## 7 CFR Part 931

[Docket No. FV95–931–1FIR]

## Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1995–96 Fiscal Year

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

## ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

**EFFECTIVE DATE:** July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: 202–720– 5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended [7 CFR Part 931], regulating the handling of fresh Bartlett pears grown in Oregon and Washington. 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 is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1995–96 fiscal year beginning July 1, 1995, and ends June 30, 1996. This final 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 8c(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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1995– 96 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of 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. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 1, 1995, and unanimously recommended total expenses of \$92,254 with an assessment rate of \$0.02 per standard box or equivalent for the 1995–96 fiscal year. In comparison, 1994–95 budgeted expenses were \$96,410, with an approved assessment rate of \$0.02 per standard box or equivalent. This represents a \$4,156 decrease in expenses and no change in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 3,152,300 standard boxes or equivalent, will yield \$63,046 in assessment income. Assessment income, combined with \$4,000 from other income sources, and \$25,208 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of \$25,208 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1995-96 fiscal year. Major expense categories for the 1995-96 fiscal year include \$44,135 for salaries, \$9,195 for unshared contingency, and \$4,989 in employee health benefits.

An interim final rule concerning this action was published in the August 7, 1995, Federal Register [60 FR 40058], with a 30-day comment period ending September 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be