

effect through March 31, 1996. The suspension of § 915.150 paragraph (d) of the avocado marketing order pack-out reporting requirements was published in the Federal Register (59 FR 30866, June 16, 1994) and is currently in effect through March 31, 1996. This rule suspends these regulations indefinitely.

Sections 911.53–59 (7 CFR 911.53–59) of the lime marketing order cover volume regulations and were used by FLAC to collect and maintain information from handlers, so that it could recommend to the Department that lime volume regulations be issued, when and if needed. FLAC determined that volume regulations will not be needed in the near future, and thus such information will not be needed, because of reduced production due to hurricane damage in 1992.

Concerning pack-out reporting requirements, both FLAC and AAC recommended suspension of their pack-out reporting requirements. Section 911.111 (7 CFR 911.111) and § 915.150 (7 CFR 915.150) contain provisions requiring Florida handlers to file certain reports with either the FLAC or the AAC concerning their Florida lime and avocado shipments, respectively. This action continues the suspension of these provisions since information collected under these provisions is not needed because lime and avocado production is so low. These provisions would require handlers to furnish information on types and number of containers of limes and avocados they pack each day. Sufficient information from other sources is available to meet committee needs during future seasons. Information needed for committee operations, marketing policies, and compliance is available from inspection certificates collected on a daily basis by committee staff. These resources are used to collect such information. Low lime and avocado production has also resulted in a substantial reduction of the both committees' staff and reduction of assessment income. Thus, the continuation of the suspension will reduce administrative costs and work load.

These continued suspensions are a result of damage to the lime and avocado groves caused by Hurricane Andrew in August 1992. For limes, Hurricane Andrew reduced production acreage from approximately 6,500 acres to approximately 1,500 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,682,677 bushels. In the 1992–93 season, production prior to the hurricane was 1,146,000 bushels. After the hurricane, in the 1993–94 season, production fell to 228,455 bushels and

in the 1994–95 season, it was 283,977 bushels. This was well below the levels reached prior to the hurricane.

For avocados, Hurricane Andrew reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,110,105 bushels. In the 1992–93 season, production fell to 283,000 bushels and in the 1993–94 season it was 174,712 bushels. Although the 1994–95 season recovered to 778,951 bushels, it is well below the levels reached prior to the hurricane.

Therefore, this action reflects the committees' and the Department's appraisal of the need to suspend certain volume regulations and pack-out reporting requirements under the orders, as specified. This rule indefinitely suspends certain reporting requirements for Florida limes and avocados, and lessens the overall reporting and recordkeeping burden under the orders. The Department's view is that this suspension will have a beneficial impact on Florida lime and avocado producers and handlers, since it lessens the reporting burden on handlers and will reduce the committees' expenses incurred under the orders.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0581–0091 and 0581–0078 for limes and avocados respectively.

This action indefinitely suspends the annual reporting burden currently estimated at 210.4 hours for all regulated Florida lime handlers to: (1) Apply for a prorated base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

This action also indefinitely suspends the annual reporting burden currently estimated at 130 hours for all regulated Florida avocado handlers who file such reports. Specifically, this would apply to handlers who file: (1) The Avocado Handler Daily Size Report Form; and (2) the Avocado Handlers Weekly Report Form.

After consideration of all relevant matter presented, the information and recommendations submitted by the

committees, and other information, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relieves restrictions by suspending certain volume regulation and pack-out reporting requirements under the orders for fresh Florida limes and avocados; (2) Florida lime and avocado handlers are aware of this suspension which was recommended by the committees at public meetings, and they will need no additional time to comply; (3) Florida fresh lime shipments are currently in progress, and they are expected to continue throughout the year; (4) such requirements need to be suspended promptly for both limes and avocados, so they are of maximum benefit to handlers; and (5) this rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final action.

#### List of Subjects

##### *7 CFR part 911*

Limes, Marketing agreements, Reporting and recordkeeping requirements.

##### *7 CFR part 915*

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

#### **PART 911—[SUSPENDED IN PART]**

2. In part 911, §§ 911.53 through 911.59, and § 911.111 are suspended, indefinitely.

#### **PART 915—[SUSPENDED IN PART]**

3. In § 915.150, paragraph (d) is suspended, indefinitely.

Dated: April 16, 1996.

Michael V. Dunn,

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 96–9825 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

**7 CFR Part 927****[Docket No. AO-99-A-6; FV-92-065]****Winter Pears Grown in Oregon, Washington, and California; Order Amending the Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the marketing agreement and order for winter pears grown in Oregon, Washington, and California. The amendments were recommended by the Winter Pear Control Committee (WPCC), the agency responsible for local administration of the marketing order, and were favored by winter pear producers in a referendum held from November 1 through November 30, 1995. The amendments will: Redefine "ship or handle" to include shipments of winter pears within the production area; update the definition of "export market" to recognize that there are now 50 states in the United States; authorize the WPCC to accept voluntary contributions and how such funds may be used; and revise the authority for exempting certain shipments from regulation. These amendments are designed to improve the administration, operation and function of the winter pear marketing agreement and order program.

