

Rules and Regulations

Federal Register

Vol. 60, No. 68

Monday, April 10, 1995

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 927

[Docket No. FV94-927-1FR; Amendment]

Increase in Expenses for the 1994-95 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: The Department of Agriculture (Department) is amending the final rule that authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1994-95 fiscal year. This final rule authorizes an increased level of expenses for the 1994-95 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, 1994, through June 30, 1995.

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, DC 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 will be applicable to all assessable pears handled during the 1994-95 fiscal year, which began July 1, 1994, and ends June 30, 1995. 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 3, 1994, and unanimously recommended total expenses of \$6,835,926 for the 1994-95 fiscal year. In comparison, the 1993-94 fiscal year expense amount was \$6,933,615, which is \$97,689 more than the amount recommended for the 1994-95 fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.43 per standard box, or equivalent for winter pears. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year. In comparison, the 1993-94 winter

pear assessment rate was \$0.45 per standard box, or equivalent and \$0.04 for the supplemental assessment rate on Anjou variety pears. This represents a \$0.02 decrease in the assessment rate recommended for this fiscal year.

This rate, when applied to anticipated winter pear shipments of 13,817,000 boxes or equivalent, will yield a total of \$5,941,310 in assessment income. Assessment income, along with \$401,324 from other income sources, and \$493,292 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The \$493,292 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1994-95 fiscal period.

Major expense categories for the 1994-95 fiscal year include \$5,572,500 for advertising, \$276,340 for SOPP data research, \$276,340 for winter pear improvement, \$142,310 for salaries and benefits, and \$612,442 for unshared contingency.

The expenses and assessment rate were authorized in the finalization of the interim final rule issued on November 1, 1994, and published in the **Federal Register** [59 FR 55333, November 7, 1994]. The interim final rule provided a 30-day comment period for interested persons. No comments were received.

The Committee conducted a mail vote during January 1995, and unanimously recommended to increase 1994-95 expenses from \$6,835,926 to \$7,460,160, an increase of \$624,234 from the previously authorized amount. The increase is necessary because the winter pear crop, which was previously estimated at 13,817,000 boxes or equivalent, is now estimated at 15,500,000 boxes.

This under-estimation of over one million boxes, caused the Committee to calculate less assessment income. The Committee is increasing funds for promotion and advertisement for what has become the largest crop of winter pears in the industry's history.

With the approved assessment rate of \$0.43, when applied to winter pear shipments of 15,500,000 boxes or equivalent, will yield a total of \$6,665,000 in assessment income. Assessment income, along with \$368,086 from other income sources, and \$427,074 from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Major expense categories for the 1994-95 fiscal year are to be revised as follows; \$5,812,500 for advertising, \$538,322 for unshared contingency, \$310,000 for SOPP data research, and

\$310,000 for winter pear improvement (\$5,572,500, \$612,442, \$276,340, and \$276,340, respectively, are the amounts from the previously approved budget).

This action will not impose additional costs on handlers. 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 as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect or to engage in further public procedure and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year for the Committee began July 1, 1994, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) handlers are aware of this action which was unanimously recommended by the Committee by mail vote; and (3) no increase in the assessment rate is being recommended so no additional funds will need to be collected from handlers.

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

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.234 [Amended]

2. § 927.234 is amended by removing "\$6,835,926" and adding in its place "\$7,460,160".

Dated: March 31, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-8424 Filed 4-7-95; 8:45 am]

BILLING CODE 3410-02-P

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560-AD42

1995 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On November 7, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule (58 FR 55378) with respect to the 1995 Production Adjustment Program for Extra Long Staple (ELS) Cotton, which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (1949 Act). The 1995 ELS Cotton Acreage Reduction Program (ARP) percentage has been determined to be 10 percent. This final rule amends the regulations to set forth the ARP percentage, the established (target) price, and the price support rate. No paid land diversion (PLD) program will be implemented for the 1995 crop of ELS cotton.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Consolidated Farm Service Agency, United States Department of Agriculture, room 3758-S, P.O. Box 2415, Washington, DC 20013-2415 or call 202-720-9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.