



Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-22-0079]

Pears Grown in Oregon and Washington; Amendment to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes an amendment to Marketing Order No. 927, which regulates the handling of pears grown in Oregon and Washington. The proposed amendment would revise the Fresh Pear Committee's approval requirement for recommending modifications to the marketing order's fresh pear handling regulations from 80 to 75 percent.

DATES: The referendum will be conducted from May 13 through May 27, 2024. Only pear growers who grew pears within the designated production area during the period July 1, 2022, through June 30, 2023, are eligible to vote in this referendum.

ADDRESSES: Interested persons with questions and comments are invited to submit written questions and comments to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; or Telephone: (202) 720-8085.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or E-mail: Geronimo.Quinones@usda.gov or Matthew.Pavone@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, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal 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.

The Agricultural Marketing Service (AMS) is issuing this proposed 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 proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule shall not be deemed to preclude, preempt, or supersede any State program covering pears grown in Oregon and Washington.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the U.S. 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. A 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 no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended sec. 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of sec. 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed herein is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. This proposed rule would revise the approval requirement for recommending modifications to the Order's fresh pear handling regulations. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the "Final Regulatory Flexibility Analysis" section of this proposed rule. The amendment would apply equally to all producers and handlers, regardless of size. The proposed amendment also has no additional impact on the reporting, record-keeping, or compliance costs of small businesses.

The Committee recommended the proposed amendment to the Order following deliberations at a public meeting held on June 2, 2022. The Committee recommended this change by vote of nine in favor and two opposed, with one abstention. The two opposing voters did not feel the proposed change was necessary, and the abstention voter wanted an even lower voter approval requirement. The Committee submitted its formal recommendation to amend the Order through the informal rulemaking process on August 23, 2022, and subsequently provided AMS clarification about the recommendation on December 1, 2022.

A proposed rule soliciting public comments on the proposed amendment was published in the **Federal Register** on October 10, 2023 (88 FR 69888). AMS received one comment—supporting the proposed rule. Based on all the information available to AMS at this time, including the comment received in response to the proposed rule, no substantive changes will be made to the proposed amendment.

AMS will conduct a producer referendum to determine support for the proposed amendment. If appropriate, a final rule will then be issued to effectuate the amendment, if it is favored by producers in the referendum.

Proposal – Prerequisites to recommendations

Currently, §§ 927.33(a) and 927.52(a) of the Order provide that all decisions of the Committee require a supporting vote of 75 percent or greater; except that a decision to recommend changes to the regulations concerning the shipment of fresh pears requires a supporting vote of 80 percent or greater. The voting requirements in § 927.52 of the Order utilize a weighted calculation of votes based on the handling of specific pear varieties. The Committee recommended modifying the current 80 percent voting requirement to 75 percent to align these voting requirements, mitigate confusion, and simplify the Order.

In 2020, the Committee recommended a regulation change for the Anjou pear variety in three separate motions, each receiving a separate vote. A subcommittee was then formed to investigate how the proposed modification to the voting requirement might have affected the 2020 voting outcomes. The subcommittee analyzed the three motions by comparing each voting outcome at 75- and 80-percent concurrence requirement levels. Of the three, two motions did not have enough Committee support at either voting level and received only 52 percent and 66 percent of the vote, respectively. The third motion for the regulation change received 86 percent affirmative support by vote. Therefore, the subcommittee concluded that changing the requirement to 75 percent would not have altered the outcome of those votes.

While a majority of the Committee believes the current 80-percent voter affirmation requirement is too high, two members believe the change to 75 percent is not necessary, and one member believes the change is not impactful enough.

The Committee considered alternatives, including a 70-percent requirement. However, after running simulations with historical data to assess the impact of a 70- or 75-percent requirement, the Committee determined 75 percent to be optimal in that it did not materially affect vote outcomes for recommendations. Additionally, the adjustment

from an 80- to 75-percent voting requirement establishes regulatory consistency with other Committee recommendations that have a 75-percent voting requirement. As such, the Committee believes this proposal would provide more continuity to all Committee voting procedures without materially changing voting outcomes, thereby mitigating confusion and improving the efficiency of its operations.