**EFFECTIVE DATE:** May 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2522-S, Washington, DC 20090-6456, telephone (202) 720-5127; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807, telephone: (503) 326-2724.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on November 16, 1992, and published in the November 20, 1992, issue of the Federal Register (57 FR 54728). Recommended Decision and Opportunity to File Written Exceptions issued on March 15, 1995, and published in the Federal Register on March 21, 1995, (60 FR 14914). Secretary's Decision and Referendum Order issued on June 22, 1995, and published in the Federal Register on June 29, 1995, (60 FR 3376).

This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 *et seq.*) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

**Preliminary Statement**

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on December 2, 1992, to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the WPCC established under the order to assist in local administration of the marketing order.

This final rule: (1) Redefines "ship or handle" to include shipments of winter pears within the production area; (2) updates the definition of "export market" to recognize that there are now 50 states in the United States; (3) authorizes the WPCC to accept voluntary contributions and specifies how such funds may be used; and (4)

revises the authority for exempting certain shipments from regulation.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 21, 1995, filed with the Hearing Clerk, Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 20, 1995. None were filed.

A Secretary's Decision and Referendum Order was issued on June 22, 1995, directing that a referendum be conducted during the period November 1 through November 30, 1995, among winter pear producers to determine whether they favored the proposed amendments to the order. In that referendum, producers voted in favor of all four of the amendment proposals listed on the referendum ballot. All of the proposed amendments were favored by more than the requisite two-thirds of the producers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all winter pear handlers throughout the production area for their approval. The marketing agreement was signed by handlers of more than 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 1994, through June 30, 1995.

**Small Business Considerations**

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than \$5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the

proposed amendments to the order would have on small businesses.

During the 1995–96 crop year, approximately 90 handlers were regulated under Marketing Order No. 927. In addition, there are about 1,980 growers of winter pears in the regulated area. The Act provides for the application of uniform rules on regulated handlers. Since handlers covered under the winter pear marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. 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.

All of the order amendments are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. The benefits are expected to outweigh any costs associated with the amendments. Accordingly, it is determined that the amendments to the order will not have a significant economic impact on growers or handlers.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements that may result from the amendments will be submitted to the Office of Management and Budget (OMB) for approval.

#### List of Subjects in 7 CFR Part 929

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Order Amending the Order for Winter Pears Grown in Oregon, Washington, and California

#### 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 Marketing Agreement and Order No. 927 (7 CFR part 927), covering winter pears grown in Oregon, Washington, and California.

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

(1) The marketing agreement and 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 agreement and 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 agreement and order upon which hearings have been held;

(3) The marketing agreement and 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 agreement and 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 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 growers who are not engaged in processing, distribution, or shipping of winter pears covered by the said order, as hereby amended) who during the period of July 1, 1994, through June 30, 1995, handled 50 percent or more of the volume of such winter pears covered by the said order, as amended and hereby further amended have signed a marketing agreement; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum and represented at least two-thirds of the volume of such commodity in the referendum, all such

producers during the period June 1, 1994, through June 30, 1995 (which has been deemed to be a representative period), having been engaged within the production area in the production of winter pears for fresh market.

#### Order Relative to Handling

*It is therefore ordered,* That on and after the effective date hereof, all handling of winter pears grown in Oregon, Washington, and California 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 agreement and order amending the order contained in the Secretary's Decision issued on June 22, 1995, and published in the Federal Register on June 29, 1995, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

#### PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

##### § 927.8 Ship or handle.

*Ship or handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: *Provided,* That the term “handle” shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

##### § 927.10 Production area.

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

4. Section 927.12 is revised to read as follows:

##### § 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.

5. In § 927.41, paragraph (a) is revised to read as follows:

##### § 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 Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control 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.

\* \* \* \* \*

6. Section 927.45 is added to read as follows:

**§ 927.45 Contributions.**

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to section 927.47.

Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

**§ 927.47 Research and development.**

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production 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 of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

**§ 927.52 Prerequisites to Control Committee recommendations.**

\* \* \* \* \*

(b) \* \* \*

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

\* \* \* \* \*

9. In § 927.65, paragraph (b) is revised to read as follows:

**§ 927.65 Exemption from regulation.**

\* \* \* \* \*

(b) The Control 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.

\* \* \* \* \*

Dated: April 16, 1996.

Michael V. Dunn,

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 96-9828 Filed 4-19-96; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 932**

[Docket No. FV96-932-1FIR]

**Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting without change, the provisions of an interim final rule, that authorized expenses and established an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1996 fiscal year. The Committee is responsible for local administration of the marketing order which regulates the handling of the California Olives. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** Effective beginning January 1, 1996, through December 31, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209-487-5901; or Tershirra T. Yeager, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone 202-720-5127.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, 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 Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives during the 1996 fiscal year, beginning January 1, 1996, through December 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 5 handlers of olives grown in California who are subject to regulation under the order and approximately 1,350 producers of olives in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less