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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-09-0037; FV09-927-1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Processed Pear Committee (PPC) for the 2009–2010 and subsequent fiscal periods from \$6.25 to \$8.41 per ton for “summer/fall” pears for canning. The PPC is responsible for local administration of the marketing order regulating the handling of pears for processing grown in Oregon and Washington. Assessments upon handlers of pears for processing are used by the PPC to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

DATES: *Effective Date:* October 15, 2009.

FOR FURTHER INFORMATION CONTACT:

Susan M. Coleman or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail:

Sue.Coleman@ams.usda.gov or *GaryD.Olson@ams.usda.gov*.

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 SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: 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, 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, 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 pears beginning July 1, 2009, 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 PPC for the 2009–2010 and subsequent fiscal periods from \$6.25 to \$8.41 per ton for “summer/fall” pears for canning handled under the order. The assessment rate for “winter” and

“other” pears for processing remain unchanged at a zero rate.

The order provides authority for the PPC, 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 PPC are growers, handlers, and processors of Oregon and Washington pears. They are familiar with the PPC’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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent fiscal periods, the PPC unanimously recommended the following three base rates of assessment: (a) \$6.25 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 for “summer/fall” pears applies only to pears for canning and excludes pears for other methods of processing as defined in § 927.15, which includes pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the PPC or other information available to USDA.

The PPC met on May 28, 2009, and unanimously recommended 2009–2010 expenditures of \$1,029,554. In comparison, last year’s budgeted expenditures were \$882,606. The major expenditures recommended by the PPC for the 2009–2010 fiscal period include \$860,310 for promotion and paid advertising; \$130,944 for research; \$24,200 for administration; \$13,100 for PPC expenses; and \$1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included \$700,000 for promotion and paid advertising; \$140,106 for research; \$28,000 for administration;

\$13,500 for PPC expenses; and \$1,000 for contingency.

The PPC based its recommended assessment rate for “summer/fall” pears for canning on the 2009–2010 crop estimate, the 2009–2010 program expenditure needs, and the current and projected size of its monetary reserve. Shipments of “summer/fall” pears for canning for 2009–2010 are estimated at 121,000 tons, which should provide \$1,017,610 in assessment income. Income derived from handler assessments, along with interest income (\$5,000), and funds from the Committee’s authorized reserve (\$136,420), should be adequate to cover the budgeted expenditures. The estimated 2009–2010 year-end reserve is \$129,476, which is within the order’s limit of approximately one fiscal period’s operational expenses.

Over the past five years, the Northwest processed pear industry has suffered a reduction in crop size by approximately 23 percent. With the decreasing crop size, along with the increasing costs for promotional activities, the PPC has been forced to cut back on some promotional activities and use reserve funds. The PPC recommended the higher assessment rate to increase the funding for promotional activities. As stated earlier, the budget for promotion and paid advertising is being increased from last season’s \$700,000 to \$860,310 this fiscal period. This increase will allow the PPC to effectively carry out the promotional activities needed to maintain the existing market share and increase demand. The PPC recommended no change for the \$0.00 assessment rate for both the “winter” and “other” classification of pears for processing.

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 PPC or other available information.

Although this assessment rate will be effective for an indefinite period, the PPC 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 the PPC’s meetings are available from the PPC or USDA. The PPC meetings are open to the public and interested persons may express their views at these meetings. USDA will continue to evaluate the PPC’s recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as

necessary. The PPC’s 2009–2010 budget has been reviewed and approved by USDA; those for subsequent fiscal periods will also 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 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.

There are approximately 1,500 growers of pears for canning in the regulated production area and approximately 51 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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 \$7,000,000.

According to the *Noncitrus Fruits and Nuts 2008 Preliminary Summary* issued in January 2009 by the National Agricultural Statistics Service, the total farm gate value of “summer/fall” processed pears grown in Oregon and Washington for 2008 was \$28,868,000. Therefore, the 2008 average gross revenue for a “summer/fall” processed pear grower in Oregon and Washington was \$19,245. Based on records of the PPC and recent f.o.b. prices for pears, all of the handlers ship less than \$7,000,000 worth of processed pears on an annual basis. Thus it can be concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA’s definition of small businesses.

