

**§ 610.202 Determining the holiday.**

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(a) Except when employees are entitled to a different holiday under 5 U.S.C. 6103(b)(3), an employee's holiday is the day designated by 5 U.S.C. 6103(a) whenever part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled on that day.

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[FR Doc. 00-19855 Filed 8-4-00; 8:45 am]

BILLING CODE 6325-01-P

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

[Docket No. FV00-927-1 FR]

**Winter Pears Grown in Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. The marketing order regulates the handling of winter pears grown in Oregon and Washington and is administered locally by the Winter Pear Control Committee (Committee). This rule will require that Anjou variety pears shipped to North America during the period of August 15 through November 1 of each year be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Establishing quality requirements for Anjou pears will enhance the ripening process. This rule is expected to result in higher quality Anjou pears reaching the market and to benefit producers, handlers, and consumers. A minimum quantity exemption from the quality and inspection requirements is also provided.

**EFFECTIVE DATE:** August 15, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with 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 final 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 the date of the entry of the ruling.

This final rule establishes quality requirements under the order for Anjou variety pears. This rule will require that Anjou pears shipped to North America (Continental United States, Canada, or Mexico) during the period of August 15

through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. The quality and inspection requirements will only apply to shipments to these three markets because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the proposed inspection and quality requirements.

Section 927.51 of the order provides authority for the issuance, modification, suspension, or termination of regulations for grade, size, and quality for any variety of winter pears grown in any district during a specified period and for different requirements applicable to shipments for different export markets.

Section 927.60 provides that when such regulations are in effect, no person shall handle such pears unless they are inspected and certified by the Federal-State Inspection service as meeting such requirements. Section 927.60 further provides authority for the establishment of minimum quantity exemptions from such requirements.

Section 927.52 provides that any vote on size, grade, and quality regulations be conducted based upon an affirmative vote of not less than 80 percent of the applicable total number of votes for that variety. This section provides that for the Anjou variety of pears, each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by the member. Each district is given an additional vote for each 25,000 boxes of the average quantity of Anjou pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods. Using this formula, there are 453 applicable total votes for Anjou pears.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) of the applicable total number of votes voting in favor, that it be required that such pears have their core/pulp

temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality requirements because they are necessary for Anjou pears to ripen properly. In addition, the Committee has regularly provided handlers with research studies collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears meeting these minimum quality requirements prior to shipment to North American markets (Continental United States, Canada, or Mexico). The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should also have an average pressure of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure the proper handling practices that are necessary to prevent poor quality fruit from being shipped early in the marketing year. The

Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the proposed minimum temperature because the pears are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure that a quality product is shipped to the consumer and to maintain reasonable returns to producers.

The Committee estimates the total 2000–2001 winter pear shipments at approximately 15,300,000 standard boxes. Of that amount, Anjou pear shipments are estimated at approximately 11,800,000 standard boxes. Last year, the total winter pear crop was about 13,800,000 standard boxes. Of that amount, Anjou pear shipments were approximately 10,100,000 standard boxes. In recent years approximately 7–8 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into the domestic market.

To facilitate communications between the Committee and growers, handlers, and other interested persons, this final

rule also updates § 927.105 to include the Committee's current address.

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 90 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,800 winter pear producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

The Committee estimates, based upon handler shipment totals and an average price of \$14 per standard box, that about 87 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistic Service, and the total number of winter pear producers, the average annual producer receipts are approximately \$43,200, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of winter pears may be classified as small entities.

This rule will require that Anjou pears shipped to North America (Continental United States, Mexico, or Canada) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Shipments to other markets outside of North America are transported in cold storage containers and the fruit arrives after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped

without regard to the inspection and quality requirements.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality factors necessary to enhance the ripening process. In addition, the Committee has regularly provided handlers with a compilation of research data that has been collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program has worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears to meet these quality requirements prior to shipment. The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should have an average pressure test of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds that it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for

later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure that handlers follow the handling practices necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the minimum temperature because they are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure a quality product is shipped to the consumer and to maintain reasonable returns to producers.

This rule will impose some additional costs on handlers. Some of the additional costs may be passed on to producers. In recent years, approximately 9–10 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into North American markets. The

Committee currently estimates the Anjou pear crop to be approximately 11,800,000 standard boxes. An average inspection rate for pears within the production area will approximate \$0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements will result in mandatory inspection costs of approximately \$56,050 (9.5 percent  $\times$  11,800,000 standard boxes  $\times$  inspection rate of \$0.05 per standard box). The actual increase in costs to the industry because of mandatory inspection requirements will be significantly less, however, because approximately 65–75 percent of the Anjou pear crop is currently being inspected on a voluntary basis. These costs are expected to be significantly offset by the benefits of this final rule. The benefits for this final rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to the quality requirements, including a longer time period of mandatory inspection as well as continuing with the voluntary program. The Committee believes that the requirements in this final rule are the minimum level necessary to ensure a quality product. The Committee believes that voluntary compliance is no longer effective. The Committee believes that this action will benefit producers, handlers, and consumers.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large winter 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.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meetings were widely publicized throughout the winter 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 March 30, May 4, and June 2, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on July 3, 2000 (65 FR 41018). Copies of the rule were mailed or sent via facsimile to Committee members. Finally, the rule was made available

through the Internet by the Office of the Federal Register. A 15-day comment period ending July 18, 2000, was provided to allow interested persons to respond to the proposal. No comments were received.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule needs to be in place by August 15, 2000, because shipments of Anjou pears from the 2000 crop are expected to begin shortly thereafter; (2) handlers are aware of this rule, which was discussed and recommended at several public meetings, and are prepared to operate under the quality and inspection requirements established herein; and (3) a 15-day comment period was provided for in the proposed rule and no comments were received.

#### 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 AND WASHINGTON

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

**Authority:** 7 U.S.C. 601–674.

2. Section 927.105 is revised to read as follows:

##### § 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to: Winter Pear Control Committee, 4382

SE International Way, Suite A, Milwaukie OR 97222–4635.

3. A new § 927.316 is added to read as follows:

##### § 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and (2) any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: August 1, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–19875 Filed 8–4–00; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV00–930–3 FR]

#### Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Decreased Assessment Rates

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound. This rule also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.001125 to \$0.00085 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal

periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer 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.

**EFFECTIVE DATE:** August 8, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737 telephone: (301) 734–5243; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” The marketing agreement and order are 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 (Department) 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, tart cherry 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 tart cherries beginning July 1, 2000, and continue until amended, suspended, or