



[Billing code 3410-02 P]

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 922**

[Doc. No. AMS-FV-13-0041; FV13-922-2 PR]

**Apricots Grown in Designated Counties in Washington;  
Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2013-2014 and subsequent fiscal periods from \$0.50 to \$1.50 per ton of Washington apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the marketing order. The fiscal period begins April 1 and ends March 31. The higher rate is deemed necessary to fund an increase in the Committee's proposed budget and replenish its reserve. The proposed assessment rate would remain in effect

indefinitely unless modified or suspended, or if the marketing order were terminated.

**DATES:** Comments must be received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Manuel Michel or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-

mail: Manuel.Michel@ams.usda.gov or  
GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 132 and Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in 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 proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, apricot handlers in designated counties in Washington 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 Washington apricots beginning April 1, 2013, and continue until amended or suspended, or until the order is terminated.

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 entry of the ruling.

This proposed rule would increase the assessment rate for the Committee for the 2013-2014 and subsequent fiscal periods from \$0.50 to \$1.50 per ton for Washington apricots handled under the order.

The 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 apricots in designated counties in Washington. They are familiar with the Committee's needs, and with the costs of goods and services in their local area, and are therefore 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.

The Committee met on May 13, 2013, and unanimously recommended expenditures of \$5,370 for the 2013-2014 fiscal period. In comparison, the Committee's budgeted expenditures for the previous fiscal period were \$4,995. The Committee also unanimously recommended an assessment rate of \$1.50 per ton of Washington apricots.

The recommended assessment rate of \$1.50 is \$1.00 higher than the rate currently in effect. The higher assessment rate is needed to fund a proposed increase in administrative costs and to replenish the reserve. The

increased assessment rate is the same rate that was in effect in 2011 and previous years.

The major expenditures recommended by the Committee for the 2013-2014 fiscal period include \$2,500 for the management fee; \$1,200 for Committee travel; \$1,000 for the annual audit; and \$670 for office supplies, insurance, and miscellaneous expenses. In comparison, major expenditures for the 2012-2013 fiscal period included \$2,400 for the management fee; \$1,300 for Committee travel; \$750 for the annual audit; and \$545 for office supplies, insurance, and miscellaneous expenses. The proposed expenses for 2013-2014 fiscal period are comparable to the expenses from last year, with a slight increase in management fees, offset by an equal reduction in travel expenses. Higher audit and insurance fees account for the majority of the remaining \$375 difference in the year-over-year budget increase.

The Committee's recommended assessment rate was derived by dividing the 2013-2014 anticipated expenses by the expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve.

Committee members estimated the 2013 fresh apricot production to be approximately 5,950 tons, which would be smaller than the 2012 production of 6,700 tons. The smaller

crop is attributed to the effects of weather, pollination and tree health.

The recommended assessment rate of \$1.50 per ton, when multiplied by the 5,950 tons of estimated 2013 Washington apricot shipments, is expected to generate \$8,925 in handler assessments. The projected revenue from handler assessments would be adequate to cover the 2013-2014 budgeted expenses of \$5,370, with a \$3,555 surplus that would be added to the reserve. The Committee plans to increase its monetary reserve from \$1,733 at the beginning of the 2013-2014 fiscal period to approximately \$5,288 at the end of the fiscal period. That amount would be within the provisions of the order and would provide the Committee with greater ability to withstand fluctuations in assessment income and expenses in the future.

The proposed assessment rate would continue in effect indefinitely unless modified or suspended, or until the order is 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 the 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 and further rulemaking would be undertaken as necessary. The Committee's 2013-2014 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) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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 businesses 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.

There are approximately 20 handlers of Washington apricots who are subject to regulation under the order and approximately 94 apricot growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural growers are defined as those having annual receipts of less than \$750,000.

The National Agricultural Statistics Service (NASS) reports that the 2012 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 6,700 tons, the average price was \$1,250 per ton, and the total farm-gate value was approximately \$8,371,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2012 average revenue from the sale of apricots was approximately \$89,000. In addition, based on information from the USDA's Market News Service, 2012 f.o.b. prices for WA No.1 apricots ranged from \$16.00 to \$24.00 per 24-pound loose-pack container, and from \$18.00 to \$27.00 for 2-layer tray-pack containers. Using average

prices and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than \$7,000,000 worth of apricots on an annual basis. In view of the foregoing, it is concluded that the majority of handlers and growers of Washington apricots may be classified as small entities.

This proposal would increase the assessment rate established for the Committee, and collected from handlers, for the 2013-2014 and subsequent fiscal periods from \$0.50 to \$1.50 per ton of Washington apricots handled. The Committee unanimously recommended 2013-2014 expenditures of \$5,370 and an assessment rate of \$1.50 per ton. Although the proposed assessment rate of \$1.50 is \$1.00 higher than the rate established for the 2012-2013 fiscal period, it is the same rate as was established in 2011 and prior years.

The Committee estimates that the 2013-2014 Washington apricot crop will be 5,950 tons. At the proposed \$1.50 per ton assessment rate, the Committee anticipates assessment income of approximately \$8,925, which would be adequate to cover budgeted expenses for the 2013-2014 fiscal period. In addition, at the proposed assessment rate and expense level, the Committee anticipates that \$3,555 would be added to its monetary reserve, which it estimates would be \$5,288

on March 30, 2014. That reserve level is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42(a)(2)).

The major expenditures recommended by the Committee for the 2013-2014 fiscal period include \$2,500 for the management fee; \$1,200 for Committee travel; \$1,000 for the annual audit; and \$670 for office supplies, insurance, and miscellaneous expenses. In comparison, major budgeted expenditures for the 2012-2013 fiscal period included \$2,400 for the management fee; \$1,300 for Committee travel; \$750 for the annual audit; and \$545 for office supplies, insurance, and miscellaneous expenses.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the order. Committee members also discussed reasons for and against regulatory suspension, order suspension, and order termination. The result of these discussions was the Committee's recommendation to maintain the order's administrative functions and to increase the assessment rate.

This action would increase the assessment obligation imposed on handlers. While the increase would impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Additionally, these costs would be offset by the benefits derived from the operation of the order.

Like all Committee meetings, the May 13, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189. No changes in those requirements as a result of this action are necessary. Should any changes

become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny 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 2013-2014 fiscal period began on April 1, 2013, and the order requires that the assessment rate for each fiscal period apply to all assessable Washington apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are already shipping Washington apricots from the 2013 crop; and (4) 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 922**

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

**PART 922 - APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

1. The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2013, an assessment rate of \$1.50 per ton is established for Washington apricots handled in the production area.

Dated: August 14, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

[FR Doc. 2013-20264 Filed 08/19/2013 at 8:45 am; Publication Date: 08/20/2013]