

# Proposed Rules

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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 No. AO-F&V-927-A1; FV04-927-1 PR]

#### Winter Pears Grown in Oregon and Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 927

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

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement and Order No. 927, which regulates the handling of winter pears grown in Oregon and Washington. The amendments are jointly proposed by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing Agreement and Order No. 931 regulates the handling of fresh Bartlett pears grown in Oregon and Washington. The amendments would combine the winter pear and fresh Bartlett orders into a single program under marketing order 927, and would add authority to assess pears for processing. The Committees also proposed a number of conforming changes. All of the proposals are intended to streamline industry organization and improve the administration, operation, and functioning of the program.

**DATES:** The hearing dates are:

1. April 13 and 14, 2004, 9 a.m. to 4 p.m., Yakima, Washington.
2. April 16, 2004, 9 a.m. to 4 p.m., Portland, Oregon.

**ADDRESSES:** The hearing locations are:

1. Doubletree Hotel, 1507 N. 1ST Street, Yakima, Washington, (509) 248-7850.

2. Sheraton Inn—Portland Airport, 8235 NE. Airport Way, Portland, Oregon, (503) 335-2860.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945.

Small businesses may request information on this proceeding 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.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This 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.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

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 proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. 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 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.

At a joint meeting of the Winter Pear Control Committee and the Northwest Fresh Bartlett Pear Marketing Committee on November 13, 2003, both Committees voted unanimously to recommend amendments to Marketing Order 927. The amendments are intended to streamline industry organization by placing both Marketing Order 927, regulating the handling of winter pears, and Marketing Order 931, regulating the handling of Bartlett pears, under one program: Marketing Order 927. The amendments would also add pears for processing to the order, and update various provisions of the order.

The Committees' request for a hearing was submitted to USDA on November 19, 2003. The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committees' proposed amendments to Marketing Order No. 927 (order) are summarized below.

1. Expand the definition of "pears" to include all varieties of pears classified as summer/fall pears (rather than limiting that class to Bartletts); to add Concorde, Packham, and Taylor's Gold pears to the current list of winter pear varieties; and to add a third category of pears which would include varieties not classified as summer/fall or winter pears. This amendment would extend program coverage to all pears grown in Oregon and Washington.

2. Revise the definition of "size" to include language currently used within the industry.

3. Extend the order's coverage to pears for processing by revising the definition of "handle," and adding definitions of "processor" and "process."

4. Establish districts for pears for processing. This amendment would divide the order's production area into two districts for pears for processing: One being the State of Oregon and the other being the State of Washington.

5. Dissolve the current Winter Pear Control Committee and establish two new administrative committees: The

Fresh Pear Committee and the Processing Pear Committee (Committees). This proposal also includes adding a public member and public alternate member seat to both of the newly established Committees and removing Section 927.36, Public advisors. The Committees would jointly administer Marketing Order 927.

Related changes would be made to order provisions governing nomination and selection of members and their alternates, terms of office, eligibility for membership, and quorum and voting requirements, to reflect the proposed dual committee structure.

6. Authorize changes in the number of Committee members and alternates, and allow reapportionment of committee membership among districts and groups (*i.e.*, growers, handlers, and processors). Such changes would require a Committee recommendation and approval by the Department.

7. Provide that an assessment rate be established for each category of pears, including: summer/fall pears, winter pears, and all other pears. In addition, rates of assessment could be different for fresh pears and pears for processing in each category, and could include supplemental rates on individual varieties.

8. Authorize container marking requirements for fresh pears.

9. Remove the order provision allowing grower exemptions from regulation. This is a tool no longer used by the industry and, thus, is considered obsolete.

10. Amend § 927.70, Reports, to ensure confidentiality in the handling and reporting of information provided to the Committees, and to require handlers to maintain records for at least two years.

11. Allow elimination of inspection requirements (when handling regulations are in effect) if alternative methods to ensure compliance are available.

12. Eliminate the current exemptions for pears for processing and for pears shipped to storage warehouses.

13. Provide that separate continuance referenda be held every 6 years for fresh pears and processing pears.

14. Add authority for the committees to conduct post-harvest research, in addition to production research and promotion (including paid advertising).

15. Update several order provisions to make them more current.

16. Revise order provisions to reflect the two-committee structure being recommended for administration of the program.

These proposals have not received the approval of the Department. The Winter

Pear Control Committee and Northwest Fresh Bartlett Marketing Committee believe that the proposed changes would improve the administration, operation, and functioning of the programs in effect for pears grown in Oregon and Washington.

