

by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere

with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: April 19, 2011.

**Mary Ellen Callahan**,  
Chief Privacy Officer, Department of  
Homeland Security.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Doc. No. AMS-FV-10-0072; FV10-927-1 FIR]

#### Pears Grown in Oregon and Washington; Amendment To Allow Additional Exemptions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Adoption of interim rule as final.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim rule that added an exemption to the marketing order for Oregon-Washington pears that provides for the sale of fresh pears directly to consumers without regard to regulation. For each customer, the interim rule provided an exemption for consumer-direct sales of up to 220 pounds of fresh pears per transaction, for home use only, made directly at orchards, packing facilities, roadside stands, or farmers' markets without regard to the marketing order's assessment, reporting, handling, and inspection requirements. This action is intended to provide increased marketing flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

**DATES:** Effective May 16, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Portland, Oregon; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [Gary.D.Olson@ams.usda.gov](mailto:Gary.D.Olson@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, 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: [Laurel.May@ams.usda.gov](mailto:Laurel.May@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.

The handling of pears grown in Oregon and Washington is regulated by 7 CFR part 927. This rule continues in effect the interim rule that added an exemption for consumer-direct sales of up to 220 pounds of fresh pears per customer and transaction, for home use only, and made directly at orchards, packing facilities, roadside stands, or farmers' markets. These consumer-direct sales are exempt from the marketing order's assessment, reporting, handling, and inspection requirements. The Committee believes that the volume represented by these pear sales is insignificant and will not adversely affect the domestic and international marketing of commercial quantities of fresh pears. The majority of promotional funds collected by the Committee are utilized for large-scale promotional efforts that do not have a direct relationship or benefit to these consumer-direct sales. This exemption provides regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

In an interim rule published in the **Federal Register** on January 25, 2011, and effective on January 26, 2011, (76 FR 4202, Doc. No. AMS–FV–10–0072, FV10–927–1 IR), a new § 927.122 was added to the order's rules and regulations providing for the consumer-direct exemption.

#### 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 action 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 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 1,537 growers of fresh pears in the regulated production area and approximately 38

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 2010 Preliminary Summary issued in January 2010 by the National Agricultural Statistics Service, the average 2009 fresh pear price of \$456 per ton places the farm-gate value of fresh pears grown in Oregon and Washington at \$202,053,810. Based on the number of fresh pear growers in the Oregon-Washington production area, the average gross revenue for each grower can be estimated at approximately \$131,460. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Northwest pear handlers currently ship less than \$7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

This rule continues in effect the action that exempts from regulation fresh pears that are sold directly to consumers—in quantities of 220 pounds or less per customer and transaction—at orchards, packing houses, roadside stands, and farmers' markets. This change provides small pear handlers with increased marketing flexibility while facilitating the sale of pears in local markets. Section § 927.65(b) of the order authorizes the establishment of regulations that exempt specified quantities of pears, or types of pear shipments from the order.

This action is expected to have a beneficial impact on the Northwest pear industry, especially on small growers and handlers. The Committee's goal is that this exemption will reduce overall costs to the pear industry, relax the burden on small businesses, and facilitate the distribution of fruit at the local level. The Committee believes that this action will be especially beneficial to small independent businesses because such agricultural operations tend to utilize roadside stands and farmers' markets more than do large, vertically integrated entities. The Committee has stated that the majority of pear handlers are small businesses under the SBA definition. Although this rule was recommended by the Committee with the goal of helping small pear grower handlers and handlers, it does not prevent large businesses from realizing the same benefits.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 22, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before March 28, 2011. No comments were received. Therefore, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0072-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 4202, January 25, 2011) 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.

#### PART 927—PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim rule that amended 7 CFR part 927 and that was published at 76 FR 4202 on January 25, 2011, is adopted as a final rule, without change.

Dated: May, 9, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

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