

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 931

[Docket No. FV03-931-1 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 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 begins 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 September 25, 2003.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; 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:

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 proposed herein would 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 would increase 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 currently 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 would 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	\$.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	–0.025
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 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, would be adequate to cover budgeted expenses. Funds in the reserve (currently \$16,997.14) would be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (\$ 931.42).

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

#### 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, 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 1,500 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 would increase 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 proposed assessment rate is \$0.31 higher than the current rate. 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, would 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 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 proposed 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 would 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
Oregon Bartlett Pear Commission .....	\$0.34	\$0.275	–\$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	–0.025
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 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 growers. 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 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. 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. 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 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 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 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on July 1, 2003, 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; (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, 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: September 5, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-23048 Filed 9-9-03; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2001-NM-213-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747SP, 747SR, 747-100, -100B, -100B SUD, -200B, -200C, -200F, and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747SP, 747SR, 747-100, -100B, -100B SUD, -200B, -200C, -200F, and -300 series airplanes. This proposal would require modification of the escape slide/raft pack assembly and cable release sliders. This action is necessary to prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by October 27, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-213-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain

“Docket No. 2001-NM-213-AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6435; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to

Docket Number 2001-NM-213-AD.” The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-213-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The FAA has received reports of improper escape slide/raft deployment and passenger/crew door blockage during slide deployment tests on certain Boeing Model 747 series airplanes. Subsequent investigation revealed that the cause of this improper deployment or door blockage was damaged pins of the slide pack cover, which could not be extracted. If the pins are not extracted, either the door will not fully open or the slide will not deploy.

We also received one report of high-deployment and non-deployment forces of the floor mounted escape slide of the upper deck during maintenance. Investigation revealed that the cable release slider did not travel enough to allow for easy extraction of the deployment cables, which can result in high-deployment forces. Further investigation revealed that the release pins can become snagged in the access hole of the outboard cover panel cone, preventing escape slide deployment.

Improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation could result in injury to passengers or crewmembers.

**Explanation of Relevant Service Information**

We have reviewed and approved Boeing Special Attention Service Bulletin 747-25-3274, Revision 1, dated January 9, 2003, which describes procedures for modification of the escape slide/raft pack assembly. For Group 1 and 2 airplanes, the modification includes removing the slide packs and replacing the cover release pin cable assemblies with new assemblies containing high-strength pins, and removing the pulley guard bracket to prevent new pins from hanging on the pulley guard during slide pack release. For Group 3 through 15 airplanes, the modification includes removing the slide packs and replacing the cover release pin cable assemblies with new assemblies containing high-strength pins. For Groups 4, 6, 8, and 10 airplanes, the modification includes removing the cable guard brackets from the door 3 ramp packs.