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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–17–0045; SC17–927–1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Processed Pear Committee (Committee) to increase the assessment rate established for the 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton of ''summer/fall'' pears for canning. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated. This rule also makes administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective February 5, 2018.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (hereinafter referred to as 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 Committee locally administers the Order and is comprised of growers, handlers, and processors of processed pears grown in Oregon and Washington, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled, ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled, 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington 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 ''summer/fall'' pears for canning beginning July 1, 2017, and to continue until amended, suspended, or terminated.

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 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton for ''summer/fall'' pears for canning handled under the Order. The assessment rate for ''winter'' and ''other'' pears for processing would remain unchanged at zero.

The Order authorizes 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 growers, handlers, and processors of pears grown in Oregon and Washington, and a public member. 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 2012–2013 and subsequent fiscal periods, the Committee recommended, and USDA approved, the following three base rates of assessment: (a) $7.00 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'', excluding pears for other methods of processing; (b) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''winter''; and (c) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''other''. The assessment on ''summer/fall'' pears applies only to pears for canning and excludes pears for other methods of processing defined in § 927.15, as pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate structure continues 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 May 31, 2017, and unanimously recommended expenditures of $800,150 for the 2017–2018 fiscal period. In comparison, the previous fiscal period's budgeted expenditures were $855,268. The assessment rate of $8.00 per ton for ''summer/fall'' pears for canning established by this rule is $1.00 higher than the rate currently in effect.

The major expenditures recommended by the Committee for the 2017–2018 fiscal period include $605,606 for promotion and paid advertising, $147,694 for research, $25,000 for administration, and $21,850 for Committee expenses. In comparison, major expenditures for the 2016–2017 fiscal period included $682,130 for promotion and paid advertising, $127,288 for research, $25,000 for administration, and $20,850 for Committee expenses.

Committee members estimate the 2017–2018 crop to be 100,000 tons, which would be less than the 2016–2017 production of 103,000 tons by 3,000 tons. Pear production tends to fluctuate due to the effects of weather, pollination, and tree health. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for ''summer/fall'' pears in order to align assessment income with expenses.

The Committee's recommended assessment rate was derived by dividing the 2017–2018 anticipated expenses by the expected shipments of ''summer/fall'' pears for canning, while also taking into account interest income and the Committee's monetary reserve. Shipments of ''summer/fall'' pears for canning for 2017–2018 fiscal period are estimated at 100,000 tons, which should provide $800,000 (100,000 tons × $8.00 per ton) in assessment income. The projected revenue from handler assessments, together with funds from interest income, should be adequate to cover the 2017–2018 fiscal period budgeted expenses of $800,150.

Section 927.42(a) authorizes the Committee to carry over excess funds into subsequent fiscal periods as a reserve, provided that funds do not exceed approximately one year's operational expenses. The Committee expects its monetary reserve, which was estimated to be $544,990 at the end of the 2016–2017 fiscal period, to remain unchanged during the 2017–2018 fiscal period. The reserve will be kept within the established limits of the Order and will provide the Committee with greater ability to absorb fluctuations in assessment income and expenses into the future.

The assessment rate established in this final 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 further modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's budgets 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) (5 U.S.C. 601–612), 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 businesses 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 1,200 growers of processed pears in the regulated production area and approximately 50 processed pear handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the Noncitrus Fruits and Nuts 2016 Summary issued in June 2017 by the National Agricultural Statistics Service, the total farm-gate value of ''summer/fall'' processed pears grown in Oregon and Washington for 2016 was $27,874,000. Based on the number of ''summer/fall'' processed pear growers in the Oregon and Washington, the average gross revenue for each grower can be estimated at approximately $23,228 ($27,874,000 divided by 1,200). Furthermore, based on Committee records, the Committee has estimated that all of the Oregon-Washington pear handlers currently ship less than $7,500,000 worth of processed pears each on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington processed pears may be classified as small entities.

This rule increases the assessment rate collected from handlers, for the 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton for ''summer/fall'' pears for canning. The Committee unanimously recommended 2017–2018 expenditures of $800,150 and an assessment rate of $8.00 per ton for ''summer/fall'' pears for canning. The assessment rate of $8.00 is $1.00 higher than the rate established for the 2012–2013 fiscal period. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for ''summer/fall'' pears in order to align assessment income with expenses.

The 2017–2018 estimate of ''summer/fall'' pears for canning is 100,000 tons. At the $8.00 per ton assessment rate, the Committee anticipates that assessment income of approximately $800,000, along with interest income, should be adequate to cover budgeted expenses for the 2017–2018 fiscal period of $800,150. With the recommended assessment rate and budgeted expense level, the Committee does not anticipate utilizing any funds from the monetary reserve. As such, reserve funds are estimated to be $544,990 at the end of the 2017–2018 fiscal period on June 30, 2018. That reserve level is within the maximum permitted by the Order of approximately one fiscal period's operational expenses (§ 927.42(a)).

