

to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, many of which may be classified as small entities.

The revised regulations establish that the electronic transmissions used in perishable agricultural commodity transactions are, in fact, "ordinary and usual billing or invoice statements." The use of electronic transactions is voluntary, and the revised regulations specifically provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights.

Accordingly, based on the information in the above discussion, AMS has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements covered by this rule were approved by OMB on October 31, 1996, and expires on October 31, 1999.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.46, a new paragraph (a)(5) is added to read as follows:

§ 46.46 Statutory trust.

* * * * *

(a) * * *

(5) "Ordinary and usual billing or invoice statements" as used in section 5(c)(4) of the Act, and "invoice or other billing statement" as used in § 46.46(f)(3), mean communications customarily used between parties to a transaction in perishable agricultural commodities in whatever form, documentary or electronic, for billing or invoicing purposes.

Dated: November 7, 1997.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97-29926 Filed 11-13-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket Nos. AO-99-A7; FV96-927-1]

Winter Pears Grown in Oregon, Washington, and California; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for winter pears grown in Oregon, Washington, and California. The amendments remove the State of California from the order and make related changes to provisions concerning the production area, districts, and establishment and membership of the Committee. Another amendment allows the use of telecopiers or other electronic means in Committee voting procedures. The amendments will improve the administration, operation and functioning of the order.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, Washington, D.C. 20250-0200;

telephone: (202) 720-2491, or FAX (202) 720-5698; or Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204-2807; telephone (509) 326-2724 or FAX (509) 326-7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 24, 1996, and published in the June 26, 1996, issue of the **Federal Register** (61 FR 33047). Recommended Decision and Opportunity to File Written Exceptions issued on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548). Secretary's Decision and Referendum Order issued July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310).

Preliminary Statement

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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will 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. A 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 date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Sacramento, California, on July 9, 1996, and in Portland, Oregon, on July 10, 1996, to consider the proposed amendment of Marketing Order and Agreement No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the "order." Notice of the Hearing was published in the June 26, 1996, issue of the **Federal Register** (61 FR 33047).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained proposals submitted by the Winter Pear Control Committee (Committee), which locally administers the order.

The Committee's proposals pertained to: (1) revising the definition of "production area" to mean only the States of Oregon and Washington; (2) revising "district" by removing California, leaving only those districts designated in the States of Oregon and Washington; (3) revising "establishment and membership" of the Committee to be consistent with the reduction in size of the regulated production area; (4) revising "procedure of Control Committee", "(a) quorum and voting", so that the number of members needed for a quorum is consistent with the revised Committee representation, and amending "(b) mail voting", to allow for the use of telecopiers and other electronic means; and (5) revising the definition of "pears" to exclude pears produced in California.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on June 9, 1997, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 26, 1997. No exceptions were received.

A Secretary's Decision and Referendum Order was issued on July 22, 1997, directing that a referendum be conducted during the period August 8 through August 29, 1997, among producers of winter pears in Oregon, Washington, and California to determine whether they favored the proposed amendments to the order. All of the proposed amendments were favored by more than the requisite two-

thirds of the producers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all winter pear handlers throughout the production area for their approval. The marketing agreement was signed by handlers of more than 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 1996, through June 30, 1997.

Also, this final rule includes an additional modification to the regulatory text concerning the definition of "pears" to clarify that the definition applies to winter pears that are grown in the production area.

Small Business Considerations

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1800 winter pear producers in Oregon, Washington, and California and approximately 100 handlers of winter pears who are subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers will not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1995-96 crop year, approximately 100 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,800 producers of winter pears in the

production area. Production for the 1995-96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes.

The removal of the State of California will allow the Northwest winter pear industry to operate more efficiently. There are approximately 60 growers and 19 handlers of winter pears in California who have asked to be removed from the marketing order since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. Production for the 1995-96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes. Revenue generated from assessments collected in 1995-96 would be \$175,923 from California compared to \$6,203,295 from Oregon and Washington.

Record evidence indicated that during the 1994-95 crop year winter pears were assessed at \$.43 per standard box. According to preliminary figures in the record, returns to handlers per standard box for that year were \$8.31. The assessment rate is about 5 percent of the preliminary returns.

California growers believed they were funding promotion programs that are in direct competition with their own product. Record evidence showed that there will not be any additional burden imposed on handlers with the implementation of these amendments. In fact, handlers in the State of California will be relieved of any regulatory burden. Those in Oregon and Washington will continue to benefit from operation of the program. There are currently 1,700 winter pear growers and 93 winter pear handlers in Oregon and Washington producing over 15 million standard boxes of pears annually. In California, there are approximately 60 winter pear growers and 19 handlers of winter pears producing over 400,000 standard boxes of pears annually.

Record evidence also showed that the collection of information under the marketing order will not be effected by removing California from the marketing order. A witness testified that there are alternatives that will replace the current information that is being collected from the State of California, if it is needed. Accordingly, this action 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.