This rule increases the assessment rate established for the PPC and collected from handlers for the 2009–2010 and subsequent fiscal periods from \$6.25 to \$8.41 per ton for “summer/fall” pears for canning. The PPC also unanimously recommended 2009–2010

expenditures of \$1,029,554. With a 2009–2010 crop of “summer/fall” pears for canning estimate of 121,000 tons in Oregon and Washington, the PPC anticipates assessment income of about \$1,017,610. The PPC recommended the higher assessment rate to increase the funding for promotional activities.

The major expenditures recommended by the PPC for the 2009–2010 fiscal period include \$860,310 for promotion and paid advertising, \$130,944 for research, \$24,200 for administration, \$13,100 for PPC expenses, and \$1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included \$700,000 for promotion and paid advertising, \$140,106 for research, \$28,000 for administration, \$13,500 for PPC expenses, and \$1,000 for contingency.

The PPC discussed alternatives to this recommended assessment increase. The PPC reviewed a “critical issue analysis” of the key components of the PPC’s promotion program and discussed individual promotional activities. As a result of its review, the PCC determined that leaving the assessment rate at the current \$6.25 per ton would have cut core promotional activities. Furthermore, the PCC determined that any assessment rate less than the \$8.41 rate herein established would have been insufficient and would have limited promotional activities. The assessment rate of \$8.41 per ton for “summer/fall” pears for canning enables the PPC to achieve the key components as laid out in its promotion program.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2009–2010 season could average about \$250 per ton for “summer/fall” pears for canning. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total grower revenue is 3.364 percent for Oregon and Washington “summer/fall” pears for canning.

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 would be offset by the benefits derived by the operation of the order.

In addition, the PPC’s meeting was widely publicized throughout the Oregon and Washington pear industry and all interested persons were invited to attend and participate in PPC deliberations on all issues. Like all PPC meetings, the May 28, 2009 meeting was

a public meeting and all entities, both large and small, were able to express views on the issues.

This rule does not impose additional reporting or recordkeeping requirements on either small or large Oregon and Washington 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 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 regarding this action was published in the **Federal Register** on August 26, 2009 (FR 74 43082). Copies of the rule were made available to all Oregon and Washington processed pear handlers. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2009, was provided so that persons interested in the proposal could respond. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 PCC 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) The 2009–2010 fiscal period began on July 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all pears for canning handled during such fiscal period; (2) the PPC needs to have sufficient funds to pay its expenses, which are incurred on a continuous

basis; (3) handlers are aware of this action, which was recommended by the PPC at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule.

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.

■ 2. In § 927.237, the introductory text and paragraph (a) are revised to read as follows:

§ 927.237 Processed pear assessment rate.

On or after July 1, 2009, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$8.41 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: October 6, 2009.

Rayne Pegg,
Administrator, Agricultural Marketing Service.

[FR Doc. E9–24681 Filed 10–13–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2008–0458]

RIN 3150–AI31

Criminal Penalties; Unauthorized Introduction of Weapons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to authorize the imposition of Federal criminal penalties on those who, without authorization, introduce weapons or explosives into specified classes of facilities and installations

subject to the regulatory authority of the NRC. This action is necessary to implement section 229, “Trespass on Commission Installations,” of the Atomic Energy Act of 1954, as amended (AEA).

DATES: This rule is effective on April 12, 2010.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC–2008–0458]. Address questions about NRC dockets to Carol Gallagher at 301–415–5905, e-mail Carol.Gallagher@nrc.gov.

NRC’s Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC’s PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC’s Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC’s electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC’s PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: James E. Adler, Office of the General Counsel, telephone 301–415–1656, e-mail: james.adler@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Public Comments
- III. Discussion of the Final Rule
- IV. Voluntary Consensus Standard
- V. Finding of No Significant Environmental Impact: Environmental Assessment
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis
- X. Congressional Review Act
- XI. Agreement State Compatibility

I. Background

Section 654 of the Energy Policy Act of 2005, “Unauthorized Introduction of Dangerous Weapons,” amended § 229 of the AEA (42 U.S.C. 2278a) to authorize the NRC to issue regulations that make it a Federal crime to bring, without authorization, weapons or explosives into facilities designated by the NRC.