AMS also proposes to allow such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Reporting and recordkeeping requirements, Winter pears.

#### 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. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee are as follows:

#### Proposal No. 1

Revise § 927.4 to read as follows:

##### § 927.4 Pears.

(a) *Pears* means and includes any and all varieties or subvarieties of pears classified as: Summer/fall pears including Bartlett and Starkrimson pears; winter pears including Beurre D'Anjou, Beurre Bosc, Doyenne du Comice, Concorde, Forelle, Winter Nelis, Packham, Seckel, and Taylor's Gold pears; and other pears including any or all other varieties or subvarieties of pears not classified as summer/fall or winter pears.

(b) The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may recognize new or delete obsolete varieties or subvarieties for each category.

Revise the heading of 7 CFR part 927 to read as follows:

#### PART 927—PEARS GROWN IN OREGON AND WASHINGTON

#### Proposal No. 2

Revise § 927.5 to read as follows:

##### § 927.5 Size.

*Size* means the number of pears which can be packed in a 44-pound net weight standard box or container equivalent, or "size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications more specifically defined in a regulation issued under this part.

#### Proposal No. 3

Revise § 927.7 to read as follows:

##### § 927.7 Handler.

*Handler* is synonymous with shipper and means any person (except a common or contract carrier transporting pears owned by another person) who, as owner, agent, broker, or otherwise, ships or handles pears, or causes pears to be shipped or handled by rail, truck, boat, or any other means whatsoever.

Revise § 927.8 to read as follows:

##### § 927.8 Ship or handle.

*Ship or handle* means to sell, deliver, consign, transport or ship pears within the production area or between the production area and any point outside thereof, including receiving pears for processing: *Provided*, That the term "handle" shall not include the transportation of pear shipments within the production area from the orchard

where grown to a packing facility located within the production area for preparation for market or delivery for processing.

Add a new § 927.14 to read as follows:

**§ 927.14 Processor.**

*Processor* means any person who as owner, agent, broker, or otherwise, commercially processes pears in the production area.

Add a new § 927.15 to read as follows:

**§ 927.15 Process.**

*Process* means to can, concentrate, freeze, dehydrate, press or puree pears, or in any other way convert pears commercially into a processed product.

**Proposal No. 4**

Amend § 927.11 by revising the introductory paragraph, and paragraphs (a), (b), and (c), to read as follows:

**§ 927.11 District.**

*District* means the applicable one of the following-described subdivisions of the production area covered by the provisions of this subpart:

(a) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for the fresh market, districts shall be defined as follows:

(1) *Medford District* shall include all the counties in the State of Oregon except for Hood River and Wasco Counties.

(2) *Mid-Columbia District* shall include Hood River and Wasco Counties in the State of Oregon, and the counties of Skamania and Klickitat in the State of Washington.

(3) *Wenatchee District* shall include the counties of King, Chelan, Okanogan, Douglas, Grant, Lincoln, and Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(4) *Yakima District* shall include all of the State of Washington not included in the Wenatchee District or in the Mid-Columbia District.

(b) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for processing, districts shall be defined as follows:

(1) The State of Washington.

(2) The State of Oregon.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee, may reestablish districts within the production area.

\* \* \* \* \*

**Proposal No. 5**

Revise § 927.20 to read as follows:

**§ 927.20 Establishment and membership.**

There are hereby established two committees to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35:

(a) A Fresh Pear Committee, consisting of 13 individual persons as its members, is established to administer order provisions relating to the handling of pears for the fresh market. Six members of the Fresh Pear Committee shall be growers, six members shall be handlers, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. Each district shall be represented by one grower member and one handler member, except that the Mid-Columbia District and the Wenatchee District shall be represented by two grower members and two handler members.

(b) A Processed Pear Committee consisting of 10 members is established to administer order provisions relating to the handling of pears for processing. Three members of the Processed Pear Committee shall be growers, three members shall be handlers, three members shall be processors, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. District 1, the State of Washington, shall be represented by two grower members, two handler members and two processor members. District 2, the State of Oregon, shall be represented by one grower member, one handler member and one processor member.

