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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.

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