

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 931**

[Docket No. FV00-931-1 IFR]

Fresh Bartlett Pears Grown in Oregon and Washington; Decreased Assessment Rate**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 2000-2001 and subsequent fiscal periods from \$0.025 to \$0.02 per standard box of fresh Bartlett pears handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 2000-2001 fiscal period begins July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 7, 2000. Comments received by September 5, 2000, 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 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) 720-5698, 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:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, 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: 720-5698.

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) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington hereinafter referred to as the "order." The marketing agreement and order 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 order now in effect, fresh Bartlett pear 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 fresh Bartlett pears beginning July 1, 2000, and continuing until modified, 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 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 decreases the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.025 to \$0.02 per standard box of fresh Bartlett pears handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, 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 fresh Bartlett 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 assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999-2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 1, 2000, and unanimously recommended 2000-2001 expenditures of \$81,060 and an assessment rate of \$0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were \$77,231. The assessment rate of \$0.02 is \$0.005 less than the rate now in effect and will reduce the financial burden on handlers. At the current rate of \$0.025 per standard box and with estimated 2000-2001 fresh Bartlett pear shipments of 3,200,000 standard boxes, the projected reserve on June 30, 2001, would exceed the level the Committee believes to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than \$0.02 would not generate the income necessary to administer the program with an adequate reserve. The decreased assessment rate is expected to result in an operating reserve of \$19,261 on June 30, 2001.

Major expenses recommended by the Committee for the 2000-2001 fiscal period include \$44,468 for salaries, \$4,847 for office rent, and \$3,891 for health insurance. Budgeted expenses for these items in 1999-2000 were \$40,433, \$5,323, and \$4,048, respectively.

The Committee based its recommended assessment rate on the 2000–2001 crop estimate, the 2000–2001 fiscal period expenditures estimate, and the current and projected balance of the operating reserve. With fresh Bartlett pear shipments for 2000–2001 estimated at 3,200,000 standard boxes, the \$0.02 per standard box assessment rate should provide \$64,000 in assessment income. Income derived from handler assessments, along with \$13,060 from the Committee's authorized reserve (currently \$32,321) and miscellaneous income (\$3,000), will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be \$19,261 at the end of the 2000–2001 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

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

Although this assessment rate is effective 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 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 rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Currently, about 98.5 percent of the fresh Bartlett pear handlers ship under \$5,000,000 worth of fresh Bartlett pears and 1.5 percent ship over \$5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of fresh Bartlett pear producers, the average annual producer revenue is approximately \$9,800. In view of the foregoing, it can be concluded that the majority of fresh Bartlett pear producers and handlers may be classified as small entities, excluding receipts from other sources.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.025 to \$0.02 per standard box of fresh Bartlett pears handled. The Committee unanimously recommended 2000–2001 expenditures of \$81,060 and an assessment rate of \$0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were \$77,231. The assessment rate of \$0.02 is \$0.005 less than the rate currently in effect. At the rate of \$0.025 per standard box and with 2000 fresh Bartlett pear shipments estimated at 3,200,000 standard boxes, the projected reserve on June 30, 2001, would exceed the level the Committee believes to be adequate to administer the program. The assessment rate reduction would also lessen the financial burden on handlers. The Committee decided that an assessment rate of less than \$0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 2000–2001 fiscal period include \$44,468 for salaries, \$4,847 for office rent, and \$3,891 for health insurance. Budgeted expenses for these items in 1999–2000 were \$40,433, \$5,323, and \$4,048, respectively.

With fresh Bartlett pear shipments for 2000–2001 estimated at 3,200,000 standard boxes, the \$0.02 rate of assessment should provide \$64,000 in

assessment income. Income derived from handler assessments, along with \$13,060 from the Committee's authorized reserve (currently \$32,321) and miscellaneous income (\$3,000), will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be \$19,261 at the end of the 2000–2001 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; 931.42).

Recent price information indicates that the grower price for the 2000–2001 marketing season will range between \$8.60 and \$11.30 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue will range between 0.18 and 0.23 percent.

This action decreases 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, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett 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, 2000, 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 action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett 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.

After consideration of all relevant matter presented, including the

information and recommendation submitted by the Committee 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) This action reduces the current assessment rate for fresh Bartlett pears; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 2000, an assessment rate of \$0.02 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16990 Filed 7–5–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00–14]

RIN 1557–AB86

Other Equity Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is making a technical correction to its regulation on non-controlling equity investments to clarify that a national bank that wishes to use the notice procedure to make a non-controlling investment in an enterprise must certify that its loss exposure is limited, as a legal and accounting matter, and that it does not have open-ended liability for the obligations of the enterprise.

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Karl Betz, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

Description of Change

On March 10, 2000 the OCC published a final rule titled “Financial Subsidiaries and Operating Subsidiaries.” 65 FR 12905. The final rule amended 12 CFR 5.36, “Other equity investments,” to provide a streamlined, after-the-fact notice procedure for national banks making non-controlling investments in enterprises engaging in specified activities. As part of the notice process, the applicant must certify that it has satisfied the standards and conditions that the OCC applies to investments of this type.¹ These standards and conditions are established by OCC precedents approving non-controlling investments.²

¹ See 65 FR at 12913 (provisions describing the certifications that the notice must contain).

² See, e.g., OCC Corporate Decision No. 97–54 (June 26, 1997); OCC Interpretive Letter No. 692, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (Nov. 1, 1995); OCC Interpretive Letter No. 694, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (Dec. 13, 1995); OCC Interpretive Letter No. 705, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (October 25, 1995); OCC Interpretive Letter No. 711, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–026 (Feb. 23, 1996).

The final rule omitted from the notice procedure one standard contained in these precedents. In order to clarify that all of the standards and conditions contained in OCC precedent approving non-controlling investments apply to non-controlling investments that are eligible for the after-the-fact notice procedure, we are amending § 5.36(e) to conform the requirements of the notice procedure with those of the precedents on which it is based. Accordingly, this rule adds the requirement that a national bank certify that its loss exposure is limited, as a legal and accounting matter, and that the bank does not have open-ended unlimited liability for the obligations of the enterprise. The rule is published in final form and takes effect immediately upon publication in the **Federal Register**.

Administrative Procedure Act—Notice and Comment

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), the OCC finds good cause for dispensing with the requirements for notice and an opportunity for public comment that the APA would otherwise require. This technical correction conforms the rule with the governing standards that have been available in published OCC precedent for some time. By removing an apparent inconsistency with the precedents in this area, the rule avoids the confusion, and the potential for the filing of incomplete notices, that may otherwise occur when banks compare the requirements of the rule with those in the precedents.

Effective Date

The APA generally requires that a final rule take effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) generally requires that a final rule issued by a Federal banking agency take effect on the first day of the first calendar quarter that begins on or after the date on which the regulation is published in final form. 12 U.S.C. 4802(b)(1). Both requirements are subject to a good cause exception.

For the reasons previously explained, the OCC finds good cause for making this amendment to 12 CFR 5.36(e) effective immediately upon publication. Delaying the effective date of the amendment will delay national banks' ability to rely with certainty on the notice process for non-controlling investments and thus impede the rule's purpose of facilitating national banks' ability to make non-controlling