

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 927**

[Docket No. AO-F&V-927-A1; FV04-927-1 FR]

**Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927**

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the marketing order (order) for winter pears grown in Oregon and Washington. The amendments are based on recommendations 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. All of the proposals were favored by pear growers in a mail referendum, held March 22 through April 8, 2005. These amendments are intended to streamline industry organization and improve the administration, operation, and functioning of the program.

**DATES:** This rule is effective May 21, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259-7988, fax: (435) 259-4945; or Susan Hiller, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 385, Portland, OR 97204; telephone (503) 326-2724 or Fax (503) 326-7440.

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:** Prior documents in this proceeding: Notice of Hearing issued on March 24, 2004, and

published in the March 30, 2004, issue of the **Federal Register** (69 FR 16501), and a Recommended Decision issued on January 5, 2005, and published in the January 13, 2005, issue of the **Federal Register** (70 FR 2520). Secretary's Decision and Referendum Order issued February 28, 2005, and published in the **Federal Register** on March 8, 2005 (70 FR 11155).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

**Preliminary Statement**

This final rule was formulated on the record of a public hearing held on April 13 and 14, 2004, in Yakima, Washington and on April 16, 2004, in Portland, Oregon. Notice of this hearing was issued March 24, 2004 and published in the **Federal Register** on March 30, 2004 (69 FR 16501). The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in the States of Oregon and Washington, hereinafter referred to as the "order."

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 marketing orders (7 CFR part 900y).

The notice of hearing contained order changes proposed by both 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 order 927 regulates the handling of winter pears grown in Oregon and Washington. Marketing order 931 regulates the handling of Bartlett pears in the same production area.

The amendments included in this decision will:

1. Expand the definition of "pears" to include all varieties of pears classified as summer/fall pears in addition to winter pears; add Concorde, Packham, and Taylor's Gold pears to the current list of winter pear varieties; and add a third category of pears which would include varieties not classified as summer/fall or winter pears. This amendment extends 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 divides 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 Processed Pear Committee (Committees). This proposal adds a public member and public alternate member seat to both of the newly established Committees and removes Section 927.36, Public advisors. The Committees will coordinate administration of Marketing Order 927, with each Committee recommending assessments and administering program functions specific to their commodity. Coordinated administration will allow each Committee to make decisions on behalf of the commodity they represent, yet combine administrative functions, when applicable, to maximize efficiencies and minimize program costs.

Additionally, related changes are being 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 allowing reapportionment of committee membership among districts and groups (*i.e.*, growers, handlers, and processors). Such changes will require a Committee recommendation and approval by the Department.

7. Add authority to establish assessment rates 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. Add authority for 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 update order language regarding confidentiality requirements to conform to language under the Act.

11. Clarify inspection requirements and adding authority to eliminate those requirements if an alternative, adequate method of ensuring compliance with quality and size standards in effect under the order can be developed.

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 the 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.

AMS also proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments. None are deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 5, 2005, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 14, 2005.

A Secretary's Decision and Referendum Order was issued on February 28, 2005, directing that a referendum be conducted during the period March 22 through April 8, 2005, among pear growers to determine whether they favored the proposed amendments to the order. Ballots representing 387 pear producers, or about 20 percent of the producers eligible to vote, were cast.

Ballots cast in the referendum were tallied in two ways: (1) To determine the level of support for the amendments from all pear producers (both fresh and pears for processing) within the production area as a whole, and (2) to determine the level of support for the amendments among producers of pears for processing within the States of Oregon and Washington, each independently.

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

Additionally, according to the AMAA, for the purpose of ascertaining producer support for the issuance of an order

applicable to pears for processing, a referendum must be conducted among producers of such pears, and results must be tallied by State (as opposed to the entire production area). In order for such proposal to pass, a minimum of 66⅔ percent of either the number of voters voting by State or the volume of production for that State represented in the referendum, must be favorable.

The voters voting in the referendum, both by production area and by processed pear producers by State, favored all of the amendments proposed by the Committees. These amendments will authorize all pears produced in the States of Oregon and Washington, whether for the fresh or processed market, to be regulated under Federal marketing order 927.

Support for the amendments from both fresh and processed pear producers within the production area combined represented 98 percent of the eligible voters voting and 99 percent of the production represented in the referendum.

