

**Paperwork Reduction Act**

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

FSA 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.

**List of Subjects in 7 CFR Part 760**

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Farm Service Agency (USDA) amends 7 CFR part 760 as follows:

**PART 760—INDEMNITY PAYMENT PROGRAMS**

- 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; and Sec. 748, Pub. L. 111–80, 123 Stat. 2131.

**Subpart B—General Provisions for Supplemental Agricultural Disaster Assistance Programs**

- 2. Revise § 760.106 paragraph (a)(1), to read as follows:

**§ 760.106 Equitable relief.**

(a) \* \* \*  
(1) Are otherwise ineligible or provide evidence, satisfactory to FSA, that the failure to meet the requirements of § 760.104 for one or more eligible crops on the farm was unintentional and not because of any fault of the participant, as determined by the Secretary, or

\* \* \* \* \*

**§ 760.107 [Amended]**

- 3. Amend § 760.107, in paragraph (b)(2)(ii), by removing the words “paragraph (a)” and adding, in their place, the words “paragraph (b)(2)(i)”.

**Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program**

- 4. Revise § 760.203, paragraph (c)(2) to read as follows:

**§ 760.203 Eligible losses, adverse weather, and other loss conditions.**

\* \* \* \* \*

(c) \* \* \*

(2) Due to an eligible adverse weather event or loss condition that occurred on or after January 1, 2008, and before October 1, 2011.

\* \* \* \* \*

- 5. Revise § 760.204, paragraph (f)(1) to read as follows:

**§ 760.204 Eligible livestock, honeybees, and farm-raised fish.**

\* \* \* \* \*

(f) \* \* \*

(1) They must have died:  
(i) On or after the beginning date of the eligible loss condition; and  
(ii) On or after January 1, 2008, and no later than 60 calendar days from the ending date of the eligible loss condition, but before November 30, 2011; and  
(iii) As a direct result of an eligible loss condition that occurs on or after January 1, 2008, and before October 1, 2011; and

(iv) In the calendar year for which payment is being requested; and

\* \* \* \* \*

**Subpart E—Livestock Indemnity Program**

- 4. Revise § 760.404, paragraph (c) to read as follows:

**§ 760.404 Eligible livestock.**

\* \* \* \* \*

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

- (1) Died as a direct result of an eligible adverse weather event that occurred on or after January 1, 2008, and before October 1, 2011;  
(2) Died no later than 60 calendar days from the ending date of the applicable adverse weather event, but before November 30, 2011;  
(3) Died in the calendar year for which benefits are being requested;  
(4) Been maintained for commercial use as part of a farming operation on the day they died; and  
(5) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild, free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

\* \* \* \* \*

**Subpart G—Supplemental Revenue Assistance Payments Program**

- 5. Amend § 760.601 by adding a sentence at the end of paragraph (b) to read as follows:

**§ 760.601 Applicability.**

\* \* \* \* \*

(b) \* \* \* Crop losses must have occurred in crop year 2008 or subsequent crop years due to an eligible disaster event that occurs on or before September 30, 2011.

\* \* \* \* \*

- 6. Revise § 760.610, paragraph (a)(2), to read as follows:

**§ 760.610 Participant eligibility.**

(a) \* \* \*

(2) Crop losses must have occurred in crop year 2008 or subsequent crop years due to an eligible disaster event that occurred on or before September 30, 2011.

(i) For insured crops, the coverage period, as defined in the insurance policy, must have begun on or before September 30, 2011;

(ii) For NAP crops, the coverage period must have begun on or before September 30, 2011; and

(iii) The final planting date for that crop according to the Federal crop insurance or NAP policy must have been on or before September 30, 2011.

\* \* \* \* \*

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 2011–22323 Filed 8–30–11; 8:45 am]

**BILLING CODE 3410–05–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 927**

[Doc. No. AMS–FV–11–0060; FV11–927–2 IR]

**Pears Grown in Oregon and Washington; Assessment Rate Decrease for Fresh Pears**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Fresh Pear Committee (Committee) for the 2011–2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order

which regulates the handling of fresh pears grown in Oregon and Washington. Assessments upon Oregon-Washington fresh pear handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 1, 2011. Comments received by October 31, 2011, 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 Internet: <http://www.regulations.gov>. Comments should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

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

Small businesses may request information on complying with this regulation 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-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 fresh winter pears beginning July 1, 2011, 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 decreases the assessment rate established for the Committee for the 2011-2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The standard box or equivalent assessment rate for fresh "summer/fall" pears and "other" fresh pears would remain unchanged at \$0.366 and \$0.00, respectively.

The Oregon-Washington pear marketing order provides authority for the Committee, with USDA approval, to formulate an annual budget of expenses and to collect assessments from handlers to administer the fresh pear program. The members of the Committee are producers and handlers of Oregon-Washington fresh 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 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 2005-2006 and subsequent fiscal periods, the Committee recommended, and the USDA approved, the following three base rates of assessment: (a) \$0.366 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as "summer/fall"; (b) \$0.501 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as "winter"; and (c) \$0.000 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as "other". These assessment rates 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 3, 2011, and unanimously recommended 2011-2012 expenditures of \$8,827,860 and an assessment rate of \$0.471 per standard box or equivalent of fresh winter pears handled. In comparison, last year's budgeted expenditures were \$9,262,200. The assessment rate of \$0.471 is \$0.03 lower than the rate previously in effect. The Committee recommended the assessment rate decrease because the winter pear promotion budget for the 2011-2011 fiscal period was reduced.