Revise § 927.21 to read as follows:

**§ 927.21 Nomination and selection of members and their respective alternates.**

Grower members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the growers in such district. Handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district. Processor members and their respective alternates shall be selected by the Secretary from nominees elected by the processors. Public members for each committee shall be nominated by the Fresh Pear Committee and the Processed Pear Committee, respectively, and selected by the Secretary. The Fresh Pear Committee and the Processed Pear Committee may prescribe such additional qualifications, administrative rules and procedures for selection for each candidate as it deems necessary and as the Secretary approves.

Revise § 927.22 to read as follows:

**§ 927.22 Meetings for election of nominees.**

(a) Nominations for members of the Fresh Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Fresh Pear Committee.

(b) Nominations for grower and handler members of the Processed Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Processed Pear Committee. Nominations for processor members of the Processed Pear Committee and their alternates shall be made at a meeting of processors at such time and place designated by the Processed Pear Committee.

Revise § 927.23 to read as follows:

**§ 927.23 Voting.**

Only growers in attendance at meetings for election of nominees shall participate in the nomination of grower members and their alternates, and only handlers in attendance at meetings for election of nominees shall participate in the nomination of handler members and their alternates, and only processors in attendance for election of nominees shall participate in the nomination of processor members and their alternates. A grower may participate only in the election held in the district in which he or she produces pears, and a handler may participate only in the election held in the district or districts in which he or she handles pears. Each person may vote as a grower, handler or processor, but not a combination thereof. Each grower, handler and processor shall be entitled to cast one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be elected.

Revise § 927.24 to read as follows:

**§ 927.24 Eligibility for membership.**

Each grower member and each of his or her alternates shall be a grower, or an officer or employee of a corporate grower, who grows pears in the district in which and for which he or she is nominated and selected. Each handler member and each of his or her alternates shall be a handler, or an officer or employee of a handler, handling pears in the district in and for which he or she is nominated and selected. Each processor member and each of their alternates shall be a processor, or an officer or employee of a processor, who processes pears in the production area.

Revise § 927.27 to read as follows:

**§ 927.27 Term of office.**

The term of office of each member and alternate member of the Fresh Pear Committee and the Processed Pear Committee shall be for two years beginning July 1 and ending June 30: *Provided*, That the terms of office of one-half of the initial members and alternates shall end June 30, 2005; and that beginning with the 2005–2006 fiscal period, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

Revise § 927.33 to read as follows:

**§ 927.33 Procedure.**

(a) *Quorum and voting.* A quorum at a meeting of the Fresh Pear Committee or the Processed Pear Committee shall consist of 75 percent of the number of committee members, or alternates then serving in the place of any members, respectively. Except as otherwise provided in § 927.52, all decisions of the Fresh Pear Committee or the Processed Pear Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

(b) *Mail voting.* The Fresh Pear Committee or the Processed Pear Committee may provide for members voting by mail, telecopier or other electronic means, telephone, or telegraph, upon due notice to all members. Promptly after voting by telephone or telegraph, each member thus voting shall confirm in writing, the vote so cast.

Remove § 927.36, Public advisors.

**Proposal No. 6**

Further amend § 927.20 by adding a new paragraph (c) to read as follows:

**§ 927.20 Establishment and membership.**

\* \* \* \* \*

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their

alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in pear acreage within districts and within the production area during recent years;

(2) The importance of new pear production in its relation to existing districts;

(3) The equitable relationship between membership and districts;

(4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

**Proposal No. 7**

Revise § 927.41 to read as follows:

**§ 927.41 Assessments.**

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Fresh Pear Committee or the Processed Pear Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Fresh Pear Committee or the Processed Pear Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

(b)(1) Based upon a recommendation of the Fresh Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for the fresh market during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Fresh Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Fresh Pear Committee recommendation or other information that different rates are necessary for fresh pears or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new

rates shall apply to any or all varieties or subvarieties that are shipped during the fiscal period for fresh market.

(2) Based upon a recommendation of the Processed Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for processing during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Processed Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Processed Pear Committee recommendation or other information that different rates are necessary for pears for processing or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rates shall apply to any or all varieties or subvarieties of pears that are shipped during the fiscal period for processing.

(c) Based on the recommendation of the Fresh Pear Committee, the Processed Pear Committee or other available data, the Secretary may establish additional base rates of assessments, or change or modify the base rate classifications defined in paragraphs (a) and (b) of this section.

(d) The Fresh Pear Committee or the Processed Pear Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Fresh Pear Committee or the Processed Pear Committee may impose an additional charge in the form of interest on such outstanding amount. The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, shall prescribe the amount of such late payment charge and rate of interest.

