

# Proposed Rules

Federal Register

Vol. 70, No. 236

Friday, December 9, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Docket No. FV05-927-01 PR]

#### Pears Grown in Oregon and Washington; Establishment of Continuing Assessment Rates and Modification of the Rules and Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish continuing assessment rates for the Fresh Pear Committee and the Processed Pear Committee (Committees) for the 2005-2006 fiscal period and subsequent fiscal periods. The Committees recommended the establishment of three base rates of assessment for any or all varieties or subvarieties of pears classified as "summer/fall", "winter", and "other" for fresh pears and pears for processing, respectively. This rule would also modify handling and reporting requirements in conformance with the amendments made to the marketing order for pears grown in Oregon and Washington on May 21, 2005, and to reflect current pear industry operating practices under the marketing order. The order is locally administered by the Committees. Assessments upon pear handlers are used by the Committees to fund reasonable and necessary expenses of the program. The fiscal period began July 1 and ends June 30. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by January 9, 2006.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must 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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation 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, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable pears beginning on July 1, 2005, and continue until amended, suspended, or terminated. This 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 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. Such 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.

This rule reflects a recent amendment to the marketing order for "winter" pears (Marketing Order No. 927) which incorporated the handling of "summer/fall" pears, previously regulated under Marketing Order No. 931, and extended coverage to pears for processing. This rule would establish continuing assessment rates for the Fresh Pear Committee (FPC) and the Processed Pear Committee (PPC) for the 2005-2006 fiscal period and subsequent fiscal periods. The Committees recommended the establishment of three base rates of assessment for any or all varieties or subvarieties of pears classified as "summer/fall", "winter", and "other" for fresh pears and pears for processing, respectively.

The Oregon and Washington pear marketing order provides authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the program. The members of the Committees include growers, handlers, and processors of Oregon and Washington pears. They are familiar with the needs of the Committees and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates for the Committees. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an

opportunity to participate and provide input.

The FPC met on July 15, 2005, and unanimously recommended 2005–2006 expenditures of \$8,987,218. In addition, the FPC unanimously recommended the following three base rates of assessment: (a) \$0.366 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “summer/fall” (b) \$0.501 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “winter” and (c) \$0.000 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “other”. This was the first public meeting of the newly formed FPC since the pear marketing order was amended on May 21, 2005 (70 FR 29388).

The FPC contracts with Pear Bureau Northwest under a management agreement. The major expenditures recommended by the FPC for the 2005–2006 fiscal period include \$418,431 for shared expenses (salaries and benefits, insurance, office rent, equipment rental and maintenance, office supplies, telephone, postage, and similar expenses); \$584,307 for production research and market development; \$207,500 for program expenses (compliance and education, committee meetings, office equipment purchases, industry development, and computer programs); and \$7,776,980 for paid advertising.

The recommended assessment rate for fresh “summer/fall” pears was derived by the FPC by allocating \$0.300 for paid advertising, \$0.031 for production research and market development, and \$0.035 for administrative expenses. Similarly, the assessment rate for “winter” pears was derived by allocating \$0.400 for paid advertising; \$0.031 for production research and market development; and \$0.070 for administrative expenses. The FPC recommended a \$0.00 assessment rate for all “other” pears not included under the classification of “summer/fall” and “winter” pears. Fresh “summer/fall” pear shipments for 2005–2006 are estimated at 3,688,600 standard boxes, which should provide \$1,350,028 in “summer/fall” pear assessment income. Fresh “winter” pear shipments for 2005–2006 are estimated at 15,160,000 standard boxes, which should provide \$7,595,160 in “winter” pear assessment income. This results in a combined total assessment income of \$8,945,188 for the 2005–2006 fiscal period.

Income derived from handler assessments (\$8,945,188), interest and

miscellaneous income (\$41,000), and reserve funds (\$431,546) would be adequate to cover budgeted expenses. Reserve funds, estimated at \$430,516 at the end of the 2005–2006 fiscal period, would be kept within the maximum permitted by the order of approximately one fiscal period’s expenses (§ 927.42).

The PPC met on July 22, 2005, and unanimously recommended 2005–2006 expenditures of \$875,980. In addition, the PPC unanimously recommended the following three base rates of assessment: (a) \$6.25 per ton for any or all varieties or subvarieties of pears for canning classified as “summer/fall”, excluding pears for other methods of processing; (b) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as “winter”; and (c) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as “other”. The assessment for “summer/fall” pears applies only to pears for canning and excludes pears for other methods of processing as defined in § 927.15, which includes pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This was the first public meeting of the newly formed PPC since the pear marketing order was amended on May 21, 2005 (70 FR 29388).

The PPC contracts with the Washington State Fruit Commission under a management agreement. The major expenditures recommended by the PPC for the 2005–2006 fiscal period include \$28,000 for contracted administrative services expenses; \$700,000 for paid advertising; \$140,000 for production research and market development; and \$6,980 for committee expenses (audit, compliance and education, office supplies, telephone, and travel).

The recommended assessment rate for “summer/fall” pears was derived by the PPC for canning by allocating \$5.00 for paid advertising, \$1.00 for production research and market development, and \$0.25 for administrative expenses. The PPC recommended a \$0.00 assessment rate for both the “winter” and “other” classification of pears for processing. Shipments of “summer/fall” pears for canning for 2005–2006 are estimated at 140,000 tons, which should provide \$875,000 in “summer/fall” pear assessment income.

Because this is the first time pears for processing would be regulated, there is no beginning reserve balance. Income derived from handler assessments (\$875,000), along with interest income (\$2,000) would be adequate to cover budgeted expenses. Reserve funds, estimated at \$1,020 at the end of the

2005–2006 fiscal period, would be kept within the maximum permitted by the order of approximately one fiscal period’s expenses (§ 927.42).

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates would be in effect for an indefinite period, the Committees would continue to meet prior to, or during, each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of meetings for the Committees are available from either the Committees or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committees’ recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Committees’ 2005–2006 budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

As a result of amendments to the order on May 21, 2005 (70 FR 29388), the Committees also unanimously recommended conforming changes to the order’s handling and reporting requirements to reflect the combinations of the two orders into one and to reflect current pear industry operating practices. The conforming changes that are no longer in effect for the order, include removing language regarding a marketing agreement from §§ 927.100, 927.101, 927.105, and 927.121; exemption certificates from §§ 927.110, 927.110a, 927.111, 927.112, 927.113, and 927.114; shipments to designated storages in § 927.122; and the reserve fund in § 927.142. In § 927.102, the list of varieties would be removed since pears are defined in § 927.4 and California would be removed since that state is no longer defined in § 927.10, production area. Further, conforming changes would replace the name of the Winter Pear Control Committee with that of the FPC or the PPC where appropriate in §§ 927.105, 927.120, 927.123, and 927.316. There would also be conforming changes in §§ 927.125 and 927.126, to the reports required under the order for the FPC and the PPC that were previously required under the Winter Pear Control Committee and the Northwest Fresh Bartlett Pear Marketing Committee.

### Initial Regulatory Flexibility Analysis

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

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 the 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 approximately 1,715 growers of pears in Oregon and Washington and approximately 51 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000.

According to the *Noncitrus Fruits and Nuts 2004 Summary* issued in July 2005 by the National Agricultural Statistics Service, the total farm gate value of all pears grown in Oregon and Washington for 2004 was \$210,409,000. Therefore, the 2004 average gross revenue for a pear grower in Oregon and Washington was \$122,687. Based on records of the Committees and recent f.o.b. prices for pears, over 76 percent of the handlers ship less than \$6,000,000 worth of pears on an annual basis. Thus, it can be concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA's definition of small businesses.

This rule would establish continuing assessment rates for the FPC and the PPC for the 2005–2006 fiscal period and subsequent fiscal periods. The Committees recommended the establishment of three base rates of assessment for any or all varieties or subvarieties of pears classified as “summer/fall”, “winter”, and “other” for fresh pears and pears for processing, respectively.

The FPC met on July 15, 2005, and unanimously recommended 2005–2006 expenditures of \$8,987,218. In addition,

the FPC unanimously recommended three base rates of assessment per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “summer/fall”, “winter”, and “other”, as follows: \$0.366, \$0.501, and \$0.000, respectively. Fresh “summer/fall” pear shipments for 2005–2006 are estimated at 3,688,600 standard boxes, which should provide \$1,350,028 in “summer/fall” pear assessment income. Fresh “winter” pear shipments for 2005–2006 are estimated at 15,160,000 standard boxes, which should provide \$7,595,160 in “winter” pear assessment income. This results in a combined total assessment income of \$8,945,188 for the 2005–2006 fiscal period.

Income derived from handler assessments (\$8,945,188), interest and miscellaneous income (\$41,000), and reserve funds (\$431,546) would be adequate to cover budgeted expenses. Reserve funds, estimated at \$430,516 at the end of the 2005–2006 fiscal period, would be kept within the maximum permitted by the order of approximately one fiscal period's expenses (\$927.42).

The PPC met on July 22, 2005, and unanimously recommended 2005–2006 expenditures of \$875,980. In addition, the Committee unanimously recommended three base rates of assessment per ton for any or all varieties or subvarieties of pears for processing classified as “summer/fall”, “winter”, and “other”, as follows: \$6.25, \$0.00, and \$0.00, respectively. The “summer/fall” assessment applies only to pears for canning. Shipments of “summer/fall” pears for canning for 2005–2006 are estimated at 140,000 tons, which should provide \$875,000 in “summer/fall” pear assessment income.

Because this is the first time pears for processing would be regulated, there is no beginning reserve balance. Income derived from handler assessments (\$875,000), along with interest income (\$2,000) would be adequate to cover budgeted expenses. Reserve funds, estimated at \$1,020 at the end of the 2005–2006 fiscal period, would be kept within the maximum permitted by the order of approximately one fiscal period's expenses (\$927.42).

Prior to arriving at these budgets, the FPC and the PPC considered information and proposals from the Pear Research Subcommittee, Pear Bureau Northwest, and the Pacific Northwest Canned Pear Service. Alternative expenditure levels were discussed regarding the relative value of research and promotion to the pear industry. The recommended assessment rate for fresh “summer/fall” pears was derived by the

FPC by allocating \$0.300 for paid advertising, \$0.031 for production research and market development, and \$0.035 for administrative expenses. Similarly, the assessment rate for “winter” pears was derived by allocating \$0.400 for paid advertising, \$0.031 for production research and market development, and \$0.070 for administrative expenses. The FPC recommended a \$0.00 assessment rate for all “other” pears not included under the classification of “summer/fall” or “winter” pears. The recommended assessment rate for “summer/fall” pears was derived by the PPC for canning by allocating \$5.00 for paid advertising, \$1.00 for production research and market development, and \$0.25 for administrative expenses. The PPC recommended a \$0.00 assessment rate for the “winter” pears for processing and all “other” pears for processing.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2005–2006 season could range between \$256 and \$356 per ton of pears. The highest estimated revenue would be the assessment on fresh market “winter” pears at \$22.77 per ton. Therefore, the highest estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total grower revenue could range between 6.4 and 8.9 percent.

As a result of amendments to the order on May 21, 2005 (70 FR 29388), the Committees also unanimously recommended conforming changes to the order's handling and reporting requirements to reflect the combinations of the two orders into one and to reflect current pear industry operating practices under the marketing order. The conforming changes include removing language regarding a marketing agreement, exemption certificates, shipments to designated storages, and the reserve fund. Further, conforming changes would replace the name of the Winter Pear Control Committee with that of the FPC or the PPC where appropriate. There would also make conforming changes to the reports required under the order for the FPC and the PPC that were previously required under the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee. These conforming changes would have a minimal impact on the small entities of growers and handlers in Oregon and Washington. There are no viable alternatives to these proposed conforming changes.

In addition, while assessments impose some additional costs on

handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committees' meetings were widely publicized throughout the Oregon and Washington pear industry and all interested persons were invited to attend the meetings and participate in the Committees' deliberations on all issues. Like all committee meetings, the July 15, 2005, and the July 22, 2005, meetings were public meetings and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. 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 rule.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2005–2006 fiscal period began on July 1, 2005, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable pears handled during such fiscal period; (2) the Committees need to have sufficient funds to pay for the expenses which are incurred on a continuous basis; (3) handlers are aware of these actions which were unanimously recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) any conforming changes to the handling and reporting requirements made as result of the proposed rule should be implemented as quickly as possible to assure program continuity.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

#### **PART 927—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. Subpart—Control Committee Rules and Regulations is revised to read as follows:

#### **Subpart—Rules and Regulations**

3. In § 927.100, the words “agreement and” are removed.

#### **§ 927.101 [Removed and Reserved]**

4. Section 927.101 is removed and reserved.

5. Section 927.102 is revised to read as follows:

#### **§ 927.102 Order.**

*Order* means Marketing Order No. 927, as amended (§§ 927.1 to 927.81), regulating the handling of pears grown in the States of Oregon and Washington.

6. Section 927.105 is revised to read as follows:

#### **§ 927.105 Communications.**

Unless otherwise prescribed in this subpart or in the order, or required by the Fresh Pear Committee or the Processed Pear Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the order shall be forwarded to: Fresh Pear Committee, 4382 SE International Way, Suite A, Milwaukie OR 97222–4635 and or the Processed Pear Committee, 105 South 18th Street, Suite 205, Yakima, WA 98901.

#### **§§ 927.110, 927.110a, 927.111, 927.112, 927.113 and 927.114 [Amended]**

7. The undesignated center heading “Exemption Certificates”, and §§ 927.110, 927.110a, 927.111, 927.112, 927.113, and 927.114 are removed.

#### **§ 927.120 [Amended]**

8. In § 927.120, the words “Control Committee” are removed and the words “Fresh Pear Committee” are added in their place.

#### **§ 927.121 [Amended]**

9. In § 927.121, the words “marketing agreement and” are removed.

#### **§ 927.122 [Removed and Reserved]**

10. Section 927.122 is removed and reserved.

#### **§ 927.123 [Amended]**

11. In § 927.123, the words “Control Committee” are removed and the words “Fresh Pear Committee or Processed Pear Committee” are added in their place.

12. Section 927.125 is revised to read as follows:

#### **§ 927.125 Fresh pear reports.**

(a) Each handler shall furnish to the Fresh Pear Committee, as of every other Friday or at such other times established by the Fresh Pear Committee, a “Handler’s Statement of Fresh Pear Shipments” containing the following information:

(1) The quantity of each variety or subvariety of fresh pears shipped by that handler during the preceding two weeks;

(2) The assessment payment due and enclosed;

(3) The date of each shipment;

(4) The ultimate destination by city and state or city and country;

(5) The name and address of such handler; and

(6) Other information as may be requested by the Fresh Pear Committee.

(b) Each handler shall furnish to the Fresh Pear Committee, each Friday during the shipping season or at such other times established by the Fresh Pear Committee, a “Handler’s Packout Report” containing the following information:

(1) The projected total quantity of the packout of each variety or subvariety;

(2) The quantity to date of the packout of each variety or subvariety;

(3) The quantity of each variety or subvariety loose in storage;

(4) The quantity of the packout in controlled atmosphere (C.A.) storage and the quantity in C.A. storage which is sold;

(5) The quantity of each variety or subvariety shipped;

(6) The name and address of such handler; and

(7) Other information as may be requested by the Fresh Pear Committee.

(c) Each handler shall furnish to the Fresh Pear Committee, upon request, the “Pear Size and Grade Storage Report” containing the quantity of specific grades and sizes of fresh pears in regular and C.A. storage by variety or subvariety, and such other information as may be requested from the Fresh Pear Committee for the time period specified.

(d) Each handler who has shipped less than 2,500 44-pound net weight standard boxes or container equivalents

of fresh pears during any reporting period of the shipping season may, in lieu of reporting as provided in (a) and (b) of this section, report as follows:

(1) At completion of harvest, on the next reporting date, furnish to the Fresh Pear Committee a "Handlers Packout Report";

(2) After unreported shipments total 2,500 44-pound net weight standard boxes or container equivalents of fresh pears, furnish to the Fresh Pear Committee a "Handler's Statement of Fresh Pear Shipments" and a "Handler's Packout Report" on the next reporting date;

(3) After completion of all shipments from regular storage (*i.e.* non-C.A. storage), furnish to the Fresh Pear Committee a "Handler's Statement of Fresh Pear Shipments" and a "Handler's Packout Report" on the next reporting date;

(4) At mid-season for C.A. storage, at a date established by the Fresh Pear Committee, furnish to the Fresh Pear Committee a "Handler's Statement of Fresh Pear Shipments", and a "Handler's Packout Report"; and

(5) At the completion of all seasonal pear shipments, furnish to the Fresh Pear Committee a "Handler's Statement of Fresh Pear Shipments" and a "Handler's Packout Report", on the next reporting date. Each of these reports shall be marked "final report" and include an explanation of the actual shipments versus the original estimate, if different.

(f) Each handler shall specify on each bill of lading covering each shipment, the variety or subvariety and quantity of all pears included in that shipment.

13. A new § 927.126 is added to read as follows:

**§ 927.126 Processed pear reports.**

(a) Each handler shall furnish to the Processed Pear Committee annually on a date established by the Processed Pear Committee the "Processed Pear Assessment Report" containing the following information:

(1) The name of the processor(s) or firm(s) to whom pears were sold;

(2) The quantity of each variety or subvariety of pears shipped by that handler;

(3) The crop year covered in the report;

(4) The assessment payment due and enclosed;

(5) The name and address of such handler; and

(6) Other information as may be requested by the Processed Pear Committee.

(b) Each handler shall specify on each bill of lading covering each shipment,

the variety or subvariety and quantity of all pears included in that shipment.

**§ 927.142 [Removed and Reserved]**

14. Section 927.142 is removed and reserved.

15. Section 927.236 is revised to read as follows:

**§ 927.236 Fresh pear assessment rate.**

On and after July 1, 2005, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) \$0.366 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as "summer/fall";

(b) \$0.501 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as "winter"; and

(c) \$0.000 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as "other".

16. A new § 927.237 is added to read as follows:

**§ 927.237 Processed pear assessment rate.**

On and after July 1, 2005, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$6.25 per ton for any or all varieties or subvarieties of pears for canning classified as "summer/fall", excluding pears for other methods of processing;

(b) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as "winter"; and

(c) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as "other".

17. Section 927.316 is revised to read as follows:

**§ 927.316 Handling regulation.**

During the period August 15 through November 1, no person shall handle any fresh Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Fresh Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and any such pears have an average pressure test of 14 pounds or less. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Fresh Pear Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of fresh Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: December 5, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05-23819 Filed 12-8-05; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2005-23250; Directorate Identifier 2005-NM-150-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747-400 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-400 series airplanes. This proposed AD would require inspecting the support bracket of the crew oxygen cylinder installation to determine the manufacturing date marked on the support, and performing corrective action if necessary. This proposed AD results from a report indicating that certain oxygen cylinder supports may not have been properly heat-treated. We are proposing this AD to prevent failure of the oxygen cylinder support under the most critical flight load conditions, which could cause the oxygen cylinder to come loose and leak oxygen. Leakage of oxygen could result in oxygen being unavailable for the flightcrew or could result in a fire hazard in the vicinity of the leakage.

**DATES:** We must receive comments on this proposed AD by January 23, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400