

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 927 and 931

[Docket No. FV96-927-2 IFR]

#### Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule establishes assessment rates for Marketing Order Nos. 927 and 931 for the 1996-97 and subsequent fiscal periods. The Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of winter pears grown in Oregon, Washington, and California and fresh Bartlett pears grown in Oregon and Washington. Authorization to assess winter pear and fresh Bartlett pear handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

**DATES:** Effective on July 1, 1996. Comments received by September 16, 1996, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX (202) 720-5698. Comments should reference the docket 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.

#### FOR FURTHER INFORMATION CONTACT:

Tershirra Yeager, Marketing Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2522-S, Washington, DC 20090-6456, telephone (202) 720-5127, FAX (202) 720-5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204, telephone (503) 326-2724, FAX (503) 326-7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 927 [7 CFR part 927], regulating the handling of winter pears in Oregon, Washington, and California; and Marketing Order No. 931 [7 CFR part 931] regulating the handling of fresh Bartlett pears in Oregon and Washington, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable winter pears and fresh Bartlett pears beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 handlers are afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears and 65 handlers of fresh Bartlett pears subject to regulation under the marketing orders. In addition, there are about 1,800 winter pear and fresh Bartlett pear producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of winter pear and fresh Bartlett pear producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the

Committees are producers and handlers of Oregon, Washington, and California pears. They are familiar with the Committees' needs and with the pears costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Winter Pear Control Committee met on May 31, 1996, and unanimously recommended 1996-97 expenditures of \$5,887,084 and an assessment rate of \$0.405 per standard box. In comparison, last year's budgeted expenditures were \$7,384,440, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears grown in Oregon, Washington, and California. Winter pear shipments for the year are estimated at 12,465,800 standard boxes which should provide \$4,674,675 for paid advertising. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Winter Pear Control Committee for the 1996-97 year include \$154,387 for salaries, \$16,893 for health insurance, and \$23,392 for office rent. Budgeted expenses for these items in 1995-96 were \$147,152, \$16,634, and \$17,357, respectively.

The Northwest Fresh Bartlett Marketing Committee met on May 30, 1996, and unanimously recommended 1996-97 expenditures of \$89,774 and an assessment rate of \$0.0375 per western standard pear box. In comparison, last year's budgeted expenditures were \$92,254, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Shipments for the year are estimated at 1,842,000 packed boxes which should provide \$69,075 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Northwest Fresh Bartlett Marketing Committee for the 1996-97 year include \$46,306 for salaries, \$4,991 for health insurance, and \$7,016 for office rent.

Budgeted expenses for these items in 1995-96 were \$44,135, \$4,989 and \$5,206, respectively.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996-97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal periods began on July 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period

apply to all assessable winter pears and fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of the actions which were recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 927

Winter Pears, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 931

Fresh Bartlett Pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 927 and 931 are amended as follows:

1. The authority citation for 7 CFR parts 927 and 931 continue to read as follows:

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

Note: These sections will appear in the Code of Federal Regulations.

#### **PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA**

2. A new center heading—Assessment Rate consisting of a new § 927.236 is added to read as follows:

##### Assessment Rate

##### **§ 927.236 Assessment Rate.**

On and after July 1, 1996, an assessment rate of \$0.405 per standard box is established for the Winter Pear Control Committee.

#### **PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON**

3. A new center heading—Assessment Rate consisting of a new § 931.231 is added to read as follows:

##### Assessment Rate

##### **§ 931.231 Assessment Rate.**

On and after July 1, 1996, an assessment rate of \$.0375 per western standard pear box is established for the Northwest Fresh Bartlett Marketing Committee.

Dated: August 9, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-20789 Filed 8-15-96; 8:45 am]

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