

has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580-0013)

■ 5. Section 800.117 is revised to read as follows:

**§ 800.117 Who shall perform original services.**

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service—(1) Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other than seasonal ice making waterways unnavigable, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by

authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

■ 6. Section 800.118 is revised to read as follows:

**§ 800.118 Certification.**

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under Control Number 0580-0013)

■ 7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

**§ 800.185 Duties of official personnel and warehouse samplers.**

\* \* \* \* \*

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0580-0013)

■ 8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

**§ 800.196 Designations.**

\* \* \* \* \*

(f) *Area of responsibility—(1) General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or

the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0580-0013).

Dated: April 15, 2003.

**Donna Reifschneider,**  
*Administrator.*

[FR Doc. 03-9630 Filed 4-17-03; 8:45 am]

BILLING CODE 3410-EN-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Docket No. FV00-927-3]

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the marketing order for winter pears grown in Oregon and Washington (order). Three amendments were proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. Of these three, only one proposal was favored by winter pear growers in a mail referendum, held July 17 through August 2, 2002. The single amendment to the order will change provisions related to alternate Committee members serving for absent members at Committee meetings. This amendment will improve the operation and functioning of the winter pear marketing order program by ensuring industry representation at Committee meetings. The two amendments that failed to receive grower support in the referendum include authorizing the Committee to recommend maturity regulations, and authorizing the Committee to recommend container or marking requirements. These amendments will not be implemented.

**EFFECTIVE DATE:** May 19, 2003.

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

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

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

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

### Preliminary Statement

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon and Washington. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The Notice of Hearing contained three amendment proposals submitted by the Committee,

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

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

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

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

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

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

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

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

### Small Business Considerations

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

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

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

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

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

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

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

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

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

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

### Civil Justice Reform

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

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

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

#### *Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

#### *(a) Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington.

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

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

tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

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

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

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

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

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

the interests of producers of winter pears in the production area.

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

*It is therefore ordered,* That on and after the effective date hereof, all handling of winter pears grown in Oregon and 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 to change order language relating to alternate Committee members serving for absent members at Committee meetings contained in USDA's Decision issued by the Administrator on June 4, 2002, and published in the **Federal Register** on June 10, 2002, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 927 is amended as follows:

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

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

*Authority:* 7 U.S.C. 601–674.

■ 2. Revise § 927.28 to read as follows:

#### § 927.28 Alternates for members of the Control Committee.

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 both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

\* \* \* \* \*

Dated: April 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9629 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–02–P

### CONSUMER PRODUCT SAFETY COMMISSION

#### 16 CFR Part 1500

#### Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is today declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and is banning such wicks and candles with such wicks.<sup>1</sup> The Commission is issuing this final rule under authority of the Federal Hazardous Substances Act (FHSA).

**DATES:** This final rule becomes effective on October 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kristina Hatlelid, Ph.D., M.P.H., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7254.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On February 24, 2000, the U.S. Consumer Product Safety Commission (CPSC or Commission) received a request from Public Citizen that the Commission ban candles with lead-containing wicks and wicks sold for candle-making that contain lead. On February 29, 2000, CPSC received a similar request from the National Apartment Association and the National Multi Housing Council. These requests were docketed collectively under the FHSA (Petition No. HP 00–3) on March 17, 2000.

After analysis of the available data on lead-cored candlewicks and the information provided by the petitioners, the CPSC staff transmitted a briefing package to the Commission recommending that it proceed with a rulemaking that could result in a ban of lead-cored candlewicks and candles with such wicks. The staff recommended that a lead-cored wick be defined as a wick containing a metal

core with greater than 0.06 percent lead by weight in the metal, since laboratory test data indicate that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. On February 20, 2001, the Commission voted to grant the petition and commence rulemaking by issuing an advance notice of proposed rulemaking (ANPR) incorporating this criterion. 66 FR 10863. The ANPR was followed in April of 2002 by a notice of proposed rulemaking (NPR) that included requirements for certification, record-keeping, labeling, and tracking of metal-cored candlewicks and candles that comply with the ban. 67 FR 20062.

##### B. The Product<sup>2</sup>

Lead-cored wicks are candlewicks with a metal wire in the center made of lead or lead alloy. The metal core is used to provide structural rigidity to the wick, *i.e.*, to keep the wick straight during candle production, and to provide an upright wick during burning.

##### C. The Market

###### 1. Trade Associations

The major trade association that represents candle and wick manufacturers and suppliers is the National Candle Association (NCA). NCA members include about 74 candle manufacturers, 10 of which are foreign. The NCA states that its members produce about 90 percent of the candles made in the U.S. Another U.S. based organization, comprised of craftspeople, is the International Guild of Candle Artisans, with 800 members from around the world.

###### 2. Candle Information

Of 483 firms identified by CPSC staff as U.S. candle manufacturers, all but three firms had fewer than 500 employees and 293 (or 60 percent) had fewer than five employees.

In 2000, the latest year for which factory shipment data are available, U.S. domestic candle shipments totaled approximately \$1.5 billion. Imports

<sup>2</sup> Information presented in this preamble is derived from briefing memoranda to the Commission from Kristina M. Hatlelid, Ph.D., M.P.H., toxicologist, Directorate for Health Sciences, to the Commission, "Petition HP 00–3 to Ban Lead-Cored Candlewicks," December 12, 2000; "Proposal to Ban Lead-Cored Candlewicks," March 18, 2002; and "Briefing Package for Ban on Candles with Lead-containing Wicks for Candle-making that Contain Lead—Final Rule," March 27, 2003. These and other materials for this rulemaking are available on the CPSC world wide Web site at [www.cpsc.gov](http://www.cpsc.gov) and from the CPSC office of the Secretary, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814, (301) 504–7923.

<sup>1</sup> The Commissioners voted 3–0 to issue these final rules.