Oregon producers of pears for processing voting in favor of the amendments represented 100 percent of the voters and volume of Oregon pears for processing represented in the referendum. Washington producers of pears for processing voting in favor of the amendments represented 98 percent of the voters and 95 percent of the volume of Washington pears for processing represented in the referendum.

The amended marketing agreement was subsequently mailed to all 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 pears handled by all handlers during the representative period of July 1, 2003, through June 30, 2004.

#### Small Business Consideration

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 and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$6,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that most of the proposed amendments are designed to enhance industry efficiencies and reduce costs, thereby improving grower returns.

The record indicates that there are approximately 1,850 pear growers in Oregon and Washington. Of that total, 1,345 growers report Bartlett or other summer/fall pear production, and 1,753 growers report winter pear production. Two-year average NASS figures (the 2002 crop year and preliminary figures for 2003) provides the following production profile for Washington and Oregon, respectively: bearing acres, 24,800 and 17,600; yield per acre, 16.8 tons and 11.8 tons; annual production, 417,500 tons and 207,500 tons. Total acres planted in pears for Washington and Oregon (including non-bearing acres) in 2002 were 26,586 and 22,822, respectively.

Summing average Washington and Oregon pear acreage for 2002 and 2003, and dividing by the number of growers (1,850), the estimated average acreage per grower in the two-state area is 26.7 total acres and 22.9 bearing acres. According to the 1997 Agricultural Census, the average Oregon and Washington pear grower had approximately 23 and 15 total acres, respectively. The sum of average Washington and Oregon pear production for 2002 and 2003, divided by the number of growers, yields an estimated average production per grower in the two-state area of 338 tons (676,000 pounds).

The average fresh market grower return for the two States has been between 20 and 22 cents per pound in recent years, and between 10 and 12 cents per pound for processing. Estimated 2-year average pear sales revenue per grower in the production area is approximately \$101,000, which is between ⅓ and ⅔ of the revenue that would qualify a grower to be a large grower according to the SBA definition (if based on pear sales alone). According to the hearing record, roughly 75 percent of the fresh pear producers in the States of Oregon and Washington

qualify as small producers. One witness stated that a 1,000-acre farm represents the threshold between a small and a large producer (a substantially different definition from what the SBA uses).

There are 55 handlers that handle fresh pears produced in Oregon and Washington; 73 percent of these fall into the SBA definition of "small business." There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors are larger than the SBA's definition of small business. According to information presented by processors testifying at the hearing, roughly 90 percent of pears received for processing come from small grower entities.

The proposals put forth at the hearing will streamline industry organization, but will not result in a significant change in industry production, harvest or distribution activities. In discussing the impacts of the proposed amendments on small growers and handlers, witnesses indicated that the changes are expected to result in lower costs.

When implemented, the amendments will result in the consolidation of marketing orders 927 and 931, regulating fresh winter pears and summer/fall pears, respectively. Program coverage will also be extended to pears for processing. The combined programs will be administered by two new administrative committees, one for fresh pears and one for pears for processing. Cost savings are expected to occur as a result of more efficient coordination of administrative activities between the two proposed committees.

Record evidence indicates the proposal to revise the order's inspection provisions may result in cost savings for handlers. Handlers within the production area typically have about 75 percent of their product inspected on a voluntary basis. The remaining 25 percent represents the amount of additional product that would be required to be inspected if regulations were in effect.

Handler witnesses also reported that inspection costs average 12½ cents per hundredweight, with a \$9 minimum fee. In addition to paying the inspection fee, handlers may also experience delays in shipments while waiting for inspection to be completed. Handlers indicated that such delays could be longer for smaller shippers that do not have inspectors regularly stationed at their warehouses. This amendment seeks to reduce these costs by allowing alternatives to mandatory inspection.

Traditionally, the pear industry has used end-line inspection procedures. Under this scenario, samples of packed

pears are examined at the end of the production process, and the results are certified by Federally licensed inspectors. The record shows that in recent years, the Federal-State Inspection Service has developed effective, less costly alternatives to the end-line inspection program. One alternative is the "Partners in Quality" program, a documented quality assurance system. Under this program, individual packing houses must demonstrate and document their ability to pack product that meets all relevant quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each packer's system by USDA-approved auditors.

