



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 927**

**[Doc. No. AMS-SC-18-0049; SC18-927-2 FR]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Processed Pear Committee (Committee) to decrease the assessment rate established for "summer/fall" varieties of pears for canning for the 2018-2019 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: DaleJ.Novotny@usda.gov or GaryD.Olson@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 Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. Part 927, (referred to as 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 Committee locally administers the Order and is comprised of growers, handlers, and processors operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this 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 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. The assessment rate established by this rule will be applicable to all "summer/fall" varieties of pears specifically used for canning for the 2018-2019 fiscal period, 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.

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 Committee members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This final rule decreases the assessment rate from \$8.00 per ton, the rate that was established for the 2017-2018 and subsequent fiscal periods, to \$7.15 per ton of "summer/fall" varieties of pears for canning handled for the 2018-2019 and subsequent fiscal periods. The assessment rate for "winter" and "other" pears for processing will remain unchanged at \$0.00. The Committee met on May 30, 2018, and unanimously recommended 2018-2019 fiscal period expenditures of \$693,472. In comparison, last year's budgeted expenditures were \$800,150. The

Committee also unanimously recommended an assessment rate of \$7.15 per ton of "summer/fall" varieties of pears for canning handled. The new assessment rate of \$7.15 per ton is \$0.85 lower than the previous \$8.00 per ton rate. The Committee recommended the lower assessment rate to balance assessment revenue with its budgeted expenditures and to maintain its monetary reserve at levels authorized by the Order.

The major expenditures recommended by the Committee for the 2018-2019 fiscal period include \$495,000 for promotion and paid advertising, \$136,172 for research, \$15,000 for market access programs, \$25,000 for administrative and management services, and \$22,300 for Committee expenses. In comparison, these major expense categories for the 2017-2018 fiscal period were budgeted at \$591,030, \$147,694, \$14,576, \$25,000, and \$21,850; respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments, and the amount of funds available in the authorized reserve. The quantity of assessable "summer/fall" pears for canning for the 2018-2019 fiscal period is estimated at 100,000 tons. Thus, the recommended \$7.15 per ton assessment rate is expected to provide

handler assessments of \$715,000. This amount will be adequate to cover budgeted expenses of \$693,472, with any excess funds used to make a small contribution to the Committee's monetary reserve. Funds in the reserve (currently \$497,565) will be kept within the maximum permitted by § 927.42(a) of approximately one fiscal period's expenses.

The assessment rate established in this rule will 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 will 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's budget for

subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

### **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 rule 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 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 1,500 growers of pears for processing in the production area and approximately 43 handlers of processed pears subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to data from USDA National Agricultural Statistics Service (NASS), the Committee, and the industry for the 2016-2017 season (the most recent complete season of record) the average f.o.b. price for Oregon-Washington processed Bartlett pears (the only variety used for canning in the production area) was approximately \$390.50 per ton. Total shipments for that period were approximately 103,020 tons. Using the number of handlers, and assuming a normal distribution, the majority of handlers may have average annual receipts of less than \$7,500,000 ( $\$390.50 \text{ per ton} \times 103,020 \text{ tons} = \$40,229,310$  divided by 43 handlers equals \$935,565 per handler).

In addition, based on data from the Committee, the industry produced 103,020 tons of processed pears in the production area during the 2016-2017 season, with an average grower price of \$360 per ton. Based on the average grower price, production, and the total number of Oregon-Washington processed pear growers reported by the Committee (1,500), and assuming a normal distribution, the average annual grower revenue is below \$750,000 ( $\$360 \text{ per ton} \times 103,020 \text{ tons} = \$37,087,200$  divided by 1,500 growers equals \$24,725 per grower). Thus, the majority of Oregon and Washington processed pear handlers and growers may be classified as small entities.

This rule decreases the assessment rate collected from handlers for the 2018-2019 and subsequent fiscal periods from \$8.00 per ton to \$7.15 per ton of Oregon and Washington "summer/fall" pears for canning handled. The Committee unanimously recommended 2018-2019 fiscal period expenditures of \$693,472 and the \$7.15 per ton assessment rate. The assessment rate of \$7.15 per ton is \$0.85 lower than the previous rate in effect for the 2017-2018 fiscal period. The quantity of assessable "summer/fall" pears for canning for the 2018-2019 fiscal period is estimated at 100,000 tons. Thus, the \$7.15 per ton rate should provide \$715,000 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses, with any excess funds to be carried over in the Committee's monetary reserve to be used in subsequent years.

The major expenditures recommended by the Committee for the 2018-2019 fiscal period include \$495,000 for promotion and paid advertising, \$136,172 for research, \$15,000 for market access programs, \$25,000 for administrative and management services, and \$22,300 for Committee expenses. In comparison, these major expense categories for the 2017-2018 fiscal period were budgeted at \$591,030, \$147,694, \$14,576, \$25,000, and \$21,850, respectively.

The new, lower assessment rate is necessary to balance assessment revenue with the Committee's 2018-2019 fiscal period budgeted expenditures and to maintain its monetary reserve at levels authorized in the Order.

Prior to arriving at this budget and assessment rate, the Committee considered the benefits and costs related to maintaining the previous assessment rate of \$8.00 per ton and establishing other assessment rates. However, leaving the assessment rate unchanged would have generated more revenue than required to meet the Committee's 2018-2019 fiscal period budgeted expenses of \$693,472, and would have added a large amount of excess funds to the Committee's already sufficient monetary reserve. Based on estimated shipments, the assessment rate of \$7.15 per ton is expected to provide \$715,000 in assessment income. The Committee determined assessment revenue will be adequate to fully cover budgeted expenditures for the 2018-2019 fiscal period, with a small amount of excess funds to be added to the Committee's monetary reserve. Reserve funds will be kept within the amount authorized by the Order.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2018-2019 season should be approximately \$296 per ton of pears for

processing. Therefore, the estimated assessment revenue for the 2018-2019 fiscal period as a percentage of total grower revenue is about 2.4 percent (\$7.15 per ton assessment divided by \$296 per ton grower price).

This action decreases the assessment obligation imposed on handlers for the 2018-2019 and subsequent fiscal periods. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate will reduce the burden on handlers, and may reduce the burden on producers.

The Committee's meetings were widely publicized throughout the Oregon and Washington processed pear industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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, Fruit Crops. No changes in those requirements are necessary because of this action.

Should any changes become necessary, they will be submitted to OMB for approval.

This rule does not impose any additional reporting or recordkeeping requirements on either small or large Oregon and Washington 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. 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.

A proposed rule concerning this action was published in the *Federal Register* on September 12, 2018 (83 FR 46119). Copies of the proposed rule were also mailed or sent via facsimile to all Oregon and Washington fresh pear handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 12, 2018, was provided for interested persons to respond to the proposal. Two comments were received during the comment period. The

first comment was in support of the action. The second comment was a negative opinion on marketing orders in general and did not address the specific proposed rulemaking action. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, 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 part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 927.237 is amended by revising the introductory text and paragraph (a) to read as follows:

**§ 927.237 Assessment rate.**

On and after July 1, 2018, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$7.15 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: November 29, 2018

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

BILLING CODE 3410-02 P  
[FR Doc. 2018-26311 Filed: 12/3/2018 8:45 am; Publication Date: 12/4/2018]