(e) In order to provide funds to carry out the functions of the Fresh Pear Committee or the Processed Pear Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments,

which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety or subvariety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Fresh Pear Committee or the Processed Pear Committee upon the approval of the Secretary to handlers making such advance assessment payments.

#### Proposal No. 8

Revise § 927.51 to read as follows:

##### **§ 927.51 Issuance of regulations; and modification, suspension, or termination thereof.**

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that regulation, in the manner specified in this section, of the shipment of pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of pears during a specified period or periods. Such regulation may:

(1) Limit the total quantity of any grade, size, quality, or combinations thereof, of any variety or subvariety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets;

(2) Limit, during any period or periods, the shipment of any particular grade, size, quality, or any combination thereof, of any variety or subvariety, of pears grown in any district or districts of the production area; and

(3) Provide a method, through rules and regulation issued pursuant to this part, for fixing markings on the container or containers, which may be used in the packaging or handling of pears, including appropriate logo or other container markings to identify the contents thereof.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pears grown in any district in order to effectuate the declared policy of the act, he or she shall so modify, suspend, or terminate such regulation. If the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation obstructs or does not tend to effectuate the declared policy of the

act, he or she shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

#### Proposal No. 9

Remove § 927.54.

#### Proposal No. 10

Revise § 927.70 to read as follows:

##### **§ 927.70 Reports.**

(a) Upon the request of the Fresh Pear Committee and the Processed Pear Committee, and subject to the approval of the Secretary, each handler shall furnish to the aforesaid committee, respectively, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

(b) All such reports shall be held under appropriate protective classification and custody by the Fresh Pear Committee and/or the Processed Pear Committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

#### Proposal No. 11

Amend § 927.60 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

##### **§ 927.60 Inspection and certification.**

(a) Except as hereinafter provided, no handler shall ship any pears not theretofore inspected, and a certificate issued with respect thereto, by a duly authorized representative of the Federal-State Inspection Service: *Provided*, That such inspection and certification of shipments of pears may be performed by such other inspection service as the Fresh Pear Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Fresh Pear Committee a copy of the inspection certificate issued on such shipment.

(c) The Fresh Pear Committee may, with the approval of the Secretary,

prescribe rules and regulations modifying or eliminating the requirement for inspection and certification of shipments if alternative methods are available for ensuring such shipments comply with regulations in effect.

#### Proposal No. 12

Revise § 927.65 to read as follows:

##### **§ 927.65 Exemption from regulation.**

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies, nor shall any assessment be computed on pears so shipped. The Fresh Pear Committee or the Processed Pear Committee may, with the approval of the Secretary, prescribe regulations to prevent pears shipped for either of such purposes from entering commercial fresh-fruit channels of trade contrary to the provisions of this subpart.

(b) The Fresh Pear Committee or the Processed Pear Committee may, with the approval of the Secretary, prescribe rules and regulations whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

#### Proposal No. 13

Amend § 927.78 by revising paragraphs (b), (c), and (d) to read as follows:

##### **§ 927.78 Termination.**

\* \* \* \* \*

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart applicable to fresh pears for market or pears for processing at the end of any fiscal period whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers of fresh pears for market or pears for processing, respectively: *Provided*, That such majority has during such period produced more than 50 percent of the volume of fresh pears for market or pears for processing, respectively, in the production area. Such termination shall be effective only if announced on or before the last day of the then current fiscal period.

(d) The Secretary shall conduct a referendum within every six-year period beginning on the date this section becomes effective, to ascertain whether continuance of the provisions of this subpart applicable to fresh pears for

market or pears for processing are favored by producers of pears for the fresh market and pears for processing, respectively. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of fresh pears for market or pears for processing in the production area: *Provided*, That termination of the order shall be effective only if announced on or before the last day of the then current fiscal period.

\* \* \* \* \*

#### Proposal No. 14

Revise § 927.47 to read as follows:

##### § 927.47 Research and development.

The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety or subvariety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety or subvariety of pears.

#### Proposal No. 15

Revise § 927.1 to read as follows:

##### § 927.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

Revise § 927.3 to read as follows:

##### § 927.3 Person.

*Person* means an individual partnership, corporation, association, or any other business unit.

Revise § 927.6 to read as follows:

##### § 927.6 Grower.

*Grower* is synonymous with producer and means any person engaged in the production of pears, either as owner or as tenant.