Another program recently developed is the Customer Assisted Inspection Program (CAIP). Under CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence. Witnesses at the hearing testified that the fresh pear industry should be able to utilize any method of inspection acceptable to the Federal-State Inspection Service. These alternative methods have been developed by USDA as a means of reducing costs to industry. When implemented, individual pear handlers will be able to choose the method of inspection best suited to their operations, thereby possibly reducing costs associated with inspection.

Additionally, the authority to eliminate inspection requirements is expected to have handler cost implications. However, any increase or decrease in costs cannot be determined until specific alternative methods are developed to assure compliance with any quality and size standards in effect.

The proposal to authorize container marking requirements is not expected to result in significant cost increases for fresh pear handlers. Testimony indicated that packing facilities are already configured for labeling and container marking. Witnesses noted that there would be little, if any, need for equipment changes or additions. Thus, the proposed change is not expected to have any adverse financial impact related to handling fresh pears. It should be noted that this amendment will only provide the committees with authority to recommend container markings. Implementation of this authority would require informal rulemaking in the future. The amendment itself will therefore not impose any new regulatory requirements on Oregon or Washington fresh pear handlers.

Witnesses explained that the winter, summer/fall, fresh and processed pear industries are closely inter-related. Growing, harvesting, packing, processing and marketing activities of these industries all impact each other. Thus, bringing all industry segments together under a single marketing program will be beneficial for the Oregon and Washington pear industry. Proponent witnesses stated that the combined amendments, if implemented, will help to improve the orderly marketing of product within the industry.

Similarly, coordinated marketing and distribution efforts for fresh varieties that appear in the marketplace simultaneously will assist in maximizing grower returns from each variety. While the industries currently undertake coordinated marketing and promotional activities, witnesses stated that combining these industries will further synchronize activities and facilitate industry discussions and decision-making.

The amendments will add authority to assess summer/fall pear handlers and undertake promotional activities on their behalf in a manner similar to that done currently for winter pears. When asked if assuming this authority would be acceptable to the summer/fall pear industry, witnesses supported promotional activities, including paid generic advertising, as a way to boost sales and maintain market share.

Post-harvest research will also benefit the pear industries by focusing on a section of the pear crop-to-market flow that, until now, has not benefited from research activities. Improved storage techniques resulting from industry-funded post-harvest research could, for example, benefit the pear industry by decreasing the loss of product due to storage, or by increasing the storability of product to help prolong the marketing season.

A significant market-facilitating function carried out by the current marketing order committees is the collection of statistical data. That function will continue under the amended marketing order and the authority to collect information will extend to additional varieties that are currently produced. Flexibility is provided for including other varieties in the future. Witnesses emphasized the importance and value of collecting and disseminating accurate statistical information to enable industry participants to make economic and marketing decisions.

The proposal to establish two administrative committees also includes the addition of a public member to each

of those committees. The benefit of adding a non-industry, consumer perspective to committee deliberations and decision-making could prove very beneficial. Witnesses stated that this additional perspective would improve the committees' understanding of the consumer in the marketplace and could enhance committee activities aimed at increasing consumer demand for Oregon and Washington pears.

The addition of a public member to each committee is not expected to result in any substantial cost increases. While these members will be entitled to reimbursement for certain expenses allowed for under the order, this expense is neither different nor any more burdensome than the current reimbursement arrangement for committee members.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that most of the amendments are designed to reduce costs. While some of the proposals could impose some minimal costs, those costs would be outweighed by the benefits expected to accrue to the Oregon and Washington pear industry.

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. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the winter pear industry, and 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.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping provision changes that are generated by the amendments will be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 927 are approved by OMB under OMB number 0581-0089. Any changes in those

requirements as a result of this proceeding will be submitted to OMB for approval.

Witnesses stated that existing forms could be adequately modified to serve the needs of the proposed fresh and processed pear committees. While conforming changes to the forms would need to be made (such as changing the name of the committee), the functionality of the forms would remain the same. Therefore, there will be no modification to reporting and recordkeeping burdens generated from these amendments.

#### **Civil Justice Reform**

The amendments to Marketing Agreement and Order 927 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 the date of the entry of the ruling.

