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Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-23-0037]

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

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Processed Pear Committee (Committee) to increase the assessment rate established for the 2023-2024 fiscal period 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 Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: DaleJ.Novotny@usda.gov or Barry.Broadbent@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to 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 of pears operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. 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. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This 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. The 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, 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 “summer/fall” pears for canning for the 2023-2024 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 the United States Department of Agriculture (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 rule increases the assessment rate for “summer/fall” varieties of pears for canning handled under the Order from \$7.15 per ton, the rate that was established for the 2018-2019 fiscal period and subsequent fiscal periods, to \$7.50 per ton for the 2023-2024 fiscal period and subsequent fiscal periods.

The Order authorizes 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 can 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 2018-2019 fiscal period and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$7.15 per ton of “summer/fall”

varieties of pears for canning handled (83 FR 62451). 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 June 8, 2023, and unanimously recommended 2023-2024 fiscal period expenditures of \$607,532 and an assessment rate of \$7.50 per ton of “summer/fall” varieties of pears for canning handled for the 2023-2024 fiscal period and subsequent fiscal periods. In comparison, last year’s budgeted expenditures were \$594,130. The increased assessment rate of \$7.50 per ton is \$0.35 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better fund operations using assessment revenue and to reduce the reliance on reserve funds. The Committee has drawn down its financial reserve in recent years to cover Committee expenses and to reduce the reserve so as to not exceed approximately one fiscal period’s budgeted expenses, in conformance with the Order (7 CFR 927.42(a)). The Committee projects handler receipts of 78,000 tons of assessable “summer/fall” varieties of pears for canning for the 2023-2024 fiscal period, which is 7,288 more than was projected for the 2022-2023 fiscal period.

The major expenditures recommended by the Committee for the 2023-2024 fiscal period include \$492,595 for marketing, promotions, and paid advertising; \$73,337 for research; \$25,000 for promotion management fees; and \$16,600 for Committee administrative expenses. Budgeted expenditures for the 2022-2023 fiscal period were \$483,300, \$66,530, \$25,000, and \$21,396, respectively.

Processed pears for canning are marketed throughout the calendar year. The expected 78,000-ton 2023 crop will generate \$585,000 in assessment revenue at the increased assessment rate (78,000 tons of assessable “summer/fall” varieties of pears for canning multiplied by \$7.50 per ton assessment rate). The remaining \$22,532 needed to

cover budgeted expenditures will come from reserve funds carried over from previous fiscal periods and \$100 in interest income. The 2023-2024 fiscal period assessment rate increase will be appropriate to ensure the Committee has sufficient revenue, along with its reserve, to fully fund its recommended 2023-2024 fiscal period budgeted expenditures and maintain a level of reserve funds that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, an estimated 2023 crop volume of 78,000 tons of assessable “summer/fall” varieties of pears for canning, and the amount of funds available in the authorized reserve. Income derived from handler assessments (\$585,000) and funds from the Committee’s authorized reserve (\$22,432) along with interest income (\$100) will be adequate to cover budgeted expenses (\$607,532).

The assessment rate 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 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 2023-2024 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 rule on small entities. Accordingly, AMS 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 34 handlers of processed pears subject to regulation under the Order. Small agricultural growers of processed pears are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are equal to or less than \$34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual grower price received for processed pears in Washington and Oregon was \$361 per ton (2022). Total production of pears for canning for the 2022 season was reported by the Committee to be 74,131 tons. Using the average grower price from 2022, the most recent years for which there is NASS data, the total 2022 crop value of pears grown for processing in Oregon and Washington was \$26,761,291 (74,131 tons multiplied by \$361 per ton). Dividing the crop value by the estimated number of growers (1,500) yields an estimated average receipt per grower of \$17,841, which is well below the SBA threshold for small growers.

Given the relatively small total farmgate value of pears for processing produced in the production area (\$26,761,291), it is probable that most, if not all, of the pear processors regulated by the Order would be considered small entities. Dividing the \$26,761,291 estimated crop value by the number of handlers of processed pears (34) equals \$787,097. AMS has not identified a direct third-party reference for estimating processed pear manufacturing margins. Without direct third-party information regarding the industry, determination of the number of large and small processors using the SBA's definition would be difficult. However, given the low average crop value of pears for processing (\$787,097) it may be assumed that most, if not all, of the handlers of processed pears would have annual receipts below the SBA threshold for small agricultural service firms (\$34 million). Therefore, using the above information and assuming a normal distribution, most of the growers and handlers of pears for processing may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2023-2024 fiscal period and subsequent fiscal periods from \$7.15 to \$7.50 per ton of Oregon and Washington "summer/fall" pears for canning. The Committee unanimously recommended 2023-2024 fiscal period expenditures of \$607,532 and an assessment rate of \$7.50 per ton of "summer/fall" pears for canning. The assessment rate of \$7.50 is \$0.35 higher than the previous rate. The Committee expects the industry to handle 78,000 tons of "summer/fall" varieties of pears for canning during the 2023-2024 fiscal period. Thus, the \$7.50 per ton rate will provide approximately \$585,000 in assessment income (78,000 tons multiplied by \$7.50). The Committee also expects to use \$22,532 from its financial reserve and \$100 in interest income to cover remaining expenses. Income derived from handler assessments, along with reserve funds, will be adequate to meet budgeted expenditures for the 2023-2024 fiscal period.

The major expenditures recommended by the Committee for the 2023-2024 fiscal period include \$492,595 for marketing, promotions, and paid advertising; \$73,337 for research; \$25,000 for promotion management fees; and \$16,600 for Committee administrative expenses. Budgeted expenditures for the 2022-2023 fiscal period were \$483,300, \$66,530, \$25,000, and \$21,396, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to better fund 2023-2024 fiscal period budgeted expenditures and refrain from excessively drawing down the funds held in its reserve. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and the increased assessment rate, the Committee discussed various alternatives, including maintaining the previous assessment rate of \$7.15 per ton and increasing the assessment rate by different amounts. However, the Committee determined that the recommended assessment rate will be able to fund most of the budgeted expenses and avoid drawing down reserves at an unsustainable rate. The assessment rate of \$7.50 per ton of Oregon and Washington "summer/fall" pears for canning was derived by considering anticipated expenses, the projected volume of assessable pears for canning, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average grower price for the 2022-2023 fiscal period was \$361 per ton. Utilizing the assessment rate of \$7.50 per ton, assessment revenue for the 2022-2023 fiscal period, as a percentage of total grower revenue, would have been approximately 2.08 percent ($\$7.50 \text{ per ton} \div \$361 \text{ multiplied by } 100$).

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 producers. 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 production area. The processed 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 June 8, 2023, 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. One comment was received during the comment period. The comment was seeking clarity on pear varieties and weight specifications, which was not relevant to the subject matter of the rule. Accordingly, AMS made no changes to the rule based on the comment received.

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 because of this rule. 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 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.

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

A proposed rule concerning this action was published in the **Federal Register** on December 1, 2023 (88 FR 83870). Copies of the proposed rule were provided to all processed pear handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 2, 2024, was provided for interested persons to respond to the proposal. One comment was received during the comment period. The comment was seeking clarity on pear varieties and weight specifications, which was not relevant to the subject matter of the proposed rule. Accordingly, AMS made no changes to the rule. 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.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this final rule is consistent with and will effectuate the purposes 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 § 927.237 by revising the introductory text and paragraph (a) to read as follows:

§ 927.237 Processed pear assessment rate.

On and after July 1, 2023, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$7.50 per ton for any or all varieties or subvarieties of pears for canning classified as “summer/fall” excluding pears for other methods of processing;

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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