Revise § 927.76 to read as follows:

##### § 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his agent or representative in connection with any of the provisions of this subpart.

Revise § 927.77 to read as follows:

##### § 927.77 Effective time.

The provisions of this subpart and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 927.78.

#### Proposal No. 16

Revise in 7 CFR part 927 the undesignated center heading "CONTROL COMMITTEE" to read as follows:

##### ADMINISTRATIVE BODIES

Revise § 927.9 to read as follows:

##### § 927.9 Fiscal period.

*Fiscal period* means the period beginning July 1 of any year and ending June 30 of the following year or such may be approved by the Secretary pursuant to a joint recommendation by the Fresh Pear Committee and the Processed Pear Committee.

Revise § 927.13 to read as follows:

##### § 927.13 Subvariety.

*Subvariety* means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Fresh Pear Committee or the Processed Pear Committee and approved by the Secretary. Recognition of a subvariety shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

Revise § 927.26 to read as follows:

##### § 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

Revise § 927.28 to read as follows:

##### § 927.28 Alternates for members.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is

selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that a member of the Fresh Pear Committee or the Processed Pear Committee and both that member's alternates are unable to attend a meeting, the member may designate any other alternate member from the same group (handler, processor, or grower) to serve in that member's place and stead.

Revise § 927.29 to read as follows:

##### § 927.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee to qualify, or in the event of death, removal, resignation, or disqualification of any qualified member or qualified alternate for a member, a successor for his or her unexpired term shall be nominated and selected in the manner set forth in §§ 927.20 to 927.35. If nominations to fill any such vacancy are not made within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

Revise § 927.30 to read as follows:

##### § 927.30 Compensation and expenses.

The members and alternates for members shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

Revise § 927.31 to read as follows:

##### § 927.31 Powers.

The Fresh Pear Committee and the Processed Pear Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 927.20 to 927.35, the terms and provisions of this subpart:

(b) To make administrative rules and regulations in accordance with, and to effectuate, the terms and provisions of this subpart; and

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.

Revise § 927.32 to read as follows:

##### § 927.32 Duties.

The duties of the Fresh Pear Committee and the Processed Pear Committee shall be as follows:

(a) To act as intermediary between the Secretary and any grower, handler or processor;

(b) To keep minutes, books, and records which will reflect clearly all of

the acts and transactions. The minutes, books, and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions relative to pears, and to furnish to the Secretary such available information as may be requested;

(d) To cause the books to be audited by one or more competent accountants at the end of each fiscal year and at such other times as the Fresh Pear Committee and the Processed Pear Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports made;

(e) To appoint such employees agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each;

(f) To give the Secretary, or the designated agent of the Secretary, the same notice of meetings as is given to the members of the Fresh Pear Committee and the Processed Pear Committee;

(g) To select a chairman of the Fresh Pear Committee and the Processed Pear Committee and, from time to time, such other officers as it may deem advisable and to define the duties of each; and

(h) To submit to the Secretary as soon as practicable after the beginning of each fiscal period, a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period.

Revise § 927.34 to read as follows:

#### **§ 927.34 Right of the Secretary.**

The members and alternates for members and any agent or employee appointed or employed by the Fresh Pear Committee or the Processed Pear Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

Revise § 927.35 to read as follows:

#### **§ 927.35 Funds and other property.**

(a) All funds received pursuant to any of the provisions of this subpart shall be used solely for the purposes specified in this subpart, and the Secretary may

require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in his or her possession belonging to the Fresh Pear Committee or the Processed Pear Committee shall be delivered to his or her successor in office or to the Fresh Pear Committee or Processed Pear Committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Fresh Pear Committee or Processed Pear Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

Revise § 927.40 to read as follows:

#### **§ 927.40 Expenses.**

The Fresh Pear Committee and the Processed Pear Committee are authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this subpart. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

Revise § 927.42 to read as follows:

#### **§ 927.42 Accounting.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Fresh Pear Committee or the Processed Pear Committee may carryover such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve may be used to cover any expense authorized under this part and to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the

manner provided in this part. The Secretary may at any time require the Fresh Pear Committee and/or the Processed Pear Committee and its members to account for all receipts and disbursements.