#### **Order Amending the Order Regulating Winter Pears Grown in Oregon and Washington**

##### *Findings and Determinations*

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except 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 Marketing 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 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 subdivision 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 pears grown in the production area; and

(5) All handling of pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Oregon and Washington pear industry. Making the amendments effective as specified would allow the Oregon and Washington pear industries (all varieties of pears for the fresh market and pears for processing) to proceed with the combining of marketing orders 927 and 931 under the amended marketing order 927. Immediate implementation of the amendments is necessary in order to

execute administrative changes necessary for the establishment of two administrative committees and incorporating pears for processing under the provisions of the order.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

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

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping pears covered by the order as hereby amended) who, during the period July 1, 2003, through June 30, 2004, handled 50 percent or more of the volume of such 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 of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such pears, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum;

(3) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers of pears for processing from each of the States of Oregon and Washington, who participated in a referendum on the question of approval and who, during the period of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such pears for processing, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(4) 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 the interests of producers of pears in the production area.

### Order Relative to Handling of Pears Grown in Oregon and Washington

*It is therefore ordered,* That on and after the effective date hereof, all handling of pears grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on January 5, 2005, and published in the **Federal Register** on January 13, 2005, (70 FR 2520) shall be and are the terms and provisions of this order amending the order and set forth in full herein.

### List of Subjects in 7 CFR Part 927

Marketing agreements, Winter pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by revising part 927 to read as follows:

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

#### Subpart—Order Regulating Handling

##### Definitions

- Sec.  
927.1 Secretary.  
927.2 Act.  
927.3 Person 927.4 Pears.  
927.5 Size.  
927.6 Grower.  
927.7 Handler.  
927.8 Ship or handle.  
927.9 Fiscal period.  
927.10 Production area.  
927.11 District.  
927.12 Export market.  
927.13 Subvariety.  
927.14 Processor.  
927.15 Process.

##### Administrative Bodies

- 927.20 Establishment and membership.  
927.21 Nomination and selection of members and their respective alternates.  
927.22 Meetings for elections of nominees.  
927.23 Voting.  
927.24 Eligibility for membership.  
927.25 Failure to nominate.  
927.26 Qualifications.  
927.27 Term of office.  
927.28 Alternates for members.  
927.29 Vacancies.  
927.30 Compensation and expenses.  
927.31 Powers.  
927.32 Duties.  
927.33 Procedure.  
927.34 Right of the Secretary.  
927.35 Funds and other property.

##### Expenses and Assessments

- 927.40 Expenses.  
927.41 Assessments.  
927.42 Accounting.

- 927.43 Use of funds.  
927.44 [Reserved].  
927.45 Contributions.

### Research and Development

- 927.47 Research and development.

### Regulation of Shipments

- 927.50 Marketing policy.  
927.51 Issuance of regulations; and modification, suspension, or termination thereof.  
927.52 Prerequisites to recommendations.  
927.53 Notification.  
927.54 [Reserved].

### Inspection

- 927.60 Inspection and certification.

### Exceptions

- 927.65 Exemption from regulation.

### Miscellaneous Provisions

- 927.70 Reports.  
927.71 Compliance.  
927.72 Duration of immunities.  
927.73 Separability.  
927.74 Derogation.  
927.75 Liability.  
927.76 Agents.  
927.77 Effective time.  
927.78 Termination.  
927.79 Proceedings after termination.  
927.80 Amendments.

Authority: 7 U.S.C. 601–674.

#### Subpart—Order Regulating Handling

##### Definitions

##### § 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.

##### § 927.2 Act.

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

##### § 927.3 Person.

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

##### § 927.4 Pears.

(a) *Pears* means and includes any and all varieties or subvarieties of pears with the genus *Pyrus* that are produced in the production area and are classified as:

(1) Summer/fall pears including Bartlett and Starkrimson pears;

(2) Winter pears including Beurre D'Anjou, Beurre Bosc, Doyenne du Comice, Concorde, Forelle, Winter

Nelis, Packham, Seckel, and Taylor's Gold pears; and

(3) 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.

#### **§ 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 as "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.

#### **§ 927.6 Grower.**

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

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 927.10 Production area.**

*Production area* means and includes the States of Oregon and Washington.

#### **§ 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.

#### **§ 927.12 Export market.**

*Export market* means any destination which is not within the 50 states, or the District of Columbia, of the United States.

#### **§ 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.

#### **§ 927.14 Processor.**

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

#### **§ 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.

#### **Administrative Bodies**

#### **§ 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.

(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.

**§ 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, each independently, and selected by the Secretary. The Fresh Pear Committee and the Processed Pear Committee may, each independently, prescribe such additional qualifications, administrative rules and procedures for selection for each candidate as it deems necessary and as the Secretary approves.

