

Rules and Regulations

Federal Register

Vol. 63, No. 198

Wednesday, October 14, 1998

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV98-931-1 FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1998-99 and subsequent fiscal periods from \$0.03 to \$0.02 per standard box handled. The Committee is responsible for local administration of 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 1998-99 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, 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) 205-6632. Small businesses may request information on compliance 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) 205-6632.

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 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing 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 issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 1998, and continuing 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 continues to decrease the assessment rate established for the Committee for the 1998-99 and subsequent fiscal periods from \$0.03 to \$0.02 per standard box 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 members of the Committee are producers and handlers of 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 1997-98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate 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 28, 1998, and unanimously recommended 1998-99 expenditures of \$97,000 and an assessment rate of \$0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were \$111,441. The assessment rate of \$0.02 is \$0.01 less than the 1997-98 rate and will reduce the financial burden on handlers. With a 1997-98 rate of \$0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would have exceeded the level the Committee believed to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than \$0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998-99 fiscal period include \$38,878 for salaries, \$5,323 for office rent, and \$4,062 for health insurance. Budgeted expenses for these

items in 1997–98 were \$48,454, \$8,187, and \$4,956, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the \$0.02 per standard box assessment rate should provide \$60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, will be adequate to cover budgeted expenses. Funds in the reserve (\$38,990 at the end of the 1997–98 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

The assessment rate will 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 is effective 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts 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 fresh Bartlett pear producers and handlers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from \$0.03 to \$0.02 per standard box handled. The Committee unanimously recommended 1998–99 expenditures of \$97,000 and an assessment rate of \$0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were \$111,441. The assessment rate of \$0.02 is \$0.01 less than the 1997–98 rate. At the 1997–98 rate of \$0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would have exceeded the level the Committee believed to be adequate to administer the program. The assessment rate reduction will also lessen the financial burden on handlers. The Committee decided that an assessment rate of less than \$0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include \$38,878 for salaries, \$5,323 for office rent, and \$4,062 for health insurance. Budgeted expenses for these items in 1997–98 were \$48,454, \$8,187, and \$4,956, respectively.

With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the \$0.02 rate of assessment should provide \$60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, will be adequate to cover budgeted expenses. Funds in the reserve (\$38,990 at the end of the 1997–98 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between \$7.59 and \$12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the

1998–99 fiscal period as a percentage of total grower revenue will range between 0.26 and 0.16 percent.

This action continues to decrease 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 are offset by the benefits derived by the operation of the marketing order. Also, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. 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 28, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes 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.

An interim final rule concerning this action was published in the **Federal Register** on July 16, 1998 (63 FR 38280). In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 14, 1998. No comments were received.

After consideration of all relevant matter 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.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 931 which was published at 63 FR 38280 on July 16,

1998, is adopted as a final rule without change.

Dated: October 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-27531 Filed 10-13-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 245

[INS-1879-97]

RIN 1115-AE73

Interim Procedures for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule, which has been drafted in consultation with the U.S. Department of Health and Human Services (HHS), amends regulations of the Immigration and Naturalization Service (Service or INS) in order to implement, on a temporary basis, certain portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as they relate to prospective immigrants. Section 343, which was codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act or INA), provides that aliens coming to the United States to perform labor in covered health care occupations (other than as a physician) are inadmissible unless they present a certificate relating to their education, qualifications, and English language proficiency. This requirement is intended to ensure that aliens possess proficiency in the skills that affect the provision of health care services in the United States. This rule establishes a temporary mechanism to allow applicants for immigrant visas or adjustment of status in the fields of nursing and occupational therapy to satisfy the requirements of section 343 on a provisional basis. The Service expects to publish a proposed rule in the near future which will implement in full the provisions of section 343.

DATES: *Effective date:* This rule is effective December 14, 1998.

Comment date: Written comments must be submitted on or before February 11, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization

Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1879-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208. Section 343 of IIRIRA created a new ground of inadmissibility at section 212(a)(5)(C) of the Act for aliens coming to the United States to perform labor in certain health care occupations. Pursuant to section 343, any alien coming to the United States for the purpose of performing labor as a health care worker, other than as a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of HHS.

Under section 343, the certificate must verify that: (1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker; are authentic and, in the case of a license, the alien's license is unencumbered; (2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education (DoE), to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicants ability to speak and write English; and, finally, (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the alien's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 343 raises a number of important and difficult issues as to its

scope and proper implementation and requires extensive coordination between the Service and other Federal agencies. Prior to the publication of this rule, the Service met with representatives of HHS, as well as the United States Trade Representative, the Department of Labor (DOL), the Department of State (DOS), the DoE, the Department of Commerce (DOC), the CGFNS, the National Board for Certification in Occupational Therapy (NBCOT), various professional organizations representing these health care occupations, and many other interested parties.

The Purpose of the Interim Rule

The purpose of this interim rule is to establish temporary procedures which will: (1) Allow the immigration of certain health care workers into the United States on a permanent basis in order to prevent the disruption of critical health care services to the public; (2) provide for the immigration of certain health care workers who were petitioned on a permanent basis prior to the enactment of IIRIRA; and (3) establish a temporary mechanism to ensure that nurses and occupational therapists immigrating to this country have education, experience, and training which are equivalent to a United States worker in a similar occupation.

This interim rule provides a temporary mechanism for implementing section 343 with respect to nurses and occupational therapists. Aliens who obtain a certificate in accordance with this interim rule will be deemed to have satisfied the education, training, and licensing requirements of section 343. Credentialing organizations verifying that an alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application are required to determine, to the best of their ability, whether the alien appears to be classifiable under section 203(b) of the Act. (The Service has substituted the term "admission" for the term "entry," in conformity with section 308(f) of Pub. L. 104-208 which amended the Act.) Although credentialing organizations are required to make certain verifications in accordance with this interim rule, the Service is not in any way deferring or delegating to the credentialing organizations the authority to make binding determinations regarding the alien's admissibility into the United States.