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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV95-927-1FIR]

Expenses and Assessment Rate for the 1995-96 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

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 the interim final rule which authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1995-96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, room 369, Portland, Oregon, telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The

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.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable pears handled during the 1995-96 fiscal year, which began July 1, 1995, and ends June 30, 1996. This final 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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 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 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of 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 these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 27, 1995, and unanimously recommended total expenses of \$7,384,440 for the 1995-96 fiscal year. In comparison, the 1994-95 fiscal year expense amount was \$7,460,160, which is \$75,720 more than the amount recommended for the current fiscal year. The Committee also unanimously recommended an assessment rate of \$0.405 per standard box, or equivalent for winter pears. In comparison, the 1994-95 winter pear assessment rate was \$0.43 per standard

box, or equivalent. This represents a \$0.025 decrease in the assessment rate recommended for this fiscal year. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year.

This rate, when applied to anticipated winter pear shipments of 16,171,000 boxes or equivalent, will yield a total of \$6,549,296 in assessment income. Assessment income, along with \$340,000 from other income sources, and \$645,144 from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Major expense categories for the 1995-96 fiscal year include \$6,064,163 for advertising, \$417,934 for contingency, \$323,422 for winter pear improvement, and \$147,152 for salaries.

An interim final rule was issued on August 11, 1995, and published in the Federal Register [60 FR 42771, August 17, 1995] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal year for the program began July 1, 1995. The marketing order requires that the rate of assessment apply to all assessable winter pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 60 FR 42771 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-27815 Filed 11-8-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 932 and 944

[Docket No. FV95-932-1FIR]

Olives Grown in California and Imported Olives; Establishment of Limited Use Olive Grade and Size Requirements During the 1995-96 Crop Year

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 authorized the use of smaller sized olives in the production of limited use styles for California olives during the 1995-96 crop year. This final rule allows more olives into fresh market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this final rule also changes the olive import regulation so that it conforms with the requirements established under the California olive marketing order.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, CA 93721, telephone (209) 487-5901; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 720-5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in 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.

This final rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

This rule has been reviewed under Executive Order 12778, 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 608(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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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