The major expenditures recommended by the Committee for the 2011-2012 fiscal period include \$437,160 for contracted administration by Pear Bureau Northwest, \$610,700 for production research and market development, \$6,355,000 for promotion and paid advertising for winter pears, and \$1,260,000 for promotion and paid advertising for summer/fall pears. In comparison, major expenses for the 2010-2011 fiscal period included \$482,500 for contracted administration by Pear Bureau Northwest, \$610,700 for production research and market development, \$6,600,000 for promotion and paid advertising for winter pears, and \$1,410,000 for promotion and paid advertising for summer/fall pears.

The Committee based its recommended assessment rate for fresh winter pears on the 2011-2012 fresh winter pear crop estimate, the 2011-2012 program expenditure needs, and the current and projected size of its monetary reserve. Applying the \$0.471 per standard box or equivalent assessment rate to the Committee's 15,500,000 standard box or equivalent fresh winter pear crop estimate should provide \$7,300,500 in assessment income. The quantity of assessable fresh summer/fall pears for the 2011-2012 fiscal period is estimated at 4,200,000 standard boxes or equivalent. The summer/fall fresh pear assessment rate

of \$0.366 per standard box or equivalent should provide \$1,537,200 in assessment income. Thus, income derived from winter and summer/fall fresh pear handler assessments (\$8,837,700) and interest and miscellaneous income (\$20,000) would be adequate to cover the recommended \$8,827,860 budget for 2011–2012. Funds in the reserve were \$1,040,646 as of June 30, 2010. The Committee estimates that \$61,117 will be deducted from the reserve to cover budgeted expenses for 2010–2011. The Committee estimates a reserve of \$979,529 on June 30, 2011. For 2011–2012, the Committee estimates that \$29,840 will be added to the reserve for an estimated reserve of \$1,009,369 on June 30, 2012, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses (\$ 927.42).

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.

Although this assessment rate is effective 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 modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2011–2012 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Initial 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 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.

There are approximately 1,581 growers of fresh pears in the regulated production area and approximately 38 handlers of fresh pears 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 Summary issued in July 2011 by the National Agricultural Statistics Service, the average price for fresh pears in 2010 was \$591 per ton. The 2010 farm-gate value of fresh pears grown in Oregon and Washington is estimated at approximately \$249,500,579, based on shipments of 19,189,400 44-pound standard boxes. Based on the number of fresh pear growers in the Oregon and Washington, the average gross revenue for each grower can be estimated at approximately \$157,812. 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 fresh pears may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011–2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee unanimously recommended 2011–2012 expenditures of \$8,827,860 and an assessment rate of \$0.471 per standard box or equivalent of fresh winter pears. The assessment rate of \$0.471 is \$0.03 lower than the previous rate. The Committee recommended the assessment rate decrease because the winter pear promotion budget for the 2011–2012 fiscal period was reduced.

The quantity of assessable fresh winter pears for the 2011–2012 fiscal period is estimated at 15,500,000 standard boxes or equivalent. Thus, the \$0.471 rate should provide \$7,300,500 in assessment income. Applying the \$0.366 per standard box or equivalent assessment rate to the Committee's 4,200,000 standard box or equivalent fresh summer/fall pear crop estimate should provide \$1,537,200 in assessment income. Income derived from winter and summer/fall fresh pear

handler assessments (\$8,837,700) and interest and miscellaneous income (\$20,000) would be adequate to cover the budgeted expenses.

The major expenditures recommended by the Committee for the 2011–2012 fiscal period include \$437,160 for contracted administration by Pear Bureau Northwest, \$610,700 for production research and market development, \$6,355,000 for promotion and paid advertising for winter pears, and \$1,260,000 for promotion and paid advertising for summer/fall pears. In comparison, major expenses for the 2010–2011 fiscal period included \$482,500 for contracted administration by Pear Bureau Northwest, \$610,700 for production research and market development, \$6,600,000 for promotion and paid advertising for winter pears, and \$1,410,000 for promotion and paid advertising for summer/fall pears.

The Committee discussed alternate lower rates of assessment, but determined that the recommended assessment rate would be sufficient to fund the 2011–2012 fresh winter pear programs.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2011–2012 fiscal period could range between \$372 and \$456 per ton of pears. Therefore, the estimated assessment revenue for the 2011–2012 fiscal period as a percentage of total grower revenue could range between 5.75 and 4.69 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington 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 3, 2011, 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 comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1991 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic

Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington fresh 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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 2011–2012 fiscal period begins on July 1, 2011, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable pears handled during such fiscal period; (2) this action decreases the assessment rate for assessable fresh winter pears beginning with the 2011–2012 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; and (4) this interim rule provides a 60-day comment period, and all comments timely received will

be considered prior to finalization of this 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 § 927.236, the introductory text and paragraph (b) are revised to read as follows:

#### § 927.236 Fresh pear assessment rate.

On and after July 1, 2011, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

\* \* \* \* \*

(b) \$0.471 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “winter”; and

\* \* \* \* \*

Dated: August 19, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–22113 Filed 8–30–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1205

[Doc. # AMS–CN–11–0026; CN–11–002]

#### Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by updating the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the supplemental assessment and to ensure that assessments collected on imported raw cotton and the cotton content of imported cotton-containing products are

the same as assessments collected on domestically produced cotton. In addition, AMS is updating the textile trade conversion factors used to determine the raw fiber equivalents of imported cotton-containing products and expanding the number of Harmonized Tariff Schedule (HTS) statistical reporting numbers from the current 706 to 2,371 to assess all imported cotton and cotton-containing products.

**DATES:** *Effective Date:* September 30, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224, telephone (540) 361–2726, facsimile (202) 690–1718, or e-mail at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

#### Background

##### Import Assessment

Amendments to the Act were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990