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

The amendment allowing Committee members to vote by telecopiers or other electronic means provides members with the option to use these methods if available when voting on an action is to be done quickly. This allows Committee members to vote without assembling at a meeting place and, therefore, reduce administrative costs and act quickly on a recommendation that needs the Committee's attention. "Other electronic means" includes the use of modems, video and teleconferencing. The term is flexible to allow for the use of new technologies by the Committee for voting.

The additional amendments are changes that need to be made to the marketing order to reflect the removal of the State of California.

All of these amendments are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry.

Order Further Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and applicable rules of practice and procedure effective thereunder (7 CFR part 900), public hearings were held upon the amendments to Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend

to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings were held;

(3) The order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective one day after publication.

This final order changes the production area by removing the State of California from order provisions. Upon the effective date of this order, effected parties will need to be informed of these provisions. In addition, the committee needs to make budgetary and other administrative decisions implementing the new provisions. The 1997-98 fiscal period began on July 1, 1997, and these provisions need to be in place as soon as possible as handlers are already shipping winter pears. A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective one day after publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the said order, as amended, and as hereby further amended) who, during the period July 1, 1996, through June 30, 1997, handled 50 percent or more of the volume of such winter pears covered by said order, as amended, and as hereby further amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 1996, through June 30, 1997 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears for fresh market.

(3) The signed marketing agreement and the issuance of this amendatory order are the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of winter pears in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548), and in the Secretary's Decision issued on July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310), and as modified in this final rule, shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

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—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The part heading is revised to read as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

3. Section 927.4 is revised to read as follows:

§ 927.4 Pears.

Pears means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Forelle, and Seckel varieties of pears, and any other winter pear varieties or subvarieties that are grown in the production area and are recognized by the Control Committee and approved by the Secretary.

4. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon and Washington.

§ 927.11 [Amended]

5. In § 927.11, paragraph (e) is removed.

§ 927.20 [Amended]

6. Section 927.20 is amended by removing the number "14" in the first sentence and adding in its place the number "12", and removing the word "seven" each time it appears in the third sentence and adding in its place the word "six".

§ 927.33 [Amended]

7. In § 927.33, paragraph (a) is amended by removing the word "ten" in the first sentence and adding in its place the word "nine"; and adding the words "telecopier or other electronic means," and a comma after the word "mail" in paragraph (b) first sentence.

Dated: November 7, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–29927 Filed 11–13–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 94**

[Docket No. 96–066–2]

Importation of Sliced and Pre-Packaged Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to allow dry-cured pork products that have been sliced and packaged prior to shipment to the United States to be imported into the United States under specified conditions. This action will relieve some restrictions on the importation of pork into the United States without presenting a significant risk of introducing any serious communicable diseases of animals.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Sturm, Supervisory Staff Officer, Products Program, National Center for Import and Export, VS, APHIS, Suite 3B66, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277; or E-mail: jsturm@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, hog cholera, African swine fever, and swine vesicular disease, into the United States. These are dangerous and destructive communicable diseases of ruminants and swine.

Under the regulations, certain animal products—whole hams, pork shoulders, and pork loins—from regions where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists may be imported into the United States only under certain conditions. To be eligible for importation, these products must have been dry-cured and otherwise handled in accordance with procedures specified in § 94.17 of the regulations.

However, the regulations have not allowed these same products to be eligible for importation if they have been sliced and packaged prior to shipment. We have prohibited the

importation of sliced and packaged dry-cured hams, pork shoulders, and pork loins because of the difficulty in verifying the origin of the meat and how it has been processed. Without this information, we cannot easily determine whether the meat has been treated and otherwise handled in a manner that ensures it is free of disease agents.

On April 14, 1997, we published in the **Federal Register** (62 FR 18055–18059, Docket No. 96–066–1) a proposal to allow presliced and prepackaged dry-cured pork to be imported into the United States under certain conditions from countries¹ where foot-and-mouth disease, rinderpest, swine vesicular disease, African swine fever, and hog cholera exist. The proposed conditions were designed to ensure that the origin of the pork and the method of processing could be verified.

We solicited comments concerning our proposal for 60 days ending June 13, 1997. We received 13 comments by that date. They were from importers, foreign governments and meat processors, and one veterinarian. The comments were primarily positive. Several comments suggested changes in the proposed regulations. These suggestions are discussed individually below.

Separation of Facilities

In our proposed rule, we required that the slicing/packaging facility itself would have to be in a separate building, physically detached from any area where pork or pork products are handled for other purposes. This requirement was designed to prevent any possible contamination of the meat.

Several commenters objected to this requirement as unnecessarily restrictive. Commenters made various suggestions as to how we could minimize contamination without requiring a separate building for the slicing/packaging facility. Among the suggestions were: require workers moving from the pork processing facility to the slicing/packaging facility to change into either freshly laundered or disposable clothing, including caps, masks, gloves and footwear; require a "changing/scrub" room for employees; and require "walls, doors, passageways, etc."

After carefully considering these comments, we have determined that our proposed requirement that the slicing/packaging facility be in a separate building is overly restrictive. Having the

¹ Since the proposed rule was published, we have amended our regulations for importing animals and animal products to refer to regions, rather than countries. See the paragraph headed "Miscellaneous," elsewhere in this Supplementary Information section.