Revise § 927.43 to read as follows:

#### **§ 927.43 Use of funds.**

From the funds acquired pursuant to § 927.41 the Fresh Pear Committee and the Processed Pear Committee shall pay the salaries of its employees, if any, and pay the expenses necessarily incurred in the performance of the duties of the Fresh Pear Committee and the Processed Pear Committee.

Remove § 927.44.

Revise § 927.45 to read as follows:

#### **§ 927.45 Contributions.**

The Fresh Pear Committee or the Processed Pear Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Fresh Pear Committee or the Processed Pear Committee shall retain complete control of their use.

Revise § 927.50 to read as follows:

#### **§ 927.50 Marketing policy.**

(a) It shall be the duty of the Fresh Pear Committee to investigate, from time to time, supply and demand conditions relative to pears and each grade, size, and quality of each variety or subvariety thereof. Such investigations shall be with respect to the following:

- (1) Estimated production of each variety or subvariety of pears and of each grade, size, and quality thereof;
- (2) Prospective supplies and prices of pears and other fruits, both in fresh and processed form, which are competitive to the marketing of pears;
- (3) Prospective exports of pears and imports of pears from other producing areas;
- (4) Probable harvesting period for each variety or subvariety of pears;
- (5) The trend and level of consumer income;
- (6) General economic conditions; and
- (7) Other relevant factors.

(b) On or before August 1 of each year, the Fresh Pear Committee shall recommend regulations to the Secretary if it finds, on the basis of the foregoing investigations, that such regulation as is provided in § 927.51 will tend to effectuate the declared policy of the act.

(c) In the event the Fresh Pear Committee at any time finds that by reason of changed conditions any regulation issued pursuant to § 927.51

should be modified, suspended, or terminated, it shall so recommend to the Secretary.

Revise § 927.52 to read as follows:

**§ 927.52 Prerequisites to recommendations.**

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner hereinafter described in this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all members.

(b) With respect to regulation of a particular variety or subvariety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members in accordance with the following: 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 such member; and such district vote shall be computed as soon as practical after the beginning of each fiscal period on either:

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for varieties or subvarieties with less than 200,000 standard boxes or container equivalents) of the average quantity of such variety or subvariety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

(2) Such other basis as the Fresh Pear Committee or the Processed Pear Committee may recommend and the Secretary may approve. The votes so allotted to a member may be cast by such member on each recommendation relative to the variety or subvariety of pears on which such votes were computed.

Revise § 927.53 to read as follows:

**§ 927.53 Notification.**

(a) The Fresh Pear Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Fresh Pear Committee of the issuance of each regulation and of each

modification, suspension, or termination of a regulation and the Fresh Pear Committee shall give prompt notice thereof to growers and handlers.

Revise § 927.75 to read as follows:

**§ 927.75 Liability.**

No member or alternate for a member of the Fresh Pear Committee and/or the Processed Pear Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate for a member, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

Revise § 927.79 to read as follows:

**§ 927.79 Proceedings after termination.**

(a) Upon the termination of this subpart, the members of the Fresh Pear Committee and/or the Processed Pear Committee then functioning shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Fresh Pear Committee and/or the Processed Pear Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements; deliver all funds and property on hand, together with all books and records of the Fresh Pear Committee and/or the Processed Pear Committee and of the joint trustees, to such person as the Secretary shall direct; and, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Fresh Pear Committee and/or the Processed Pear Committee or in said joint trustees.

(c) Any funds collected pursuant to this subpart and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Fresh Pear Committee and/or the Processed

Pear Committee or its members, upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members or upon said joint trustees.

Revise § 927.80 to read as follows:

**§ 927.80 Amendments.**

Amendments to this subpart may be proposed from time to time by the Fresh Pear Committee and/or the Processed Pear Committee or by the Secretary.

USDA proposes the following:

**Proposal No. 17**

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 24, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1160**

[Docket No. DA-04-02]

**National Fluid Milk Processor Promotion Program; Section 610 Review**

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

**ACTION:** Notice of regulatory review and request for comments.

**SUMMARY:** This action announces the Agricultural Marketing Service's (AMS) review of the National Fluid Milk Processor Promotion Program (conducted under the Fluid Milk Promotion Order), using the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this document must be received by June 1, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review to David R. Jamison, Chief, Promotion and Research Branch, USDA/AMS/Dairy Programs, STOP 0233—Room 2958-S, 1400 Independence Avenue SW., Washington, DC 20250-0233. You may send your comments by using the electronic process available at the Federal rulemaking portal at <http://www.regulations.gov>. All comments,