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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the subject marketing agreement and order (order) and provides winter pear producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Winter Pear Control Committee (Committee). The proposed amendments would 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 would allow the use of telecopiers or other electronic means in Committee voting procedures. The proposed amendments are intended to improve the administration, operation and functioning of the order.

DATES: The referendum shall be conducted from August 8, through August 29, 1997. The representative period for the purpose of the referendum herein ordered is July 1, 1996, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, Washington, DC 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).

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.

Preliminary Statement

The proposed amendment of Marketing Agreement and Order No. 927 is based on the record of a public hearing held in Sacramento, California, on July 9, 1996, and in Portland, Oregon, on July 10, 1996. 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 proposed amendments would: (1) Revise the definition of "production area" to mean only the States of Oregon and Washington; (2) revise "district" by removing California, leaving only those districts designated in the States of Oregon and Washington; (3) revise "establishment and membership" of the Committee to be consistent with the

reduction in size of the regulated production area; (4) revise "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 amend "(b) mail voting", to allow for the use of telecopiers and other electronic means; and (5) revise the definition of "pears" to exclude pears produced in California. Also included in the Notice of Hearing was the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposal to make such changes as are necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment.

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.

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 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. 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 would 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 Act requires the application of uniform rules on regulated handlers. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendment to remove the State of California would 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 believe they are funding promotion programs that are in direct competition with their own product. Record evidence showed that there would not be any additional burden imposed on handlers if such an amendment was implemented. In fact, handlers in the State of California would be relieved of any regulatory burden. Those in Oregon and Washington could 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 would not be effected if California was removed from the marketing order. A witness testified that there are alternatives that would replace the current information that is being collected from the State of California, if it is needed. Accordingly, this action would 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 proposed rule.

The proposal to allow Committee members to vote by telecopiers or other electronic means would provide members with the option to use these methods if available when voting on an action is to be done quickly. This would allow 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 proposals are changes that would need to be made to the marketing order to reflect the removal of the State of California.

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

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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.

Findings and Conclusions and Rulings

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the June 16, 1995, issue of the **Federal Register** (62 FR 32548) are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of winter pears grown in Oregon, Washington, and California, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of winter pears grown in Oregon, Washington, and California.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1996, through June 30, 1997.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary Olson, Regional Manager, and 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.

List of Subjects in 7 CFR Part 927

Marketing Agreements, Pears, Reporting and recordkeeping requirements.

Dated: July 22, 1997

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California¹

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 the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and 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 hearing and the record thereof, it is found that:

(1) The order, as amended, as hereby proposed to be 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, as hereby proposed to be 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 have been held;

(3) The order, as amended, as hereby proposed to be 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;

(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.

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 proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order 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, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

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 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.

[FR Doc. 97–19800 Filed 7–25–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 989**

[Docket No. FV–97–989–2 PR]

Raisins Produced From Grapes Grown in California; Suspension of Provisions Concerning Certain Offers of Reserve Raisins to Handlers for Free Use

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the suspension of language in provisions of the raisin marketing order concerning certain offers of reserve raisins to handlers for free use. The marketing order regulates the handling of raisins produced from grapes grown in California, and is administered locally by the Raisin Administrative Committee (Committee). This rule would indefinitely suspend certain language to provide the Committee more flexibility in meeting its marketing needs. This proposal was unanimously recommended by the Committee.

DATES: Comments must be received by August 27, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.