

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Regional Manager, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326-2724 or Fax (503) 326-7440; or Melissa Schmaedick, Agricultural Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259-7988, or Fax: (435) 259-4945.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525-S, Washington, DC 20250-0237; telephone (202) 720-2491; Fax (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935); Recommended Decision and Opportunity to File Written Exceptions issued on March 27, 2002, and published in the April 3, 2002, issue of the **Federal Register** (67 FR 15747); Secretary's Decision and Referendum Order issued June 4, 2002, and published in the **Federal Register** on June 10, 2002 (67 FR 39634).

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

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon and Washington. 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 the formulation of marketing agreements and orders (7 CFR part 900). The Notice of Hearing contained three amendment proposals submitted by the Committee,

and one proposed by the Agricultural Marketing Service (AMS).

The Committee's proposals included: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, so that all of the order's provisions conform with the effectuated amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 27, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 3, 2002. No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on June 4, 2002, directing that a referendum be conducted during the period July 17 through August 2, 2002, among growers of winter pears to determine whether they favored the proposed amendments to the order. Ballots representing 522 winter pear producers, or about 34 percent of the producers eligible to vote, were cast. The voters voting in the referendum favored only one of the three amendments proposed by the Committee. This amendment, which will authorize additional alternates to serve when a Committee member and that member's alternates are unable to attend a Committee meeting, received favorable votes representing 87.36 percent of the number of growers and 81.65 percent of the volume of production represented in the referendum. The additional alternate will be required to be from the same group of growers or handlers as the member or alternates they serve in place of.

The other two amendments, which would have authorized container and marking requirements and minimum maturity regulation, failed to obtain the requisite number of votes, in number or in volume, needed to pass. The proposal to authorize container and marking requirements received 65.33 percent of the number of voters, and 51.39 percent of the volume of production, in favor of the amendment. The proposal to authorize maturity regulation received 53.07 percent of the number of voters, and 45.90 percent of the volume, in favor of the amendment. To become

effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of winter pears represented by voters voting in the referendum.

The amended marketing agreement was subsequently mailed to all winter pear handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 2001, through June 30, 2002.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and amendments thereto are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

According to the Small Business Administration (13 CFR 121.201), small agricultural producers are those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers, are those having annual receipts of less than \$5,000,000.

Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than \$750,000. There are 90 handlers operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, a majority of the winter pear producers and handlers are considered small under the SBA definition. This action will apply primarily to small entities.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

This final rule amends § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting. This action is designed to ensure grower and handler representation at all Committee meetings.