Proposed Rules

Federal Register
Vol. 63, No. 139
Tuesday, July 21, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV98–927–1 PR]

Winter Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled. 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 1998–99 fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 20, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 205–6632. 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.

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) 690–3919, 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. 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 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.''

The Department of Agriculture (Department) 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 proposed herein would be applicable to all assessable winter pears beginning July 1, 1998, and continue until modified, suspended, or terminated. This rule would 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 would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled.

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 Committee consists of six producer members and six handler members, each of whom is 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 budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.44 per standard box 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 29, 1998, and unanimously recommended 1998–99 expenditures of $7,958,083 and an assessment rate of $0.49 per standard box of winter pears handled during the 1998–99 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $8,066,790. The assessment rate of $0.49 is $0.05 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $0.49 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $6,719,500 for paid advertising, $460,925 for unforeseen expenses, $302,000 for improvement of winter pears, $182,785 for salaries, and $75,000 for market development. Budgeted expenses for these items in 1997–98 were $7,010,550, $268,632, $346,200, $161,549, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Winter pear shipments for the year are estimated at 15,100,000 standard boxes, which should provide $7,399,000 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 (currently $470,000) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would 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 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this rule would have on small entities. Accordingly, AMS has prepared this initial 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 1,800 producers of winter pears in the production area and approximately 90 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 would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled. The Committee met on May 29, 1998, and unanimously recommended 1998–99 expenditures of $7,958,083 and an assessment rate of $0.49 per standard box of winter pears handled. In comparison, last year's budgeted expenditures were $8,066,790. The assessment rate of $0.49 is $0.05 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $0.49 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $6,719,500 for paid advertising, $460,925 for unforeseen expenses, $302,000 for improvement of winter pears, $182,785 for salaries, and $75,000 for market development. Budgeted expenses for these items in 1997–98 were $7,010,550, $268,632, $346,200, $161,549, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Winter pear shipments for the year are estimated at 15,100,000 standard boxes, which should provide $7,399,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. The operating reserve is within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $6.18 and $10.78 per standard box of winter pears handled. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue would range between 0.5 and 0.8 percent.

This action would increase 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 would 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 29, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal period began on July 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable winter pears handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

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 proposed to be 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.

§ 927.236 [Amended]

2. Section 927.236 is proposed to be amended by removing the words ''July 1, 1997,'' and adding in their place the words ''July 1, 1998,'' and by removing ''$0.44'' and adding in its place ''$0.49.''

Dated: July 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–19389 Filed 7–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, and 1046

[Docket No. AO–338–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Final Decision and Order To Terminate Proceeding on Proposed Amendments to Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1005 ..	Carolina	AO–388–A9.
1007 ..	Southeast	AO–366–A38.
1046 ..	Louisville-Lexington-Evansville.	AO–123–A67.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final decision and termination of proceeding.

SUMMARY: This document denies proposed amendments to 3 Federal milk orders in the Southeastern United States and terminates the rulemaking proceeding. The proposals involve deductions from the minimum uniform price to producers and the definition of ''producer'' specified in each of the orders. The decision to deny the proposals is based upon 2 public hearings, and upon comments and exceptions filed in response to a subsequent recommended decision issued by the Department.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address: Nicholas__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

This partial final decision denies the proposed amendments to the Carolina, Southeast, and Louisville-Lexington-Evansville Federal milk orders,[1] and terminates this rulemaking proceeding.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities. The Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

The milk of approximately 7,600 producers is pooled on the Carolina, Southeast, and Louisville-Lexington-Evansville milk orders. Of these producers, 97 percent produce below the 326,000-pound production guideline and are considered to be small businesses.

There are 48 handlers operating pool plants under the 3 orders. Of these handlers, 22 have fewer than 500 employees and qualify as small businesses.

The Agricultural Marketing Service has determined, as set forth in the recommended decision, that neither the denial, nor the adoption, of proposed amendments involving deductions from the minimum payments to producers will have a significant economic impact on a substantial number of small entities under current marketing conditions. Dairy farmers are presently receiving the minimum order prices and should continue to do so given the current level of over-order premiums now in effect. Similarly, neither adoption nor denial of the proposed amendments will have any effect on handlers' costs under the orders because, currently, handlers are voluntarily paying producer prices in excess of the minimum prices specified in the orders. Furthermore, for the long term, the issue of deductions from minimum payments will be considered as part of the Federal order reform in connection with the Federal Agriculture Improvement and Reform Act of 1996 which requires an examination of the Federal milk order system. The concerns of small businesses will be addressed throughout the review process.

Additionally, neither the denial nor the adoption of the proposal to modify the definition of ''producer'' under the 3 orders will have a significant economic impact on a substantial number of small entities. Standards already exist in the 3 orders to assure an adequate association by producers in meeting the fluid milk needs of the markets. The denial of the proposal to incorporate additional producer qualification standards maintains the existing regulatory burden, and will not place any additional responsibilities on handlers operating under the orders.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Orders: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Extension of Time for Filing Comments to the Tentative Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Extension of Time for Filing Comments to the Tentative Decision: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

Notice of Reopened Hearing: Issued November 19, 1996; published November 25, 1996 (61 FR 59843).

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[1] The Tennessee Valley Federal milk order, an order involved in this rulemaking proceeding, was terminated as of October 1, 1997.