

program funds, and funds from the Committee's authorized reserve would be adequate to cover budgeted expenses. Funds in the reserve (currently \$115,000) would be kept within the approximately one year's operational expenses permitted by the order (section 929.42(a)).

The major expenditures recommended by the Committee for the 2001–2002 fiscal period include \$846,953 for market development (including \$490,000 for domestic market development, \$273,953 for export market development, and \$83,000 for export market development consulting services), \$123,952 for administration costs, \$129,500 for personnel, \$75,000 for Committee meetings, and \$31,367 for payroll taxes and benefits. Included in the budget calculations would be approximately \$6,000 interest and \$213,953 MAP funds from FAS for export market development. Budgeted expenses in the Committee's amended 2000–2001 budget were \$223,647 for administration costs, \$270,407 for export market development, \$119,464 for personnel, and \$67,500 for Committee meetings. There was no domestic market development program for the 2000–2001 fiscal period.

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 cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Board meetings, 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 cranberry 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 the following Web site: <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 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because: (1) The 2001–2002 fiscal period began on September 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

#### **PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK**

1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 929.239 is revised to read as follows:

#### **§ 929.239 Assessment rate.**

On and after September 1, 2001, an assessment rate of \$0.18 per barrel is established for cranberries.

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–23653 Filed 9–20–01; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 931

[Docket No. FV01–931–1 PR]

#### **Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) for the 2001–2002 and subsequent fiscal periods from \$0.02 to \$0.025 per standard box of fresh Bartlett pears. The Committee locally administers 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 fiscal period began July 1 and ends June 30. The assessment rate 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](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:** Gary D. Olson, 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, 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. 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 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, 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 proposed herein would be applicable to all assessable fresh Bartlett pears beginning July 1, 2001, and continue 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 would increase the assessment rate established for the Committee for the 2001-2002 and subsequent fiscal periods from \$0.02 to \$0.025 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 Committee consists of eight grower members and six handler members, each of whom is 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 budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 2000-2001 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of \$0.02 per standard box 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 May 31, 2001, and unanimously recommended 2001-2002 expenditures of \$76,477 and an assessment rate of \$0.025 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were \$81,060. The assessment rate of \$0.025 is \$0.005 higher than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate of \$0.02 would not generate enough income to keep its operating reserve at a reasonable level (\$25,666). Without the increase, the operating reserve would drop below \$7,000 which is not acceptable to the Committee.

Major expenses recommended by the Committee for the 2001-2002 fiscal period include \$39,040 for salaries, \$5,675 for office rent, and \$3,911 for health insurance. Budgeted expenses for these items in 2000-2001 were \$44,468, \$4,847, and \$3,891, respectively.

The Committee developed the \$0.025 assessment rate recommendation by considering the 2001-2002 budget and crop estimate, as well as the relatively small size of the current monetary reserve. Assessment income for the fiscal period should approximate \$79,700 based on estimated fresh Bartlett pear shipments of 3,188,000 standard boxes, which would be adequate to cover budgeted expenses. Funds in the reserve (currently \$18,443) would be kept within the maximum permitted by the order of approximately

one fiscal period's operational expenses (\$931.42).

The proposed assessment rate 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.

Although this assessment rate 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 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 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 2001-2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

#### 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, the 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 1,600 producers of fresh Bartlett pears in the production area and approximately 54 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 of less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on data provided by the National Agricultural Statistics Service for 1999, the most recent year complete data is available, and the current

number of producers, the average annual producer revenue in Washington and Oregon could approximate \$23,130 this year, excluding receipts from other sources. Further, based on Committee records and recent F.O.B. prices reported by the Fruit and Vegetable Market News Service for fresh Bartlett pears, over 98 percent of the regulated handlers ship less than \$5,000,000 worth of fresh Bartlett pears on an annual basis, excluding receipts from other sources. 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.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001–2002 and subsequent fiscal periods from \$0.02 to \$0.025 per standard box of fresh Bartlett pears handled. The Committee met on May 31, 2001, and unanimously recommended 2001–2002 expenditures of \$76,477 and an assessment rate of \$0.025 per standard box of fresh Bartlett pears handled. In comparison, budgeted expenditures for last year totaled \$81,060. The assessment rate of \$0.025 is \$0.005 more than the rate currently in effect, and was recommended by the Committee because the current rate of \$0.02 would not generate enough income for it to adequately administer the program. Its monetary reserve would drop below \$7,000 at the current rate of assessment, which was not acceptable to the Committee.

Major expenses recommended by the Committee for the 2001–2002 fiscal period include \$39,040 for salaries, \$5,675 for office rent, and \$3,911 for health insurance. Budgeted expenses for these items in 2000–2001 were \$44,468, \$4,847, and \$3,891, respectively.

The Committee developed the \$0.025 assessment rate recommendation by considering the 2001–2002 budget and crop estimate, as well as the relatively small size of its current monetary reserve. Assessment income for the fiscal period should approximate \$79,700 based on estimated fresh Bartlett pear shipments of 3,188,000 standard boxes, which would be adequate to cover budgeted expenses. Funds in the reserve (currently \$18,443) are expected to increase to \$25,666, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 931.42).

The Committee considered alternative levels of assessment but, considering the current relatively low level of funding in the monetary reserve, determined that increasing the assessment rate to \$0.025 per standard box would be

appropriate. The Committee believes that an assessment rate of more than \$0.025 per standard box would generate income in excess of that needed to adequately administer the program, and if left at the current rate of \$0.02, or reduced, would be inadequate to administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop indicates that the producer price for the 2001–2002 marketing season could average about \$11.61 per standard box of fresh Bartlett pears handled. Therefore, the Committee's estimated assessment revenue for the 2001–2002 fiscal period as a percentage of total producer revenue should be approximately 0.215 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 order. 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 May 31, 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 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.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposed

rule. Thirty days is deemed appropriate because: (1) The 2001–2002 fiscal period began on July 1, 2001, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (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.

#### 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 proposed to be 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, 2001, an assessment rate of \$0.025 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

#### DEPARTMENT OF ENERGY

##### 10 CFR Part 852

**RIN:1901–AA90**

#### Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking; rescheduling of public hearing and extension of comment deadline.

**SUMMARY:** This document announces a new date for the public hearing originally scheduled for September 24, 2001; and extends the time period for submitting comments regarding a notice