



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 927**

**[Doc. No. AMS-SC-17-0045; SC17-927-1 PR]**

**Pears Grown in Oregon and Washington; Increased Assessment Rate for Processed Pears**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Processed Pear Committee (Committee) to increase the assessment rate established for the 2017-2018 and subsequent fiscal periods from \$7.00 to \$8.00 per ton of "summer/fall" pears for canning. The Committee locally administers the marketing order and is comprised of growers, handlers, and processors of processed pears grown in Oregon and Washington. Assessments upon processed pear handlers are used by the Committee to fund reasonable and necessary expenses of the marketing order. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Comments must be received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet:

<http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This proposed 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 proposed rule in conformance with Executive Orders 13563, and 13175.

This proposed rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's

Memorandum titled, "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled, 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 rate, as proposed herein, would be applicable to all assessable "summer/fall" pears for canning beginning July 1, 2017, and continue until amended, suspended, or terminated.

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 proposed rule would increase the assessment rate established for the Committee for the 2017-2018 and subsequent fiscal periods from \$7.00 to \$8.00 per ton for "summer/fall" pears for canning handled under the order. The assessment rate for "winter" and "other" pears for processing would remain unchanged at zero.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers, handlers, and processors of Oregon and Washington processed pears. They are familiar with the Committee's needs, and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012-2013 and subsequent fiscal periods, the Committee recommended, and the USDA approved, the following three base rates of assessment: (a) \$7.00 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 on "summer/fall" pears applies only to pears for canning and excludes pears for other methods of processing defined in § 927.15, as pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 31, 2017, and unanimously recommended expenditures of \$800,150 for the 2017-2018 fiscal period. In comparison, the previous fiscal period's budgeted expenditures were \$855,268. The Committee also unanimously recommended an assessment rate of \$8.00 per ton

for "summer/fall" pears for canning. The recommended assessment rate of \$8.00 is \$1.00 higher than the rate currently in effect.

The major expenditures recommended by the Committee for the 2017-2018 fiscal period include \$605,606 for promotion and paid advertising, \$147,694 for research, \$25,000 for administration, and \$21,850 for Committee expenses. In comparison, major expenditures for the 2016-2017 fiscal period included \$682,130 for promotion and paid advertising, \$127,288 for research, \$25,000 for administration, and \$20,850 for Committee expenses.

Committee members estimate the 2017-2018 crop to be 100,000 tons, which would be less than the 2016-2017 production of 103,000 tons by 3,000 tons. Pear production tends to fluctuate due to the effects of weather, pollination, and tree health. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for "summer/fall" pears in order to align assessment income with expenses.

The Committee's recommended assessment rate was derived by dividing the 2017-2018 anticipated expenses by the expected shipments of "summer/fall" pears for canning,

while also taking into account interest income and the Committee's monetary reserve. Shipments of "summer/fall" pears for canning for 2017-2018 are estimated at 100,000 tons, which should provide \$800,000 (100,000 tons x \$8.00 per ton) in assessment income. The projected revenue from handler assessments, together with funds from interest income, would be adequate to cover the 2017-2018 budgeted expenses of \$800,150.

Section 927.42(a) of the order authorizes the Committee to carry over excess funds into subsequent fiscal periods as a reserve, provided that funds do not exceed approximately one year's operational expenses. The Committee expects its monetary reserve, which was estimated to be \$544,990 at the end of the 2016-2017 fiscal period, to remain unchanged during the 2017-2018 fiscal period. That amount would be within the provisions of the order and would provide the Committee with greater ability to absorb fluctuations in assessment income and expenses into the future.

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

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2017-2018 budget, and those for subsequent fiscal periods, would be reviewed and, as appropriate, approved by USDA.

#### **Initial 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 proposed 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 businesses 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.

There are approximately 1,200 growers of processed pears in the regulated production area and approximately 50 processed pear handlers 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 \$7,500,000.

According to the Noncitrus Fruits and Nuts 2016 Summary issued in June 2017 by the National Agricultural Statistics Service, the total farm-gate value of "summer/fall" processed pears grown in Oregon and Washington for 2016 was \$27,874,000. Based on the number of "summer/fall" processed pear growers in the Oregon and Washington, the average gross revenue for each grower can be estimated at approximately \$23,228 (\$27,874,000 divided by 1,200). Furthermore, based on Committee records, the Committee has estimated that all of the Oregon-Washington pear handlers currently ship less than \$7,500,000 worth of

processed pears each on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington processed pears may be classified as small entities.

This proposed rule would increase the assessment rate established for the Committee, and collected from handlers, for the 2017-2018 and subsequent fiscal periods from \$7.00 to \$8.00 per ton for "summer/fall" pears for canning. The Committee unanimously recommended 2017-2018 expenditures of \$800,150 and an assessment rate of \$8.00 per ton for "summer/fall" pears for canning. The proposed assessment rate of \$8.00 is \$1.00 higher than the rate established for the 2012-2013 fiscal period. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for "summer/fall" pears in order to align assessment income with expenses.

The 2017-2018 estimate of "summer/fall" pears for canning is 100,000 tons. At the proposed \$8.00 per ton assessment rate, the Committee anticipates that assessment income of approximately \$800,000, along with interest income, would be adequate to cover budgeted expenses for the 2017-2018 fiscal period of \$800,150. With the proposed

assessment rate and budgeted expense level, the Committee does not anticipate utilizing any funds from the monetary reserve. As such, reserve funds are estimated to be \$544,990 at the end of the 2017-2018 fiscal period on June 30, 2018. That reserve level is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 927.42(a)).

The major expenditures recommended by the Committee for the 2017-2018 fiscal period include \$605,606 for promotion and paid advertising; \$147,694 for research; \$25,000 for administration; and \$21,850 for Committee expenses. In comparison, major expenditures for the 2016-2017 fiscal period included \$682,130 for promotion and paid advertising; \$127,288 for research; \$25,000 for administration; and \$20,850 for Committee expenses.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the order. Similarly, the Committee did not recommend lower levels of budgeted expenditures than proposed herein because it would have reduced the effectiveness of the program.

A review of historical data and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017-2018 fiscal period could range between \$325 and \$346 per ton of "summer/fall" processed pears. Therefore, the estimated assessment revenue for the 2017-2018 fiscal period, as a percentage of total grower revenue could range between 2.31 and 2.46 percent.

This action would increase the assessment obligation imposed on handlers. 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 order.

In addition, the Committee's meeting was widely publicized throughout the processed pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 31, 2017, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed

rule, including the regulatory and informational impacts of this action on small businesses.

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 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 would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this action.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting.

**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.

**SUBPART A - [AMENDED]**

2. Designate the subpart labeled "Order Regulating Handling" as subpart A.

**SUBPART B - [Administrative Provisions]**

3. Designate the subpart labeled "Rules and Regulations" as subpart B and revise the heading as shown above.

4. Amend § 927.237 by revising the introductory text and paragraph (a) to read as follows:

**§ 927.237 Processed pear assessment rate.**

On and after July 1, 2017, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$8.00 per ton for any or all varieties or subvarieties of pears for canning classified as "summer/fall" excluding pears for other methods of processing;

\* \* \* \* \*

Dated: September 12, 2017.

Bruce Summers,  
Acting Administrator  
Agricultural Marketing Service

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