

Rules and Regulations

Federal Register

Vol. 67, No. 25

Wednesday, February 6, 2002

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. FV01-927-1 FR]

Winter Pears Grown in Oregon and Washington; The Establishment of a Supplemental Rate of Assessment for the Beurre d'Anjou Variety of Pears and of a Definition for Organically Produced Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a supplemental rate of assessment of \$0.03 per standard box of the Beurre d'Anjou variety of pears (d'Anjou pears) handled, excluding organically produced pears, during the 2001-2002 and subsequent fiscal periods under the marketing order regulating the handling of winter pears grown in Oregon and Washington. The marketing order is administered locally by the Winter Pear Control Committee (Committee). To properly implement the supplemental rate of assessment, which will be used for the purpose of funding data collection for Ethoxyquin residue on stored d'Anjou pears, this rule also establishes a definition for organically produced pears. The fiscal period began July 1 and ends June 30. The supplemental rate of assessment will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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) 720-8938.

Small businesses may request information on complying 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) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, 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."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Oregon and Washington winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the supplemental rate of assessment as issued herein will be applicable to all assessable d'Anjou pears, excluding organically produced pears, beginning on July 1, 2001, and will continue 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 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 establishes a supplemental rate of assessment of \$0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001-2002 and subsequent fiscal periods. The \$0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of \$0.49 per standard box established at 63 FR 39037 for the 1998-1999 and subsequent fiscal periods, which pertains to all pears handled under the order. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this rule at its meeting held on June 1, 2001.

Section 927.41 of the order provides authority for USDA, upon a recommendation of the Committee, to fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. Section 927.47 provides authority for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

Authority for the Committee to recommend the establishment of a definition for organically produced pears is provided in § 927.4, which defines "pears" for purposes of this order, and in § 927.31(b), which provides the Committee with the power to recommend administrative rules and regulations to effectuate the terms and provisions of the order.

The winter pear order provides authority for the Committee, with USDA's approval, 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 Oregon and Washington 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 rate of assessment, both basic and supplemental, is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 1, 2001, and unanimously recommended 2001–2002 expenditures of \$8,127,777. The Committee also recommended continuation of the rate of assessment of \$0.49 per standard box of winter pears established for the 1998–1999 and subsequent fiscal periods. In addition to this continuing, basic rate of assessment, the Committee unanimously recommended the establishment of a supplemental rate of assessment of \$0.03 per standard box of d’Anjou pears handled, excluding organically produced pears. Both the basic rate of \$0.49 per standard box of winter pears and the supplemental rate of \$0.03 per standard box of conventionally produced and handled d’Anjou pears 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.

Under authority of this final rule, conventionally produced and handled d’Anjou pears (pears that are not organically produced) will be assessed at a total rate of \$0.52 per standard box, while all other varieties of winter pears, including organically produced and handled d’Anjou pears, will be assessed at the currently established rate of \$0.49 per standard box. The Committee estimates that of the 15.8 million boxes of winter pears projected for utilization during the 2001–2002 fiscal period, 12.4 million boxes will be conventionally produced pears of the d’Anjou variety. While the income derived from the basic rate of assessment will continue to fund the Committee’s administrative and promotional activities, income derived from the supplemental rate of assessment will be used exclusively to fund the collection of data on Ethoxyquin residue on stored d’Anjou pears. Ethoxyquin is an antioxidant that is registered for use on pears in the control of superficial scald, a physiological disease affecting the appearance of certain varieties of stored pears. The supplemental rate will not be applicable to d’Anjou pears that are organically produced, as Ethoxyquin is not used in their handling and storage.

Since the d’Anjou variety of pear is of major importance to the Oregon and Washington winter pear industry, the Committee has embarked on a research project that will fund the collection of data pertaining to Ethoxyquin residue to satisfy requirements of the Environmental Protection Agency pertaining to U.S. pesticide tolerance and registration. In addition, the data collection will be used in conjunction with the Codex Alimentarius system that establishes maximum residue limits used as tolerances in many nations receiving shipments of Oregon and Washington d’Anjou pears.

The major expenditures recommended by the Committee for the 2001–2002 year include \$6,952,000 for market development projects including paid advertising, \$688,000 for research including \$372,000 for Ethoxyquin data research (funded by the supplemental rate of assessment), and operational expenses of \$474,000, including \$241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were \$7,342,500, \$330,000, and \$412,500 (including \$269,658 for salaries and benefits), respectively. Collection of data on the use of Ethoxyquin was not a funded research project during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period is expected to total \$8,114,000 based on estimated shipments of 15,800,000 standard boxes at the current rate of \$0.49 per standard box. This includes 12,400,000 standard boxes of conventionally produced d’Anjou pears at the proposed supplemental rate of \$0.03 per standard box. Income from the additional \$0.03 rate of assessment is estimated at \$372,000. 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 (currently \$304,181) will be kept within the maximum permitted by the order of approximately one fiscal period’s expenses (\$ 927.42).

