bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

§ 630.1215 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency must maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency must maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103;

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a) and (b), including any paid leave substituted for leave without pay under § 630.1208(b); and

(4) Whether leave was taken—

(i) Under § 630.1203(a)(1), (2), or (3);

(ii) Under § 630.1203(a)(4); or

(iii) Under § 630.1203(b).

(c) When an employee transfers to a different agency, the losing agency must provide the gaining agency with information on leave taken under § 630.1203(a) or (b) by the employee during the 12 months prior to the date of transfer. The losing agency must provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1205(a) or (b); and

(2) The number of hours of leave taken under § 630.1203(a) or (b) during the employee's 12-month period or single 12-month period, respectively, as determined under § 630.1205(a) or (b), respectively.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–09–0037; FV09–927–1 PR]

Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase 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 would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by September 25, 2009.

ADDRESSES: Interested persons are invited to submit written comments regarding 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 docket 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: 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 Avenue, 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 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 proposed herein would be applicable to all assessable pears beginning July 1, 2009, and continue until amended, suspended, or terminated. 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 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 would increase 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 would 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. The budget for promotion and paid advertising would increase from $700,000 to $860,310. 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 proposed assessment rate would 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 would be effective for an indefinite period, the PPC would 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 would 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 and those for subsequent fiscal periods would 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 1,500 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 (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 would increase 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. Leaving the assessment rate at the current $6.25 per ton would have cut core promotional activities. A $0.05 increase to $6.30 per ton would not be sufficient and would limit promotional activities. The assessment rate of $8.41 per ton for ''summer/fall'' pears for canning enables the PPC to achieve the key components of the PPC's 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 would increase 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. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no 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. Additionally, 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 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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2009–2010 fiscal period will begin 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 Oregon and Washington pear harvest and shipping season is expected to begin in mid-August; (3) the PPC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) 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.

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 proposed to be 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:

§ 924.237 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: August 20, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors; Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: In the **Federal Register** of July 12, 2006, the Consumer Product Safety Commission (''CPSC'' or ''Commission'') issued a proposed rule that would identify and explain related factors, other than those specified by statute, which the Commission may consider in evaluating the appropriateness and amount of a civil penalty under the Consumer Product Safety Act (''CPSA''). The Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, 122 Stat. 3016, supersedes the proposed rule by amending the CPSA, the Federal Hazardous Substances Act (''FHSA''), and the Flammable Fabrics Act (''FFA'') to require the Commission to consider additional factors and to issue a rule providing its interpretation of all statutory factors pertaining to civil penalties. Consequently, the Commission is withdrawing the July 12, 2006 proposed rule.

DATES: The proposed rule is withdrawn as of August 26, 2009.