

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. FV00-927-1 PR]

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: Proposed rule.

SUMMARY: This proposed rule invites comments on establishing 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 would 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 would enhance the ripening process. This 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 also is proposed.

DATES: Comments must be received by July 18, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail:

moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at <http://www.ams.usda.gov/fv/moab.html>.

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 proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would 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 proposed rule invites comments on establishing quality requirements under the order for Anjou variety pears. This rule would 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. Application of the quality and inspection requirements to shipments to these three markets is proposed because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule would 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 would prevent any producer from ultimately being able to have his fruit marketed. The requirements would 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 would 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 would 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 would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would 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 would 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.

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. 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 would 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 would 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 would prevent any producer from ultimately being able to have his fruit marketed. The requirements would 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 would 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 would 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 would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would 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 would 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 would 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 would approximate \$0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements would 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 would 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 the proposed rule. The benefits for this proposed 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 proposed 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 would benefit producers, handlers, and consumers.

This proposed rule would 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed 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. The Committee itself is composed of twelve members, of whom six are handlers and six are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place by August 15, 2000, because shipments of Anjou pears are expected to begin shortly thereafter. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—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. 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: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16737 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AG40

Operator License Eligibility and Use of Simulation Facilities in Operator Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by allowing applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites for license eligibility by manipulating a plant-referenced simulator as an alternative to use of the actual plant. The proposed rule would allow applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites by manipulating a plant-referenced simulator as an alternative to use of the actual plant. In addition, the proposed rule would remove current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the NRC for review. Also, the proposed rule would

revise the definitions of “Performance testing,” “Plant-referenced simulator,” and “Simulator facility.”

DATES: Submit comments by September 18, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1. Deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov). Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000, are also available electronically at the NRC's Public Electronic Reading room on the internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 202–634–3273 or toll-free at 1–800–397–4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Glenn Tracey, Operator Licensing, Human Performance and Plant Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1031; or by Internet electronic mail to gmt@nrc.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Section 107 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2137), requires the NRC to prescribe uniform conditions for licensing individuals as operators of production and utilization facilities to determine the qualifications