

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 931

[Docket No. FV03-931-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) for the 2003-2004 and subsequent fiscal periods from \$0.025 to \$0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears handled. The Committee locally administers the marketing order, which regulates the handling of fresh Bartlett pears grown in the States of 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 will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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 Agreement No. 147 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in the States of 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 (USDA) 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, Oregon and Washington 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 on July 1, 2003, and continue 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 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. Such 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 not later than

20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2003-2004 and subsequent fiscal periods, from \$0.025 to \$0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears grown in the States of Oregon and Washington.

The Oregon and Washington fresh Bartlett pear marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Oregon or Washington 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 2001-2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2003, and unanimously recommended 2003-2004 expenditures of \$1,122,250 and an assessment rate of \$0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. In comparison, last year's budgeted expenditures were \$77,612. The assessment rate of \$0.335 is \$0.31 higher than the rate previously in effect. The Committee recommended an increased assessment rate to establish market research and development projects to assist, improve, or promote the marketing, distribution, and consumption of pears. These projects will be executed through an agreement with Pear Bureau Northwest, which also oversees market development and promotion, including paid advertising, projects for the Winter Pear Control Committee, under Marketing Order No. 927 regulating the handling of winter pears grown in Oregon and Washington. The Bartlett pear projects for 2003-2004

include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear

variety. No paid advertising activities will be conducted.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal committee administer future Bartlett pear market development projects. Thus, with industry consensus

in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
Oregon Bartlett Pear Commission .....	\$0.34	\$0.0275	–\$0.3125
Washington State Fruit Commission .....	0.332	0.022	– 0.31
Northwest Fresh Bartlett Pear Marketing Committee .....	0.025	0.335	0.31
Oregon Total .....	0.365	0.3625	– 0.0025
Washington Total .....	0.357	0.357	0.0

The major expenditures recommended by the Committee for the 2003–2004 year include \$78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), \$38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/shipper organizations for collating information used in generating crop and quality reports, and contingency reserves), and \$1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were \$63,712, \$13,900, and \$0, respectively.

The assessment rate recommended by the Committee was determined by reviewing the historical market development expenses of other organizations and past expenses for the Committee. Commodity shipments for the 2003–2004 season are estimated at 3,350,000 standard boxes, which should provide \$1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee’s authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$16,997.14) will be kept within the maximum permitted by the order of 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 USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

**Final 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 final 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 1,500 growers of fresh Bartlett pears in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural growers 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.

According to the *Noncitrus Fruits and Nuts, 2002 Preliminary Summary* issued in January 2003 by the National Agricultural Statistics Service, the total farm gate value of fresh Bartlett pears in the regulated production area for 2002 was \$34,782,000. Therefore, the 2002 average gross revenue for a fresh Bartlett pear grower in the regulated production area was \$23,188. Further, based on Committee records and recent f.o.b. prices 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. Based on this information, it can be concluded that the majority of growers and handlers of fresh Bartlett pears in the States of Oregon and Washington may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from \$0.025 to \$0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. The Committee unanimously recommended 2003–2004 expenditures of \$1,122,250 and an assessment rate of \$0.335 per 44-pound standard box or container equivalent. The assessment rate is \$0.31 higher than the rate previously in effect. The quantity of assessable fresh Bartlett pears for the 2003–2004 season is estimated at 3,350,000 standard boxes. Thus, the \$0.335 rate should provide \$1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee’s

authorized reserve, should be adequate to cover budgeted expenses (\$ 931.42).

The major expenditures recommended by the Committee for the 2003–2004 year include \$78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Control Committee (salaries, employee benefits, office rent, and similar administration expenses), \$38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/handler organizations for collating information used in generating crop and quality reports, and contingency reserves), and \$1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were \$63,712, \$13,900, and \$0, respectively.

The increase in the assessment rate is necessary for the Committee to establish market research and development projects. These market development projects will be executed through an agreement with Pear Bureau Northwest, which also oversees the market development projects for the Winter Pear Control Committee, administering Marketing Order No. 927. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications through website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities will be implemented.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal Committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
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Washington Total .....	0.357	0.357	0.0

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–2004 season could range between \$9.20 and \$11.00 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2003–2004 season as a percentage of total grower revenue could range between 3.6 and 3 percent.

This action increases 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 growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee’s meeting was widely publicized throughout the Oregon and Washington fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues discussed. Like all Committee meetings, the May 29, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Oregon or Washington 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.

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

A proposed rule concerning this action was published in the **Federal Register** on September 10, 2003. Copies of the proposed rule were also mailed or sent via facsimile to all fresh Bartlett pear handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 25, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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 material 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 also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, 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. In addition, the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

**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, 2003, an assessment rate of \$0.335 per 44-pound standard box or container equivalent is established for fresh Bartlett pears grown in Oregon and Washington.

Dated: October 15, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-26519 Filed 10-20-03; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2003-CE-46-AD; Amendment 39-13342; AD 2003-21-07]

RIN 2120-AA64

**Airworthiness Directives; The Cessna Aircraft Company Model 525 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Cessna Aircraft Company (Cessna) Model 525 airplanes. This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged. This AD is the result of analysis that reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed. We are issuing this AD to correct this single-point failure in the electric pitch trim system, which will result in a runaway pitch trim condition where the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome. **DATES:** This AD becomes effective on October 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 22, 2003.

We must receive any comments on this AD by December 15, 2003.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel,

Attention: Rules Docket No. 2003-CE-46-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

- *By fax:* (816) 329-3771.

- *By e-mail:* 9-ACE-7-

Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-46-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-6000; facsimile: (316) 517-8500.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-46-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Withers, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946-4196; facsimile: (316) 946-4107.

**SUPPLEMENTARY INFORMATION:**

*What events have caused this AD?* The FAA has received a report of an accident involving a Cessna Model 525 airplane where the pilot ditched the airplane in the water off the coast near Coupeville, Washington. The pilot reported a problem with the pitch trim system.

Although the final investigation by the National Transportation Safety Board (NTSB) is not complete, Cessna and FAA analysis reveals the potential for a single-wire shorting to 28 volts or a failure of a relay in the electric pitch trim system such that the relay contacts remain closed and also precludes disconnect of the pitch trim using the control wheel autopilot/trim disconnect switch.

*What are the consequences if the condition is not corrected?* Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

*Is there service information that applies to this subject?* Cessna has issued Citation Alert Service Letter ASL525-27-02, dated October 10, 2003.

*What are the provisions of this service information?* The service bulletin includes (as well as other information) procedures for disengaging and tie strapping the pitch trim and autopilot servo circuit breakers.

**FAA's Determination and Requirements of the AD**

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Model 525 airplanes of the same type design, this AD is being issued to correct a single-point failure in the pitch trim system, which could result in a runaway pitch trim condition where that the pilot could not disconnect using the control wheel autopilot/trim disconnect switch. Failure of the electric trim system would result in a large pitch mistrim and would cause excessive control forces that the pilot could not overcome.

*What does this AD require?* This AD requires you to disengage the pitch trim circuit breaker and AP servo circuit breaker and then tie strap each of them to prevent them from being engaged.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Compliance Time of This AD**

*What would be the compliance time of this AD?* The compliance time of this AD is within 5 days or 10 hours time-in-service after October 22, 2003 (the effective date of this AD), whichever occurs first.

*Why is the compliance time of this AD presented in both hours TIS and calendar time?* The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. The FAA is establishing the compliance time in both hours TIS and calendar time (with the prevalent being that which occurs first).

This would assure that the unsafe condition is addressed on both high-