**§ 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.

**§ 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 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.

**§ 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 or LLC 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.

**§ 927.25 Failure to nominate.**

In the event nominations are not made pursuant to §§ 927.21 and 927.22 on or before June 1 of any year, the Secretary may select members and alternates for members without regard to nominations.

**§ 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.

**§ 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 the initial members and alternates shall end June 30, 2006; 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.

**§ 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.

**§ 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.

**§ 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.

**§ 927.31 Powers.**

The Fresh Pear Committee and the Processed Pear Committee shall have the following powers to exercise each independently:

(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.

**§ 927.32 Duties.**

The duties of the Fresh Pear Committee and the Processed Pear Committee, each independently, 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 perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress, approved August 24, 1935 (49 Stat. 774), as amended;

(e) 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 or 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;

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

(g) 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 or the Processed Pear Committee;

(h) To select a chairman of the Fresh Pear Committee or 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

(i) 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **Expenses and Assessments**

##### **§ 927.40 Expenses.**

The Fresh Pear Committee and the Processed Pear Committee are authorized, each independently, to incur such expenses as the Secretary finds may be necessary to carry out their functions under this subpart. The funds

to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

##### **§ 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 assessment classifications in this paragraph (b)(1) 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 rate 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 assessment classifications defined in paragraph (b)(1) of this section 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 rate 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.

#### **§ 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 or the Processed Pear Committee and its members to account for all receipts and disbursements.

#### **§ 927.43 Use of funds.**

From the funds acquired pursuant to § 927.41 the Fresh Pear Committee and the Processed Pear Committee, each independently, 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 or the Processed Pear Committee.

#### **§ 927.44 [Reserved]**

#### **§ 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.

#### **Research and Development**

#### **§ 927.47 Research and development.**

The Fresh Pear Committee 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.

#### **Regulation of Shipments**

#### **§ 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 investigations specified in this section, 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.

#### **§ 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 fresh pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of such 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 fresh 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.

#### **§ 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 described in paragraph (b) of 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

prescribed in paragraph (b) of this section, of all members.

(b) With respect to 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 a vote equal to the percentage 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.

#### **§ 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.

#### **§ 927.54 [Reserved]**

#### **Inspection**

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

(a) Handlers shall ship only fresh pears inspected by the Federal-State Inspection Service or under a program developed by the Federal-State Inspection Service: except, 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.

(b) Any handler may ship pears, on any one conveyance and in such

quantity as the committee, with the approval of the Secretary, may prescribe, exempt from the inspection and certification requirements of paragraph (a) of this section.

(c) The Fresh Pear Committee may, with the approval of the Secretary, prescribe rules and regulations modifying or eliminating the requirement for mandatory inspection and certification of shipments: Provided, That an adequate method of ensuring compliance with quality and size requirements is developed.

#### **Exceptions**

#### **§ 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 prescribe regulations to prevent pears shipped for either of such purposes from entering commercial channels of trade contrary to the provisions of this subpart.

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

#### **Miscellaneous Provisions**

#### **§ 927.70 Reports.**

(a) Upon the request of the Fresh Pear Committee or 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 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 handler's 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.

#### **§ 927.71 Compliance.**

Except as provided in § 927.65, no handler shall ship any pears contrary to the applicable restrictions and limitations specified in, or effective pursuant to, the provisions of this subpart.

#### **§ 927.72 Duration of immunities.**

The benefits, privileges, and immunities conferred by virtue of this subpart shall cease upon termination hereof, except with respect to acts done under and during the existence of this subpart.

#### **§ 927.73 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

#### **§ 927.74 Derogation.**

Nothing contained in this subpart is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

#### **§ 927.75 Liability.**

No member or alternate for a member of the Fresh Pear Committee 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.

#### **§ 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 or her agent or representative in connection with any of the provisions of this subpart.

#### **§ 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.

#### **§ 927.78 Termination.**

(a) The Secretary may at any time terminate this subpart.

(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 May 21, 2005, 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.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

#### **§ 927.79 Proceedings after termination.**

(a) Upon the termination of this subpart, the members of the Fresh Pear

Committee 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 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 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 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 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.

#### **§ 927.80 Amendments.**

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

Dated: May 13, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-9961 Filed 5-17-05; 9:47 am]

BILLING CODE 3410-02-P