

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Docket No. FV01-927-1 PR]

#### Winter Pears Grown in Oregon and Washington; The Establishment of a Supplemental Rate of Assessment for the Beurre d'Anjou Variety of Pears and of a Definition for Organically Produced Pears

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish a supplemental rate of assessment of \$0.03 per standard box of the Beurre d'Anjou variety of pears (d'Anjou pears) handled, excluding organically produced pears, during the 2001-2002 and subsequent fiscal periods under the marketing order regulating the handling of winter pears grown in Oregon and Washington. The marketing order is administered locally by the Winter Pear Control Committee (Committee). To properly implement the supplemental rate of assessment, which would be used for the purpose of funding data collection for Ethoxyquin residue on stored d'Anjou pears, this rule would also establish a definition for organically produced pears. The fiscal period began July 1 and ends June 30. The supplemental rate of assessment would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by October 22, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." 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 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 order now in effect, Oregon and Washington winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the supplemental rate of assessment as proposed herein would be applicable to all assessable d'Anjou pears, excluding organically produced pears, beginning on July 1, 2001, and would continue until amended, suspended, or terminated. This rule would 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 handler is 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.

This rule would establish a supplemental rate of assessment of \$0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001-2002 and subsequent fiscal periods. The \$0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of \$0.49 per standard box established at 63 FR 39037 for the 1998-1999 and subsequent fiscal periods, which pertains to all pears handled under the order. This rule would also establish a definition for organically produced pears. The Committee unanimously recommended this rule at its meeting held on June 1, 2001.

Section 927.41 of the order provides authority for the Secretary, upon a recommendation of the Committee, to fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. Section 927.47 provides authority for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

Authority for the Committee to recommend the establishment of a

definition for organically produced pears is provided in § 927.4, which defines “pears” for purposes of this order, and in § 927.31(b), which provides the Committee with the power to recommend administrative rules and regulations to effectuate the terms and provisions of the order.

The winter pear order provides authority for the Committee, with the approval of the Secretary, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon and Washington winter pears. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The rate of assessment, both basic and supplemental, is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 1, 2001, and unanimously recommended 2001–2002 expenditures of \$8,127,777. The Committee also recommended continuation of the rate of assessment of \$0.49 per standard box of winter pears established for the 1998–99 and subsequent fiscal periods. In addition to this continuing, basic rate of assessment, the Committee unanimously recommended the establishment of a supplemental rate of assessment of \$0.03 per standard box of d’Anjou pears handled, excluding organically produced pears. Both the basic rate of \$0.49 per standard box of winter pears and the supplemental rate of \$0.03 per standard box of conventionally produced and handled d’Anjou pears would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Under this proposal, conventionally produced and handled d’Anjou pears (pears that are not organically produced) would be assessed at a total rate of \$0.52 per standard box, while all other varieties of winter pears, including organically produced and handled d’Anjou pears, would be assessed at the currently established rate of \$0.49 per standard box. The Committee estimates that of the 15.8 million boxes of winter pears projected for utilization during the 2001–02 fiscal period, 12.4 million will be conventionally produced pears of the d’Anjou variety. While the income derived from the basic rate of

assessment would continue to fund the Committee’s administrative and promotional activities, income derived from the supplemental rate of assessment would be used exclusively to fund the collection of data on Ethoxyquin residue on stored d’Anjou pears. Ethoxyquin is an antioxidant that is registered for use on pears in the control of superficial scald, a physiological disease affecting the appearance of certain varieties of stored pears. The supplemental rate would not be applicable to d’Anjou pears that are organically produced, as Ethoxyquin is not used in their handling and storage.

Since the d’Anjou variety of pear is of major importance to the Oregon and Washington winter pear industry, the Committee has embarked on a research project that would fund the collection of data pertaining to Ethoxyquin residue. Such data could be used to help satisfy requirements of the Environmental Protection Agency pertaining to U.S. pesticide tolerance and registration. In addition, the data collection could be used in conjunction with the Codex Alimentarius system that establishes maximum residue limits used as tolerances in many nations receiving shipments of Oregon and Washington d’Anjou pears.

The major expenditures recommended by the Committee for the 2001–02 year include \$6,952,000 for market development projects including paid advertising, \$688,000 for research including \$372,000 for Ethoxyquin data research (funded by the supplemental rate of assessment), and operational expenses of \$474,000, including \$241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–01 were \$7,342,500, \$330,000, and \$412,500 (including \$269,658 for salaries and benefits), respectively. Collection of data on the use of Ethoxyquin was not a funded research project during the 2000–01 fiscal period.

Assessment income for the 2001–02 fiscal period is expected to total \$8,114,000 based on estimated shipments of 15,800,000 standard boxes at the current rate of \$0.49 per standard box. This includes 12,400,000 standard boxes of conventionally produced d’Anjou pears at the proposed supplemental rate of \$0.03 per standard box. Income from the additional \$0.03 rate of assessment is estimated at \$372,000. Income derived from handler assessments, along with interest income and funds from the Committee’s authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently \$304,181) would be kept within the maximum permitted

by the order of approximately one fiscal period’s expenses (§ 927.42).

