



Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-24-0045]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Fresh Pear Committee (Committee) to increase the assessment rate established for the 2024-2025 and subsequent fiscal periods from \$0.468 to \$0.516 per 44-pound standard box or equivalent for fresh “summer/fall” pears and fresh “winter” pears grown in Oregon and Washington. 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: Joshua R. Wilde, Marketing Specialist, or Barry Broadbent, Chief, Northwest Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: Joshua.R.Wilde@usda.gov or Barry.Broadbent@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Antoinette.Carter@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 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. 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 area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Order 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires federal agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

This final 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 will be applicable to all assessable Oregon and Washington fresh pears for the 2024-2025 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 8c(15)(A) of the Act (7 U.S.C 608c(15)(A)), 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 final rule increases the assessment rate for Oregon and Washington fresh “summer/fall” pears and “winter” pears handled under the Order from \$0.468 per 44-pound standard box or equivalent, the rate that was established for the 2021-2022 and subsequent fiscal periods, to \$0.516 per 44-pound standard box or equivalent for the 2024-2025 and subsequent fiscal periods.

Sections 927.40 and 927.41 of the Order authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee’s needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2021-2022 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on May 29, 2024, and recommended, with a vote of 10 in favor, with 1 opposed, and 1 abstention, 2024-2025 fiscal period expenditures of \$8,167,642 and an assessment rate of \$0.516 per 44-pound standard box or equivalent of fresh “summer/fall” and “winter” pears for the 2024-2025 fiscal period. In comparison, last year's budgeted expenditures were \$8,364,570. The member voting in opposition did not support any increase to the assessment rate. The member who abstained did not provide a justification. The new assessment rate of \$0.516 per 44-pound standard box or equivalent is \$0.048 higher than the rate currently in effect. The Committee recommended increasing the assessment rate due to a smaller estimated 2024 crop and to provide adequate income to cover the Committee’s budgeted expenses for the 2024-2025 fiscal period without needing to draw from the Committee’s financial reserves. The Committee projects handler receipts of 16,000,000 44-pound standard boxes or equivalent of assessable fresh pears for the 2024-2025 fiscal period, down from the approximately 18,000,000 44-pound standard boxes or equivalent that the Committee initially projected for the 2023-2024 fiscal period.

The major expenditures recommended by the Committee for the 2024-2025 fiscal period include \$6,928,000 for promotion and paid advertising, \$621,148 for production research and market development, \$435,321 for contracted administration and Committee expenses, and \$183,173 for industry development. For comparison, budgeted expenses

for these items during the 2023-2024 fiscal period were \$6,930,000, \$843,373, \$415,238, and \$175,959, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, the estimated volume of assessable fresh pears, and the amount of funds available in the authorized reserve. The estimated 16,000,000 44-pound standard boxes or equivalent of assessable fresh “summer/fall” and “winter” pears is expected to generate \$8,256,000 in assessment revenue (16,000,000 44-pound standard boxes or equivalent multiplied by the \$0.516 assessment rate). The income generated from handler assessments, along with \$3,000 expected in interest income, is expected to be sufficient to meet the Committee’s estimated program expenditures of \$8,167,642 without needing to draw from the Committee’s financial reserves. Funds available in the financial reserve (currently about \$716,365) will be kept below the maximum permitted by the Order (approximately one fiscal period’s expenses as authorized in § 927.42).

The assessment rate established herein will continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will 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 2024-2025 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final 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 27 handlers subject to regulation under the Order and approximately 700 growers of fresh pears in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of equal to or less than \$34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of fresh pears as those having annual receipts of equal to or less than \$3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming) (13 CFR 121.201).

Data from USDA's National Agricultural Statistics Service (NASS), indicates a three-year average grower price for Oregon and Washington fresh pears of approximately \$11.92 per 44-pound standard box or equivalent for the most recent seasons for which data is available (2020-2021 through 2022-2023 fiscal periods). Committee records indicate average annual fresh pear shipments of 15,246,095 44-pound standard boxes or equivalent over the same period. Based on these data, the average total annual value of assessable fresh pears over this period would have been approximately \$181,733,452 (15,246,095 44-pound standard boxes or equivalent multiplied by \$11.92 per box). Dividing that figure by the number of fresh pear growers (700) yields an average annual

crop value per grower of approximately \$259,619. This figure is well below the SBA small agricultural producer threshold of \$3,500,000 in annual sales. This provides evidence that a large majority of pear growers would likely be considered small agricultural producers according to the SBA definition.