The major expenditures recommended by the Committee for the 2017–2018 fiscal period include $605,606 for promotion and paid advertising; $147,694 for research; $25,000 for administration; and $21,850 for Committee expenses. In comparison, major expenditures for the 2016–2017 fiscal period included $682,130 for promotion and paid advertising; $127,288 for research; $25,000 for administration; and $20,850 for Committee expenses.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the Order. Similarly, the

Committee did not recommend lower levels of budgeted expenditures than it did because it would have reduced the effectiveness of the program.

A review of historical data and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017–2018 fiscal period could range between $325 and $346 per ton of ''summer/fall'' processed pears. Therefore, the estimated assessment revenue for the 2017–2018 fiscal period, as a percentage of total grower revenue, could range between 2.31 and 2.46 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 growers. However, these costs are offset by the benefits derived by the operation of the Order.

In addition, the Committee's meeting was widely publicized throughout the processed 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 31, 2017, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 (Generic Fruit Crops). No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large processed 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in **Federal Register** on September 18, 2017 (82 FR 43504). Copies of the proposed rule were emailed to the Committee office. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending October 3, 2017, was provided for interested persons to respond to the proposal.

Three comments were received during the comment period in response to the proposed rule. One comment was generally in support of the proposal. The other two comments, while not expressly opposed to the proposed action, raised concerns regarding the impact that the increased assessment rate would have on growers and consumers.

Specifically, one of the two commenters questioned how the increased assessment rate would affect growers and whether the increased assessment would lead to an increase in farm profits. The commenter also questioned the impact on consumers and if the action would lead to higher canned pear prices. Lastly, the commenter wanted to know when growers and handlers will receive back-pay for the ''summer/fall'' pears for canning that were sold after July 1, 2017, and before the effective date of this final rule. The other commenter was concerned about the impact that the increased assessment rate would have on small growers.

USDA considered the comments submitted and reached the following conclusions. First, marketing orders assess handlers, not growers. As such, growers will not be directly impacted by this action. However, as mentioned previously in this rule, some of the additional costs to handlers as a result of this action may be passed on to growers. Nevertheless, USDA believes that such additional costs would be offset by the economic benefits derived by the operation of the Order. Any impact of this action on growers would not affect small growers more than large growers.

Additionally, as mentioned previously in this rule, assessments upon processed pear handlers are used by the Committee to fund the reasonable and necessary expenses of the Order. Section 927.15 authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Assessments are not considered additional payments for sold product. Therefore, growers and handlers will not receive back-pay for previously sold ''summer/fall'' pears for canning.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This final rule also makes administrative revisions to the subpart headings of the regulations.

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.

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

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

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

Authority: 7 U.S.C. 601–674.

Subpart A—[Amended]

■ 2. Designate the subpart labeled ''Order Regulating Handling'' as subpart A.

Subpart B—Administrative Provisions

■ 3. Designate the subpart labeled ''Rules and Regulations'' as subpart B and revise the heading as shown above.

■ 4. Amend § 927.237 by revising the introductory text and paragraph (a) to read as follows:

§ 927.237 Processed pear assessment rate.

On and after July 1, 2017, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $8.00 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: December 29, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–28505 Filed 1–4–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–17–0040; SC17–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the South Texas Onion Committee (Committee) to increase the assessment rate established for the 2017–18 and subsequent fiscal periods from $0.05 to $0.065 per 50-pound equivalent of onions handled under the Marketing Order (Order). The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 5, 2018.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Richard.Lower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (hereinafter referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of onions operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Marketing Order now in effect, South Texas onion 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 onions beginning on August 1, 2017, and continue until amended, suspended, or terminated.

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 2017–18 and subsequent fiscal periods from $0.05 to $0.065 per 50-pound equivalent of onions handled.

The South Texas Onion 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 South Texas onions. 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 2015–16 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 June 7, 2017, and unanimously recommended 2017–18 expenditures of $149,807, the same as budgeted last fiscal year, and an assessment rate of $0.065 per 50-pound equivalent of onions. The assessment rate of $0.065 is $0.015 higher than the rate currently in effect. The Committee recommended the increase so assessments would be sufficient to cover the Committee's anticipated expenditures while providing additional funds to help replenish the Committee's reserve fund, which has been depleted due to declines in production. With the Committee's recommended $0.015 increase and estimated shipments of approximately three million 50-pound equivalents, assessment income should be approximately $195,000.

The major expenditures recommended by the Committee for the 2017–18 fiscal year include $50,000 for compliance, $37,050 for administrative, and $32,942 for management costs. Budgeted expenses for these items were the same in 2016–17.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas onions, and the level of funds in reserve. As mentioned earlier, onion shipments for the year are estimated at three million 50-pound equivalents, which should provide $195,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. The Committee currently has no money in reserves.

The assessment rate established 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.