Although both the basic rate of assessment and the proposed supplemental rate of assessment would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of both. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of either rate of assessment is needed. Further rulemaking would be undertaken as necessary. The Committee’s 2001–02 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

The Committee’s recommendation includes the establishment of a definition for organically produced pears. The Committee recommended the establishment of this definition primarily so that it could properly implement the organically produced pear exclusion included with the proposed supplemental rate of assessment. The Committee recommended that the definition be established as follows: “Organically produced pears” means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.” Although the Committee recommended that this definition be established primarily so that it could properly administer the proposed supplemental rate of assessment, the definition could prove useful to both the Committee and the Department in a variety of ways in the administration of the order. With the increasing interest and emphasis being put on organic food production in the United States, the existence of a definition for organically produced pears in this order would provide the northwest pear industry with an important tool.

#### Initial Regulatory Flexibility Analysis

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. Accordingly,

AMS has prepared this initial regulatory flexibility analysis.

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 70 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,700 winter pear producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

The Committee estimates, based upon handler shipment totals and an average F.O.B price of \$14 per standard box, that about 93 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of winter pear producers, the average annual producer receipts are approximately \$69,635, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of producers of winter pears may be classified as small entities.

This rule would establish a supplemental rate of assessment of \$0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The \$0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears would be in addition to the continuing rate of assessment of \$0.49 per standard box of pears handled established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods. This rule would also establish a definition for organically produced pears. The Committee unanimously recommended this action at its meeting held on June 1, 2001.

The major expenditures recommended by the Committee for the 2001–02 year include \$6,952,000 for market development including paid advertising, \$688,000 for research including \$372,000 for Ethoxyquin data collection, and operational expenses of

\$474,000, including \$241,401 for salaries and employee benefits. Budgeted expenses for these items in 2001–01 were \$7,342,500, \$330,000, and \$412,500 (\$269,658 for salaries and benefits), respectively. Ethoxyquin data research was not a budgeted item during the 2000–01 fiscal period.

Assessment income for the 2001–02 fiscal period would total \$8,114,000 based on estimated winter pear shipments of 15,800,000 standard boxes at the current rate of \$0.49 per standard box, and 12,400,000 standard boxes of conventionally produced d'Anjou pears at the supplemental rate of \$0.03 per standard box. The supplemental assessment income, estimated at \$372,000, would be used to fund Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. The operating reserve is within the maximum permitted by the order of approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$8,127,777. This compares to last year's approved budget of \$8,199,694. Prior to arriving at this budget, alternative expenditure and assessment levels were discussed by the Committee. Based upon the relative value of the Ethoxyquin research to the industry, a supplemental rate of assessment was recommended on d'Anjou pears. Ethoxyquin is not used in the handling and storage of organically produced d'Anjou pears, thus they were excluded from the Committee's supplemental assessment recommendation. Therefore, the Committee recommended the establishment of a definition for organically produced pears in the order's rules and regulations.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001–02 season could range between \$5.87 and \$10.34 per standard box of winter pears. Therefore, the estimated assessment revenue for the 2001–02 fiscal period, inclusive of revenue from both the basic \$0.49 rate and the \$0.03 supplemental rate of assessment, as a percentage of total grower revenue could range between 5 and 9 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs

may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 1, 2001, 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 information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large winter 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.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001–02 fiscal period began on July 1, 2001, and the supplemental rate of assessment should apply to all assessable, non-organic, d'Anjou pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses in regard to the Ethoxyquin data collection; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

#### **PART 927—WINTER 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. In Subpart—Control Committee Rules and Regulations, under the undesignated center heading “Definitions”, a new § 927.103 is added as follows:

**§ 927.103 Organically produced pears.**

*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

3. Section 927.236 is revised to read as follows:

**§ 927.236 Assessment rate.**

On and after July 1, 2001, an assessment rate of \$0.49 per standard box of conventionally and organically produced pears and, in addition, a supplemental assessment rate of \$0.03 per standard box of Beurre d’Anjou variety pears, excluding organically produced pears, is established for the Winter Pear Control Committee.

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–23657 Filed 9–20–01; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 929

[Docket No. FV01–929–3 PR]

#### Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established under the cranberry marketing order for the 2001–2002 fiscal year and subsequent fiscal years from \$.08 to \$.18 per barrel of cranberries handled. Currently, funds derived from assessments are used to cover expenses incurred by the Cranberry Marketing Committee (Committee) in the performance of its duties and functions under the order and to fund an export market development program. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the production area. The proposed \$.10

increase would be used to fund a domestic market development program. The fiscal year began September 1 and ends August 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by October 9, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938; or e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). 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 or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the “order.” 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 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 order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 2001, and continue until amended, suspended, or terminated. This rule would 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 handler is 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.

This rule would increase the assessment rate established for the Committee for the 2001–2002 fiscal period and subsequent fiscal periods for cranberries from \$0.08 to \$0.18 per barrel of cranberries.

The cranberry marketing order provides that one of the duties of the Committee is to formulate an annual budget of expenses and to recommend a rate of assessment necessary to administer the provisions of the order. The members of the Committee are producers of cranberries. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 928.41 of the order. In addition, § 929.45 of the order provides that the Committee, with the approval of the Secretary, may