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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AMS-FV-08-0008, FV08-927-610 Review]

Pears Grown in Oregon and Washington; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 927, regulating the handling of pears grown in Oregon and Washington. AMS has determined that the marketing order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: moab.docketclerk@usda.gov. A copy of the review may also be obtained via the Internet at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman or Gary D. Olson, 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 E-mail: Sue.Coleman@usda.gov or GaryD.Olson@usda.gov.

SUPPLEMENTARY INFORMATION: Marketing Order No. 927, as amended (7 CFR part

927), regulates the handling of pears grown in Oregon and Washington State, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The order establishes two administrative committees, the Fresh Pear Committee and the Processed Pear Committee (Committees).

The Fresh Pear Committee (FPC) is comprised of 13 members and 26 first and second alternate members selected by the Department of Agriculture (USDA). Six of the members and their respective alternates are growers of fresh pears, six of the members and their respective alternates are handlers, and one member and the respective alternates represent the public.

The Processed Pear Committee (PPC) is comprised of 10 members and 20 first and second alternate members selected by the USDA. Three of the members and their respective alternates are growers of pears for processing, three of the members and their respective alternates are handlers, three of the members and their respective alternates are processors, and one member and the respective alternates represent the public.

For both Committees, members and alternate members serve for two years beginning on July 1 and ending on June 30. The terms are staggered so that half of the members are selected annually. Committee members may serve for a maximum of three consecutive two-year terms.

The Committees are responsible for local administration of the order, including recommending the implementation of regulatory actions and activities to USDA, collecting and distributing industry statistics, and ensuring compliance with the various provisions of the order. The Committees recommend amendments to the order when needed to further industry objectives. Activities of the Committees are funded by assessments collected from handlers. USDA must approve recommendations by the Committees before they can be implemented.

Currently, there are approximately 1,700 growers and 42 handlers of Oregon-Washington pears in the regulated production area. The majority of these growers and handlers may be classified as small entities. The

regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all industry entities regardless of size, and do not have differential impacts based on size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 927, under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the Oregon-Washington pear marketing order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. Three comments were received on the [regulations.gov](http://www.regulations.gov) website in support of the order and are discussed later in this confirmation.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes grade, size, quality, and container regulations for fresh pears, excluding pears for processing. Also authorized for fresh pears are mandatory inspection requirements. Only one minimum quality handling regulation is currently in effect, which covers fresh shipments to North America for the Beurre D'Anjou variety. This regulation has helped ensure that only high quality Beurre D'Anjou pears reach consumers, contributing to increasing and maintaining demand. The order also authorizes production and post-harvest

research, marketing research, market development, and promotion activities, including paid advertising. The research and promotion programs are all currently active. Finally, the order authorizes collection and dissemination of information for the benefit of the industry. Funds to administer the order are obtained from assessments levied against all product handled under the order.

This order has a history of regulations that includes minimum grade and size, and mandatory inspection. Current industry practices have moved beyond the need for these regulations. However, the order contains the authority for these provisions should they ever be necessary to enforce again.

Regarding complaints or comments received from the public concerning the order, AMS received three comments, one from a pear handler, one from the FPC, and one from the PPC. All comments were supportive of the order and addressed each of the five factors under consideration by AMS. Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committees and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in August 1939 to regulate the winter pear varieties. During the 69 years the order has been in effect, AMS and the Oregon-Washington pear industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committees meet once or twice a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

In 1961, the order was redesignated from 7 CFR 939 to 7 CFR 927. In 1986, the title of the order was simplified, by changing it from "Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairegeau Varieties of Pears Grown in the States of Oregon, Washington, and California" to "Winter Pears Grown in Oregon, Washington, and California". This action allowed more varieties to be included under the order.

Additional order improvements have included a redefinition of the production area and a consolidation of orders. In 1997, California growers and handlers were removed from the order and agreement at their request since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. The most recent major amendments occurred in 2005 to consolidate the order with Marketing Order No. 931, Fresh Bartlett Pears Grown in Oregon and Washington. The title changed again, becoming "Pears Grown in Oregon and Washington."

Based on the potential benefits of the order to growers, handlers, processors, and consumers, AMS has determined that the Oregon-Washington pear marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The collection, compilation, and dissemination of information has provided growers, handlers, and processors with tools to assist them in making production and marketing decisions.

Numerous activities and projects undertaken by the Committees have allowed growers to earn higher revenues and reduce the cost of production. The minimum quality regulation of fresh Beurre D'Anjou pear shipments has benefited growers, handlers, and most importantly, consumers. AMS will continue to work with the Oregon-Washington pear industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS-FV-08-0009; FV08-966-610 Review]

Tomatoes Grown in Florida; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 966, regulating the handling of tomatoes grown in Florida (order). AMS has determined that the order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or E-mail: moab.docketclerk@usda.gov. A copy of the review may also be obtained via the Internet at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Marketing Order No. 966, as amended (7 CFR part 966), regulates the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The order establishes the Florida Tomato Committee (Committee) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 12 grower members representing four districts. Each member has an alternate. Members and alternate members are elected through nomination meetings held in each district.