

The amendment provides that, in the event that a Committee member and both his or her alternates cannot attend a meeting, the absent Committee member can designate a temporary alternate, provided that the temporary alternate represents the same group (grower or handler) as the absent member. Thus, in the event that all alternates for Committee members in the same group representing a given district are unavailable, selection of a temporary alternate would rely on the availability of other Committee members' alternates from the remaining districts.

This method of selecting a temporary alternate will ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

The collection of information under the marketing order will not be affected by this amendment to the marketing order. Current information collection requirements for part 927 are approved by OMB under OMB number 0581-0089.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. This amendment is designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings to discuss the proposals were widely publicized throughout the Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <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.

Civil Justice Reform

The amendment contained in this rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The amendment will not preempt any State or local laws, regulations, or policies, unless it presents an irreconcilable conflict with the amendment.

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. After the hearing, USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

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

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 and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will

tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby 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 marketing order, as amended, and as hereby 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 marketing order, as amended, and as hereby 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.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the order as hereby amended) who, during the period July 1, 2001, through June 30, 2002, handled 50 percent or more of the volume of such winter pears covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 2001, through June 30, 2002 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing