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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-12-0032; FV12-927-3 FR]

**Pears Grown in Oregon and Washington; Committee Membership
Reapportionment for Processed Pears**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reapportions the membership of the Processed Pear Committee (Committee) established under the Oregon-Washington pear marketing order. The marketing order regulates the handling of processed pears grown in Oregon and Washington, and is administered locally by the Committee. This rule reapportions the processor membership such that the three processor members and alternate members will be selected from the production area at-large rather than from a specific district. In an industry with few processors, this change will provide the flexibility needed to help ensure that all processor member positions are filled, resulting in effective representation of the processed pear industry on the Committee.

DATES: Effective July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-Mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This final rule reapportions the membership of the Committee established under the Oregon-Washington pear marketing order. This rule reapportions the processor membership such that the three processor members and alternate members will be selected from the production area at-large rather than from a specific district. With nine out of ten members present (the District 2 processor position is vacant), the Committee unanimously recommended

this change at a meeting held on May 30, 2012, with a request that the change be made effective by July 1, 2013.

Section 927.20(b) establishes the Processed Pear Committee consisting of ten members. Three members are growers, three members are handlers, three members are processors, and one member represents the public. For each member, there are two alternate members, designated as the "first alternate" and the "second alternate," respectively. Committee membership is apportioned among two districts. Section 927.11(b) defines District 1 as the State of Washington and District 2 as the State of Oregon. Prior to this action, District 1 was represented by two grower members, two handler members, and two processor members. District 2 was represented by one grower member, one handler member, and one processor member.

The order provides in § 927.20(c) that USDA, upon recommendation of the Committee, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternate members.

This rule adds a new § 927.150 to the order's administrative rules and regulations reapportioning the processor membership such that the three processor members

and alternate members will be selected from the production area at-large rather than from a specific district. The Committee recommended this change because there are no longer any pear processors in District 2, and the District 2 processor member and alternate member positions on the Committee are currently vacant. This change results in more effective representation of the processed pear industry by allowing the Committee to fill these vacant positions with processors from District 1.

Reapportioning the processor membership will allow all processor member and alternate member positions to be filled. The Committee recommended maintaining the three processor member positions, but specified that such members and alternate members may be located in either district. The regulatory language includes flexibility that provides opportunity for representation from District 2 should a processor once again process pears in that district.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (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 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 approximately 1,500 producers of processed pears in the regulated production area and approximately 46 handlers of processed pears subject to regulation under the 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 \$7,000,000.

According to the Noncitrus Fruits and Nuts 2011 Preliminary Summary issued in March 2012 by the National Agricultural Statistics Service, the total farm-gate value of summer/fall processed pears grown in Oregon and Washington for 2011 was \$35,315,000. Based on the number of processed pear producers in Oregon and Washington, the average gross revenue for each producer can be estimated at approximately \$23,543. Furthermore, based on Committee

records, the Committee has estimated that all of the Oregon-Washington pear handlers currently ship less than \$7,000,000 worth of processed pears each on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington processed pears may be classified as small entities.

There are three pear processing plants in the production area, all currently located in Washington. All three pear processors would be considered large entities under the SBA's definition of small businesses.

This rule adds a new § 927.150 to the order's administrative rules and regulations reappportioning the processor membership such that the three processor members will be selected from the production area at-large. This rule will be effective July 1, 2013. Authority for reappportioning the Committee is provided in § 927.20(c) of the order.

The Committee believes that this action will not negatively impact producers, handlers, or processors in terms of cost. The benefits for this rule are not expected to be disproportionately greater or less for small producers, handlers, or processors than for larger entities.

The Committee discussed alternatives to this rule, including leaving the District 2 processor member and

alternate member positions vacant. However, the Committee believes that three members should continue to represent processors on the Committee, except the representative should be chosen from the production area at-large rather than from a specific district.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they will be submitted to OMB for approval.

Additional reporting or recordkeeping requirements will not be imposed on either small or large processed 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 5, 2012 (77 FR 72245). The Committee made copies of the proposed rule available to the processed pear industry. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending February 4, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrderSmallBusinessGuide. Any questions about the compliance guide should be sent to

Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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 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. An undesignated center heading and § 927.150 are added to read as follows:

Administrative Bodies

§ 927.150 Reapportionment of the Processed Pear Committee

Pursuant to § 927.20(c), on and after July 1, 2013, the 10-member Processed Pear Committee is reapportioned and shall consist of three grower members, three handler members, three processor members, and one member

representing the public. For each member, there are two alternate members, designated as the "first alternate" and the "second alternate," respectively. District 1, the State of Washington, shall be represented by two grower members and two handler members. District 2, the State of Oregon, shall be represented by one grower member and one handler member. Processor members may be from District 1, District 2, or from both districts.

Dated: April 18, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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