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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 922**

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

**Apricots Grown in Designated Counties in Washington;**

**Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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 program. The fiscal period began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Manuel Michel, Marketing Specialist, or Gary D. Olson, Regional Director, 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 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 rule in conformance with Executive Orders 12866 and 13563.

This 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 necessary 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 apricots beginning April 1, 2013, and continue until amended, suspended, or 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 the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2013-2014 and subsequent fiscal periods from \$0.50 to \$1.50 per ton of Washington apricots handled.

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 Committee members are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs, and with the costs for 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.

For the 2012-2013 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 13, 2013, and unanimously recommended 2013-2014 expenditures of \$5,370 and an assessment rate of \$1.50 per ton of apricots handled. In comparison, the Committee's budgeted expenditures for the previous fiscal period were \$4,995. The assessment rate of \$1.50 per ton is \$1.00 higher than the rate previously established. The higher assessment rate is needed to fund an increase in administrative costs and to replenish the monetary reserve. The increased assessment rate of \$1.50 per ton is the same rate that was in effect for the 2011-2012 and prior fiscal periods.

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 assessment rate recommended by the Committee 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 shipments to be approximately 5,950 tons, which should generate \$8,925 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses, with an expected surplus of \$3,555 that may be placed in reserve. Funds in the Committee's reserve are expected to be \$5,288 on March 31, 2014, which is within the maximum permitted by the order's limit of approximately one fiscal period's operational expenses (§ 922.42(a)(2)).

The assessment rate established herein will 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 will be in effect 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA

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 2013-2014 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

### **Final 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 rule 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 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 Washington apricot handler currently ships 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 rule increases 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 assessment rate of \$1.50 per ton is \$1.00 higher than the rate established for the 2012-2013 fiscal period, it is the same rate as was established for the 2011-2012 and prior fiscal periods. The Committee estimates that the 2013-2014 Washington apricot crop will be 5,950 tons. Therefore, the \$1.50 per ton assessment rate should provide approximately \$8,925 in assessment income and be adequate to fund the budgeted expenses for the 2013-2014 fiscal period. In addition, the Committee anticipates that \$3,555 will be added to its monetary reserve, which it estimates will be \$5,288 on March 30, 2014. This reserve level is within the maximum permitted by the order.

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 increases 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.

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 Committee deliberations on all issues.

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 rule does 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. As noted in the initial regulatory flexibility analysis, USDA has not

identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on August 20, 2013 (78 FR 51098). Copies of the proposed rule were also made available to all apricot handlers by Committee staff. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending September 4, 2013, was provided for interested persons to respond to the proposal. No comments were received.

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.

After consideration of all relevant material 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** 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; (4) handlers are aware of this rule, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 15-day comment period was provided for in the proposed rule.

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

Dated: October 17, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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