

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 920.21 to read as follows:

### § 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1426 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Doc. No. AMS–FV–10–0072; FV10–927–1 IR]

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

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

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

**SUMMARY:** This rule adds 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. The marketing order regulates the handling of pears grown in Oregon and Washington. Local administration of the marketing order for the fresh pear industry is provided by the Fresh Pear Committee (Committee). For each customer, this rule exempts 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 regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

**DATES:** Effective January 26, 2011; comments received by March 28, 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>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made 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, 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 [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@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. This rule is not intended to have retroactive effect.

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. A 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.

For each customer, this rule exempts consumer-direct sales of up to 220 pounds of fresh pears per transaction, for home use only and 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 regulatory flexibility to small pear handlers, while facilitating the sale of fresh, local pears directly to consumers.

Section 927.65(a) provides the authority to exempt from regulation pears for consumption by charitable institutions and distribution by relief agencies. Section 927.65(b) provides the authority whereby certain quantities of pears or types of pear shipments may be exempted from any or all provisions of the order.

On April 22, 2010, the Committee unanimously recommended adding an exemption to the order for the sale of small quantities of home-use only pears directly to consumers. Other exemptions under the order include § 927.120 which provides for the regulation free distribution of pears for charitable or by-product use, and § 927.121, which provides an exemption for mail order sales of gift packages that are shipped directly to consumers. In order to facilitate the direct sale of local, fresh pears to consumers while relaxing the regulatory burden on small handlers, the Committee believes that specified quantities of pears sold at orchards, packing facilities, roadside stands, and farmers' markets should also be exempt from regulation.

Some grower handlers have traditionally sold a portion of their pear harvest directly to consumers from their

orchards, or from roadside fruit stands and farmers markets. Under the order, such sales are considered "handling" and thus fall under the various regulations of the order including the assessment, reporting, handling, and inspection requirements. When growers sell produce directly to consumers, they become handlers and are frequently referred to as "grower handlers." A few packing houses, those that are generally involved only in the handling aspect of the fresh pear industry, may also sell small quantities of pears directly to consumers. The Committee recommended that sales be limited to a maximum of 220 pounds of pears per customer per sale. This weight limitation is equivalent to five standard pear boxes weighing 44 pounds each and was chosen based on industry recommendations.

By removing the requirement that these small consumer-direct sales be monitored, assessed, and regulated through the implementation of reporting requirements, quality regulations, and mandatory inspection, the Committee believes that this rule will facilitate the sale of pears within the local market, and reduce overall compliance expenses.

The Committee emphasized that the volume represented by such pear sales is insignificant and will not adversely affect the domestic and international marketing of commercial quantities of fresh pears. Furthermore, the Committee stressed that the majority of the funds assessed under the order are earmarked for large-scale promotional efforts that do not have a direct relationship or benefit to the consumer-direct sales made directly at orchards, packing sheds, roadside stands, and farmers' markets. By recommending and implementing this regulatory relaxation, the Committee also believes that it is taking an important step in helping the small businesses within the Northwest pear industry to remain viable while also facilitating the current consumer interest in buying local, fresh produce.

#### 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 action 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 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 and Washington, the average gross revenue for each 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 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 should provide 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 rule is expected to have a beneficial impact on the Northwest pear industry, especially on small grower handlers 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.

In discussing alternatives to this recommendation, the Committee contemplated maintaining the status quo. The Committee's stated goal in recommending this exemption is to reduce the regulatory burden on small entities to help them remain viable while enhancing the vibrancy of the local produce market. The Committee quickly reached the conclusion that this course of action is the only feasible option.

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.

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.

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. Interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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 Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the addition of an exemption under the Oregon-Washington pear order for specified small quantities of fresh pear sales directly to consumers. Any

comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim 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) Any changes resulting from this rule should be effective as soon as practicable because the Oregon-Washington pear shipping season began in August; (2) the Committee discussed and unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this action is a relaxation of the handling regulations that is intended to benefit pear handlers while facilitating the sale of fresh, local pears directly to consumers; (4) the industry is aware of this action and wants to take advantage of the relaxation during this shipping season; and (5) this rule provides a 60-day comment period and any comments 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. A new § 927.122 is added to read as follows:

#### § 927.122 Consumer direct pear sales.

Notwithstanding any other provision of this section, fresh pears may be handled without regard to the provisions of §§ 927.41, 927.51, 927.60, and 927.70 under the following conditions:

(a) Such pears are sold in person and sold directly to consumers on the premises where grown, at packing facilities, at roadside stands, or at farmers' markets.

(b) Such pears are for home use only and are not for resale.

(c) The total quantity of such pears sold to each consumer during any single transaction does not exceed 220 pounds.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1508 Filed 1–24–11; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS–FV–09–0082; FV10–985–1A IR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2010–2011 Marketing Year

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

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

**SUMMARY:** This rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year. This rule increases the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds, and the allotment percentage from 43 percent to 50 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee unanimously recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2010, through May 31, 2011; comments received by March 28, 2011 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. 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>. All comments should reference the

document number and the date and page number of this issue of the **Federal Register** and will be made 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:

Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, 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: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@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 Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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 provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011.

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