. The marketing order was amended recently and California was removed from the production area.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440, or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 927, both as amended (7 CFR part 927; 62 FR 60999, November 14, 1997), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the ''Act.'' Effective November 17, 1997, the marketing agreement and order were amended by removing the State of California from the production area. The production area now covers the States of Oregon and Washington.

The Department of Agriculture 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, winter pear 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 winter pears beginning July 1, 1997, and continuing 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 the Secretary 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 the Secretary 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 the Secretary'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 continues in effect an assessment rate established for the Committee for the 1997–98, and subsequent fiscal periods of $0.44 per standard box of winter pears.

The order provides authority for the Committee, with the approval of the Department, 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 winter pears. 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 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 30, 1997, and unanimously recommended 1997–98 expenditures of $8,066,790 and an assessment rate of $0.44 per standard box of winter pears. In comparison, last year's budgeted expenditures were $5,502,979. The assessment rate of $0.44 is $0.035 more than the rate previously in effect. The Committee discussed alternatives to this rule, including alternative expenditure levels, but decided that an assessment rate of less than $0.44 would not generate the income necessary to administer the program with an adequate reserve. An assessment rate of more than $0.44 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Applying the $0.44 per standard box rate of assessment to the Committee's 17,310,000 standard box shipment estimate should provide $7,616,400 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. Funds in the reserve (approximately $268,000) will be kept within the maximum permitted by the order (one fiscal period's expenses; § 927.42).

Major expenditures recommended by the Committee for the 1997–98 include $7,010,550 for paid advertising, $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1997–98 budget was approved by the Department on August 25, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

A final rule amending the order was published in the **Federal Register** on November 14, 1997 (62 FR 60999). One of the amendments removed California from the production area effective November 17, 1997. The removal of California from the order is expected to have minimal effect on the Committee's anticipated revenue from assessments, and on expenses. Shipments of winter pears from California averaged 548,691 standard boxes or approximately four percent of the total winter pear shipments during the prior five year period. Assessments on shipments of winter pears from Oregon and Washington, along with interest income and funds from the Committee's authorized reserve, will be adequate to meet Committee expenses.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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.

Since the interim final rule was issued, the Department has received new figures on the number of producers and handlers in the production area. There are now approximately 1,700 producers of winter pears in the production area and approximately 93 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of winter pear producers and handlers may be classified as small entities.

This rule continues in effect an increased assessment rate established for the Committee and collected from handlers for the 1997–98, and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $8,066,790, and an assessment rate of $0.44 per standard box of winter pears. The assessment rate of $0.44 is $0.035 more than the rate previously in effect. Winter pear shipments for the year are estimated at 17,310,000 standard boxes, which should provide $7,616,400 in assessment income. Income derived from handler assessments on shipments of winter pears from Oregon and Washington, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (approximately $268,000) will be kept within the maximum permitted by the order (one fiscal period's expenses; § 927.42).

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. An assessment rate of more than $0.44 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program.

Major expenditures recommended by the Committee for the 1997–98 include $7,010,550 for paid advertising, $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively. The increase in paid advertising is needed to help the industry market this season's crop, which is significantly larger than last year's crop. A lower level of funding for paid advertising was ruled out by the Committee because it felt that a more aggressive advertising program was needed this season to market the large crop. The increased level for production research provides funds for current and anticipated research in 1997–98. The increase in salaries provides funds for staff salary adjustments.

Recent price information indicates that the grower price for the 1997–98 season will range between $4.82 and $11.81 per standard box of winter pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 4 and 9 percent.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments 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 winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large winter pear 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The interim final rule concerning this action was published in the **Federal Register** (62 FR 44202) on August 20, 1997, and requested comments to be received by September 21, 1997. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

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.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 62 FR 44202 on August 20, 1997, is adopted as a final rule without change.

Dated: December 15, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33168 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV97–948–1 FIR]

Irish Potatoes Grown in Colorado; Change in Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which changed the size requirement from a 2 inch minimum diameter or 4 ounce minimum weight to a 1⅞ inch minimum diameter for Centennial Russet variety potatoes grown in Area No. 2 of Colorado. The size requirement for Centennial Russets had been larger than the requirement for similar long varieties. The change recognized the similarity among all long varieties and provided potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of potatoes.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440, or Anne M. Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The interim rule relaxed the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no minimum weight option. This change enabled handlers to market a larger portion of the crop in fresh market outlets and improved the marketing of Colorado potatoes. Further, all Russet varieties are now required to meet the same size specifications.

Section 948.22 (7 CFR 948.22) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The Colorado Potato Administrative Committee, San Luis Valley Office (Area No. 2) (Committee), is the agency responsible for local administration of the Federal marketing order in Area No. 2.

Size regulations for potatoes grown in Area No. 2 are currently in effect under § 948.386. Centennial Russet variety potatoes had to be 2 inches minimum diameter or 4 ounces minimum weight. Other long varieties, which include other Russet varieties, had to be 1⅞ inch minimum diameter with no minimum weight option. The interim final rule amended that section by removing the weight requirement option for Centennial Russets and reducing the minimum diameter requirement for Centennial Russets to 1⅞ inches. Thus, all Russet varieties are now required to meet the same minimum diameter. The Committee unanimously recommended this change at its August 21, 1997, meeting.

When the previous size regulations were established, the Centennial Russet was the dominant variety in the San Luis Valley (Area No. 2), accounting for approximately 65–75 percent of the crop. The other major Russet variety grown in the San Luis Valley was the Russet Burbank, a slimmer potato which was required to meet the 1⅞ inch minimum diameter. Today, the Russet