According to USDA Market News data, the most recent shipping point price for fresh pears out of the Yakima Valley and Wenatchee District ranged between \$36.25 and \$45.05 per 44-pound standard box or equivalent. Using this data to assume an average shipping point price of \$40.65 for all Oregon and Washington fresh pears yields a total crop value of approximately \$619,753,762 (15,246,095 44-pound standard boxes multiplied by \$40.65 per box). Dividing this figure by 27 regulated handlers yields estimated average annual handler receipts of approximately \$22,953,843. Therefore, according to the above data and assuming a normal distribution of receipts among handlers, the majority of growers and handlers of Oregon and Washington fresh pears may be classified as small entities.

As noted above, the average price received by growers in the previous three crop years was \$11.92 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears. Given the Committee-estimated production of 16,000,000 44-pound standard boxes or equivalent of assessable fresh pears for the 2024-2025 crop year, total grower revenue is estimated to be \$190,720,000. Total assessment revenue is expected to be \$8,256,000 (16,000,000 boxes multiplied by \$0.516 per box). Therefore, estimated assessment revenue as a percentage of total grower revenue is expected to be about 4.3 percent ($\$8,256,000$ divided by $\$190,720,000$ multiplied by 100).

This final rule increases the assessment rate collected from handlers for the 2024-2025 and subsequent fiscal periods from \$0.468 to \$0.516 per 44-pound standard box or equivalent of fresh “summer/fall” and “winter” pears. The Committee recommended

2024-2025 fiscal period expenditures of \$8,167,642 and an assessment rate of \$0.516 per 44-pound standard box or equivalent of assessable fresh “summer/fall” and “winter” pears handled. The assessment rate of \$0.516 is \$0.048 higher than the rate currently in effect. The Committee expects the industry to handle 16,000,000 44-pound standard boxes or equivalent of assessable fresh “summer/fall” pears and “winter” pears during the 2024-2025 fiscal period. Thus, the \$0.516 per 44-pound standard box or equivalent assessment rate is expected to provide \$8,256,000 in assessment income (16,000,000 44-pound standard boxes or equivalent multiplied by the \$0.516 assessment rate). The income generated from handler assessments, along with \$3,000 expected in interest income, should be sufficient to meet budgeted expenditures for the 2024-2025 fiscal period.

The major expenditures recommended by the Committee for the 2024-2025 fiscal period include \$6,928,000 for promotion and paid advertising, \$621,148 for production research and market development, \$435,321 for contracted administration and Committee expenses, and \$183,173 for industry development. For comparison, budgeted expenses for these items during the 2023-2024 fiscal period were \$6,930,000, \$843,373, \$415,238, and \$175,959, respectively.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee’s budgeted expenses for the 2024-2025 fiscal period without needing to draw from the Committee’s financial reserves. The Committee projects handler receipts of 16,000,000 44-pound standard boxes or equivalent of assessable fresh pears for the 2024-2025 fiscal period, down from the estimated 18,000,000 44-pound standard boxes or equivalent that the Committee initially projected for the 2023-2024 fiscal period.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment

rate of \$0.468 per 44-pound standard box or equivalent of assessable fresh pears and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate would be necessary to adequately fund budgeted expenses for the 2024-2025 fiscal period without needing to draw from the Committee's financial reserves. Consequently, those alternatives were rejected.

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Oregon and Washington pear industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 2024, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this 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 OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements will be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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

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

A proposed rule concerning this action was published in the **Federal Register** on October 24, 2024 (89 FR 84828). A 30-day comment period ending November 25, 2024, was provided for interested persons to respond to the proposal. AMS received two comments during the comment period. One commenter supported the increased assessment rate, and the other commenter did not address the merits of the proposed rule. Accordingly, AMS made no changes 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: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will 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, the Agricultural Marketing Service amends 7 CFR part 927 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. Amend § 927.236 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2024, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) \$0.516 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “summer/fall”;

(b) \$0.516 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “winter”; and

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Erin Morris,
Administrator,
Agricultural Marketing Service.

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