Although both the basic rate of assessment and the supplemental rate of assessment 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 both. 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. The USDA will evaluate Committee recommendations

and other available information to determine whether modification of either rate of assessment is needed. Further rulemaking will be undertaken as necessary. The Committee’s 2001–2002 budget has been reviewed and approved by USDA. Those for subsequent fiscal periods will also be reviewed, and as appropriate, approved.

This final rule includes the establishment of a definition for organically produced pears. The establishment of this definition facilitates the implementation of the organically produced pear exclusion from the supplemental rate of assessment. The Committee recommended that the definition be established as follows: “*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.” Although the Committee recommended that this definition be established primarily so that it could properly administer the proposed supplemental rate of assessment, the definition could prove useful to both the Committee and the Department in a variety of ways in the administration of the order. With the increasing interest and emphasis being put on organic food production in the United States, this definition for organically produced pears provides the northwest pear industry with an important tool.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 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.

There are approximately 70 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,700 winter pear producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having

annual receipts less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

The Committee estimates, based upon handler shipment totals and an average F.O.B price of \$14 per standard box, that about 93 percent of winter pear handlers could be considered small businesses under SBA's definition. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of winter pear producers, the average annual producer receipts are approximately \$69,635. In view of the foregoing, it can be concluded that the majority of producers of winter pears may be classified as small entities.

This rule establishes a supplemental rate of assessment of \$0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The \$0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of \$0.49 per standard box of pears handled established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this action at its meeting held on June 1, 2001.

The major expenditures recommended by the Committee for the 2001–2002 year include \$6,952,000 for market development including paid advertising, \$688,000 for research including \$372,000 for Ethoxyquin data collection, and operational expenses of \$474,000, including \$241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were \$7,342,500, \$330,000, and \$412,500 (\$269,658 for salaries and benefits), respectively. Ethoxyquin data research was not a budgeted item during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period may total \$8,114,000 based on estimated winter pear shipments of 15,800,000 standard boxes at the current rate of \$0.49 per standard box, and 12,400,000 standard boxes of conventionally produced d'Anjou pears at the supplemental rate of \$0.03 per standard box. The supplemental assessment income, estimated at \$372,000, will be used to fund Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The operating reserve is within the

maximum permitted by the order of approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–2002 expenditures of \$8,127,777. This compares to last year's approved budget of \$8,199,694. Prior to arriving at this budget, alternative expenditure and assessment levels were discussed by the Committee. Based upon the relative value of the Ethoxyquin research to the industry, a supplemental rate of assessment was recommended on d'Anjou pears. Ethoxyquin is not used in the handling and storage of organically produced d'Anjou pears, thus they were excluded from the Committee's supplemental assessment recommendation. This fact, however, is the main reason the Committee recommended the establishment of a definition for organically produced pears in the order's rules and regulations.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001–2002 season could range between \$5.87 and \$10.34 per standard box of winter pears. Therefore, the estimated assessment revenue for the 2001–2002 fiscal period, inclusive of revenue from both the basic \$0.49 rate and the \$0.03 supplemental rate of assessment, as a percentage of total grower revenue could range between 5 and 9 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 producers. However, these costs are generally offset by the benefits derived by the operation of the order. 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 June 1, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Furthermore, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no 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 USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on September 21, 2001 (66 FR 48623). A copy of the proposed rule was provided to the Committee office which in turn made copies available to producers and handlers. Furthermore, the Office of the Federal Register and USDA made a copy available on the Internet. A 30-day comment period ending October 22, 2001, was provided for interested persons to respond to the proposal. No comments were 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2001–2002 fiscal period pears from producers; (2) the 2001–2002 fiscal period began on July 1, 2001, and the supplemental rate of assessment should apply to all assessable, non-organic, d'Anjou pears handled during such fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Furthermore, a 30-day comment period was provided for in the proposed rule and no comments were received.

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—WINTER 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.

2. In Subpart—Control Committee Rules and Regulations, under the undesignated center heading “Definitions”, a new § 927.103 is added as follows:

§ 927.103 Organically produced pears.

Organically produced pears means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

3. Section 927.236 is revised to read as follows:

§ 927.236 Assessment rate.

On and after July 1, 2001, an assessment rate of \$0.49 per standard box of conventionally and organically produced pears and, in addition, a supplemental assessment rate of \$0.03 per standard box of Beurre d’Anjou variety pears, excluding organically produced pears, is established for the Winter Pear Control Committee.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2849 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV02–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2002 and subsequent fiscal years from \$27.90 to \$10.09 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1, 2002, and ends December 31, 2002. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective: February 7, 2002. Comments received by April 8, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail:

moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), 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.” The Department of Agriculture (USDA) 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, California olive 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 olives

beginning January 1, 2002, and continue 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 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 decreases the assessment rate established for the Committee for the 2002 and subsequent fiscal years from \$27.90 per ton to \$10.09 per ton of olives.

The California olive 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 California olives. 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 2001 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year 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 December 11, 2001, and unanimously recommended fiscal year 2002 expenditures of \$1,428,585 and an assessment rate of \$10.09 per ton of olives. In comparison, last year’s budgeted expenditures were \$1,348,242 and the assessment rate was \$27.90. The assessment rate of \$10.09 is