



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-20-0063; SC20-927-1 PR]

Pears Grown in Oregon and Washington; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the handling regulation prescribed under the marketing order for pears grown in Oregon and Washington (Order). This action would decrease the maximum acceptable pressure for early season Beurre D'Anjou (Anjou) variety pears shipped throughout the Continental United States and to Canada. In addition, this rule would remove the handling requirement exemption for small shipments of Anjou pears.

DATES: Comments must be received by [INSERT DATE 60 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:

<https://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 available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<https://www.regulations.gov>. All comments submitted in response to this 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: 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 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, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and 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 and handlers of pears operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed 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 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. This proposed 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 a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing 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 modify the handling regulation prescribed under the marketing order for pears grown in Oregon and Washington. This action would decrease, from 14 pounds to 13 pounds, the maximum acceptable pressure for early season Anjou variety pears shipped throughout the Continental United States and to Canada during the period August 15 to November 1. The maximum pressure for Anjou pear shipments to Mexico during this period would remain at 14 pounds. In addition, this action would remove the exemption from handling requirements for Anjou pear shipments of 8,800 pounds or less. The Committee recommended these actions at its May 26, 2020, meeting.

Section 927.51 provides authority for the Committee, with the approval of USDA, to regulate the handling of pears grown within the production area of Oregon and Washington. Section 927.52 stipulates the prerequisites for recommendations made by the Committee with regards to the issuance, modification, suspension, or termination of handling regulation established under the authority of § 927.51. Section 927.316 sets forth the handling requirements for fresh Anjou pears.

The Committee met on May 26, 2020, and recommended modification of the handling regulation for the 2021-2022 and subsequent fiscal periods. The Committee's recommendation was not unanimous but met the requirements of § 927.52 for recommendations to modify the Order's handling regulation. For recommendations to change the handling regulations, the Committee vote is weighted by volume. The Order provision allocates Committee members one vote for each 25,000 boxes of the average quantity of such variety or subvariety produced in their district and shipped therefrom during the immediately preceding three fiscal periods. The provision further requires that recommendations for changes to the handling regulations shall be affirmed by members representing no less than 80 percent of the volume of the variety or subvariety affected.

Based on the above calculation, there were 397 votes cast at the meeting. The Committee voted 343 (86 percent) in favor of the recommendation, 48 votes (12 percent) opposed, with 6 votes (2 percent) abstaining. The voters in opposition expressed concern that the modification of the handling regulation could hamper total sales of early

season Anjou pears. The members abstaining represented very little, if any, Anjou production.

The Committee had discussed the modification of the handling regulation specific to early season Anjou pears several times in the past. The Committee established a subcommittee to talk with industry members and researchers to weigh the benefits of different regulatory options. Research conducted using Committee funds has demonstrated that Anjou pears harvested at higher pressures tend to not ripen properly. Most North American consumers prefer a pear that will ripen and be ready to eat quickly after purchase. Lowering the maximum pressure requirement by 1 pound, from 14 pounds to 13 pounds for the Continental United States and Canada would help ensure consumers in those areas consistently receive the product they prefer. International market and consumer research conducted for the Committee has demonstrated that the Mexican market is more receptive to a firmer pear, which led to the decision to leave the pressure at 14 pounds for early season shipments to Mexico.

In addition, removing the 8,800 minimum quantity exemption would ensure that even small shipments of early season Anjou pears conform to the maximum pressure

requirements and that all product shipped during this period is of similar quality.

The Committee derived its recommendation to modify the handling regulation from lengthy discussions with industry members at multiple public meetings, from subcommittee input, and from research conducted using Committee funds.

This proposed rule would lower the acceptable pressure, from 14 pounds to 13 pounds, of early season Anjou pear shipments destined for the Continental United States and Canada, and would remove the minimum quantity exemption for all early season Anjou shipments. It is the Committee's determination that this modification would increase consumer preference for Anjou pears in the fresh fruit market by delivering a better eating experience and would provide increased returns to handlers and growers.

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 838 growers of pears for the fresh market in the regulated area and approximately 32 handlers of pears who are 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 \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the most recent data from the National Agricultural Statistics Service (NASS), the national average producer price for non-Bartlett fresh pears for the 2017 marketing year (the most current year for NASS pear data) ranged from \$748 to \$788 per ton or \$16.46 to \$17.34 per 44-pound standard box. The Committee reported that for the same full year of records, total shipments of non-Bartlett pears for the fresh market from the production area were 11,875,202 boxes. Using the NASS price range from the 2017 marketing year, the total 2017 farm gate

value of the fresh, non-Bartlett pear crop could therefore be estimated to be between at \$195,465,825 and \$205,916,003. Dividing the crop value by the estimated number of growers (838) yields an estimated average receipt per producer of between \$233,253 and \$245,723, which is well below the SBA threshold for small producers.

USDA Market News reported a freight on board (FOB) average price (including palletizing and cooling) of \$24.45 per 44-pound box or equivalent of pears shipped in 2019. Multiplying this average FOB price by the Committee recorded total 2019 shipments of 13,811,500 44-pound boxes of fresh pears results in an estimated gross value of fresh pear shipments of \$337,691,175. Dividing this figure by the number of handlers (32) yields estimated average annual handler receipts of \$10,552,849, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, and assuming a normal distribution, the majority of producers and handlers of pears in the production area may be classified as small entities.

This proposal would decrease, from 14 pounds to 13 pounds, the maximum acceptable pressure for early season Anjou variety pears shipped throughout the Continental United States and to Canada from during the period August

15 to November 1. The maximum pressure for Anjou pear shipments to Mexico during this period would remain unchanged at 14 pounds. In addition, this action would remove the handling requirement exemption for early season Anjou pear shipments of 8,800 pounds or less. All other requirements in the Order's handling regulations would remain unchanged. Authority for this action is contained in § 927.51.

This proposed rule is expected to benefit the growers, handlers, and consumers of fresh pears. The Committee anticipates that this modification would lead to greater returns to handlers and growers by encouraging repeat consumption of fresh Anjou pears due to an improved eating experience.

Prior to arriving at its recommendation to modify the handling regulation, the Committee discussed various alternatives, including maintaining the current handling regulation, decreasing the acceptable pressure further, shortening the regulation period, and extending the requirement to shipments to Mexico. After several failed motions and much deliberation, the Committee determined that the recommended modification would most benefit the industry and consumers of pears.

The Committee's meeting was widely publicized throughout the northwest pear industry. All interested persons were invited to attend the meeting. Like all Committee meetings, the May 26, 2020, 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 information collection 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 the OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. 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 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 proposed 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 small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://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 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 927

Marketing agreements, Reporting and recordkeeping requirements, Pears.

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. 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 pears unless such pears meet the following requirements:

(a) Shipments of fresh Beurre D'Anjou variety pears throughout the Continental United States or to Canada 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 13 pounds or less.

(b) Shipments of fresh Beurre D'Anjou variety pears to Mexico 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.

(c) The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Fresh Pear Committee.

Bruce Summers,

Administrator,

Agricultural Marketing Service

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