



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 927**

[Doc. No. AMS-SC-18-0078; SC19-927-1 FR]

**Pears Grown in Oregon and Washington; Change in Committee Structure 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 change the Committee's membership structure. This action removes the second alternate member position from the Committee structure, leaving ten member positions and one alternate position for each respective member.

**DATES:** Effective July 1, 2019.

**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, (hereinafter 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 final rule in conformance with Executive Orders 13563 and 13175. This action 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 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. 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 Processed Pear Committee consists of ten members; three grower members, three handler members, three processor members, and one member representing the public. In addition, for each member there are two alternate members designated as the "first alternate" and the "second alternate." This final rule changes the membership structure of the Processed Pear Committee by removing the second alternate position for all members. The Committee unanimously recommended this change at a meeting held on May 30, 2018.

The membership structure of the Processed Pear Committee is established in § 927.20(b) of the Order. In addition, § 927.20(c) provides that the Secretary, upon recommendation of the Committee, may reapportion members among districts, may change the number of members and alternate members, and may change the composition of the Committee by changing the ratio of members, including their alternates. The Committee structure was previously reapportioned in 2013.

At its May 30, 2018, meeting, the Committee

unanimously recommended changing the Committee structure by removing the second alternate position. In recent years, the Committee has experienced difficulties in finding enough eligible nominees to fill the second alternate positions. It is the Committee's belief that continuing to fill the second alternate positions carries limited benefit to its operation and has become a burdensome task. Further, the second alternate position has rarely been called upon to serve on the Committee. As such, this rule amends § 927.150 of the Order's administrative rules and regulations by removing the second alternate position. The ten member positions will remain with one alternate member position assigned to each. This change should result in more efficiency in filling the Committee's membership positions, while still maintaining adequate representation of the processed pear industry.

#### **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 processed pears in the regulated 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 of 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 compiled by the National Agricultural Statistics Service (NASS) for 2017, the state of Oregon produced 32,300 tons of pears for processing at a market year average price of \$388 per ton for an estimated total value of \$12,532,400. The state of Washington produced 85,900 tons at a market year average price of \$344 per ton for an estimated total value of \$29,549,600.

Therefore, the total value of production of processed pears assessed under the Order for the last year was \$42,082,000 (\$12,532,400 plus \$29,549,600). Based on the number of processed pear growers in Oregon and Washington (1,500), and assuming a normal distribution, the average gross revenue for each producer can be estimated at approximately \$28,055 (\$42,082,000 divided by 1,500 growers).

Furthermore, based on Committee records, it is reported that all Oregon and Washington processed pear handlers currently ship less than \$7,500,000 worth of processed pears annually. From this information, USDA concludes that the majority of growers 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. According to Committee records, all three pear processors would be considered large entities under the SBA's definition of a small business.

This rule amends § 927.150 of the Order's administrative rules and regulations to change the Committee's membership structure by removing the second

alternate position. Authority for the modification of the Committee structure is provided in § 927.20(c) of the Order.

The Committee believes that this change will not negatively impact growers, handlers, or processors. The benefits for this rule are not expected to be disproportionately greater or lesser for small growers, handlers, or processors than for larger entities. This change is expected to benefit the entire industry through more efficient selection of Committee members and alternates.

The Committee did not discuss other alternatives to this change at its May 30, 2018, meeting. The only other option was to leave the Order unchanged and maintain the status quo, which would have required the Committee to continue to fill the second alternate positions moving forward. By eliminating the second alternate position from the Committee structure, the industry will only have to nominate and put forward for selection two-thirds of the qualified candidates that are currently required.

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 as a result of this action. Should any changes become necessary, they would 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 December 14, 2018 (83 FR 64294). Copies of the proposed rule were also mailed or sent via facsimile to all Oregon and Washington processed 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 January 14, 2019, was provided for interested persons to respond to the proposal. No comments were received during the comment period. Accordingly, no changes will be made to the rule as proposed.

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 7 CFR part 927 continues to read as follows:

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

2. Section 927.150 is revised to read as follows:

**§ 927.150 Reapportionment of the Processed Pear Committee.**

Pursuant to § 927.20 (c), on or after July 1, 2019, 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 shall be an alternate. 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: March 11, 2019.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

*BILLING CODE 3410-02 P*

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