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 action 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 are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 708 growers of fresh pears in the production area and 27 handlers subject to regulation under the Order. At the time this analysis was prepared, small agricultural producers of pears were defined by the Small Business Administration as those having annual receipts equal to or less than \$3,500,000 (North American Industry Classification System code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms were defined as those whose annual receipts are equal to or less than \$34,000,000 (North American Industry Classification System Code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the 2020 average grower price received for fresh pears produced in Oregon and Washington was \$11.39 per 44-pound standard box or equivalent. Committee data indicates total production was 16,290,225 44-pound standard boxes or equivalent in the 2019-20 fiscal

period. The total 2019-20 fiscal period value of assessable fresh “summer/fall” and “winter” pears grown in Oregon and Washington was \$185,545,663 (16,290,225 44-pound standard boxes or equivalent multiplied by \$11.39 per box equals \$185,545,663). Dividing the crop value by the estimated number of growers (708), yields an estimated average receipt per grower of \$262,070.

According to USDA Market News data, the reported average terminal price for 2020 Oregon and Washington fresh pears was \$34.87 per 44-pound standard box or equivalent (data reported in 4/5 bushel). Multiplying the Committee-reported 2019-20 Oregon and Washington total production of 16,290,225 44-pound standard boxes or equivalent by the estimated average price per box or equivalent of \$34.87 equals \$568,040,146. Dividing this figure by 27 regulated handlers yields estimated average annual handler receipts of \$21,038,524.

Therefore, using the above data, the majority of growers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This proposed rule would revise a provision in the Order’s subpart regulating handling of pears grown in Oregon and Washington. This proposal would align the approval requirement for recommending modifications to the Order’s fresh pear handling regulations, which is 80 percent, with all other Committee voting requirements within the Order. Currently, all other Committee recommendations require 75 percent concurrence. The different voting requirements sometimes result in confusion for some Committee members, which can disrupt Committee operations.

The proposed amendment has no anticipated impact on the reporting, record-keeping, or compliance costs of small businesses.

The proposed amendment would not directly increase or decrease costs to members of the pear industry.

Alternatives to the proposed amendment were considered, including making no

changes at this time. However, the Committee believes it is necessary to bring all voting requirements in-line for clarity and understanding to ensure the efficient execution of the Order.

Paperwork Reduction Act

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 would be submitted to OMB for approval.

This proposed rule would impose no 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.

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.

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

The Committee's meetings are widely publicized throughout the pear production area. All interested persons are invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the meeting held on June 2, 2022, was open to the public, and all entities, both large and small, were encouraged to express their views on the proposed amendment.

A proposed rule concerning this action published in the **Federal Register** on October 10, 2023 (88 FR 69888). A copy of the rule was sent via email to Committee staff for distribution to all Committee members and Oregon and Washington pear

growers and handlers. The proposed rule was also made available by USDA through the Internet and the Office of the Federal Register. A 60-day comment period ending December 11, 2023, was provided to allow interested persons to respond to the proposals. AMS received one comment—supportive of the proposed amendment—during the comment period. Based on all the information available to AMS at this time, including the comment received in response to the proposed rule, no substantive changes will be made to the amendment 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 Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

AMS has determined that the findings and conclusions, and general findings and determinations included in the proposed rule set forth in the October 10, 2023, issue of the **Federal Register** (88 FR 69888) are appropriate and necessary and are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled, “Order Amending the Order Regulating the Handling Pears Grown in Oregon and Washington.” This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire proposed rule be published in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400-407) to determine whether the

annexed order amending the Order regulating the handling of pears grown in Oregon and Washington is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of pears in the production area. The representative period for the conduct of such referendum is hereby determined to be July 1, 2022, through June 30, 2023.

The agents designated by the Secretary to conduct the referendum are Josh Wilde and Barry Broadbent, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Joshua.R.Wilde@usda.gov and Barry.Broadbent@usda.gov, respectively.

Order Amending the Order Regulating the Handling of Pears Grown in Oregon and Washington ¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 927; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 927 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 927 as hereby proposed to be amended regulates the handling of pears grown in Oregon and Washington and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 927 as hereby proposed to be amended is limited in application to the smallest regional production area that is practicable, consistent with

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 927 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pears produced or packed in the production area; and

5. All handling of pears grown or handled in the production area, as defined in Marketing Order 927 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator and published in the **Federal Register** (88 FR 69888) on October 10, 2023, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the AMS proposes to amend 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 § 927.52 by revising paragraph (a) to read as follows:

§ 927.52 Prerequisites to recommendations.

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner described in paragraph (b) of this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner prescribed in paragraph (b) of this section, of all members.

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Erin Morris,

Associate Administrator.

Agricultural Marketing Service.

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