



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-17-0033; SC17-922-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule an interim rule that implemented a recommendation from the Washington Apricot Marketing Committee (Committee) to decrease the assessment rate established for the 2017-2018 and subsequent fiscal periods. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses. This final rule also makes administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: DaleJ.Novotny@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other Marketing Order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 (referred to as 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 Committee locally administers the Order and is comprised of growers and handlers of apricots operating within the area of production.

USDA is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Under the Order, Washington apricot 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 apricots beginning April 1, 2017, and continue until amended, suspended, or terminated. The

Committee's fiscal period begins on April 1 and ends on March 31.

In an interim rule published in the *Federal Register* on September 15, 2017, and effective on September 18, 2017, (82 FR 43297), § 922.235 was amended by decreasing the assessment rate established for Washington apricots for the 2017-2018 and subsequent fiscal periods from \$1.40 to \$1.00 per ton of apricots handled. The decrease in the per ton assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

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 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 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 17 Washington apricot handlers subject to regulation under the Order and approximately 100 apricot growers in the regulated production area. Small agricultural service firms (handlers) are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,500,000, and small agricultural producers (growers) are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

Committee reports indicate that the industry shipped 6,028 tons of Washington apricots over the 2016-2017 fiscal period. Based on information from the USDA's Market News Service, 2016 free on board (f.o.b.) prices for Washington No.1 apricots ranged from \$18.00 to \$23.00 per 24-pound container, for both loose-pack and 2-layer tray-pack containers. Using those prices and the shipment information provided by the Committee, the approximate total value of Washington apricot shipments likely ranged between \$9.0 million and \$11.6 million, with the average revenue per handler ranging from \$529,000 to \$682,000. It is therefore determined that most, if not all, of the

Washington apricot handlers ship less than \$7,500,000 worth of apricots on an annual basis.

In addition, using shipment data from the Committee and the 2016 National Agricultural Statistics Service (NASS) average f.o.b. price of \$1,210 per ton for fresh apricots, total revenue for Washington apricot growers for the 2016-2017 fiscal period is estimated to be approximately \$7.3 million. Based on these reports and the number of apricot growers within the production area, it is estimated that the average per grower revenue from the sale of apricots in 2016 was approximately \$73,000. In view of the foregoing, it is concluded that most of the handlers and growers of Washington apricots may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2017-2018 and subsequent fiscal periods from \$1.40 to \$1.00 per ton of apricots. The Committee unanimously recommended 2017-2018 expenditures of \$8,225 and an assessment rate of \$1.00 per ton of apricots. The assessment rate of \$1.00 per ton is \$0.40 lower than the assessment rate previously in effect.

The quantity of assessable apricots for the 2017-2018 fiscal period is estimated at 6,000 tons. Thus, the \$1.00 per ton rate should provide \$6,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on growers.

In addition, the Committee's meeting was widely publicized throughout the Washington apricot 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 3, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

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 OMB and assigned OMB No. 0581-0189, Marketing Orders for Fruit Crops. This final interim rule corrects information provided in the interim rule, which had incorrectly cited OMB No. 0581-0178, Vegetable and Specialty Crops, as the previously approved information collection. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no 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.

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

Comments on the interim rule were required to be received on or before November 14, 2017. Two comments were received in response to the interim rule. One comment was

a general question about the administration of the Order, and the other comment was a statement of gratitude for a perceived lower cost to consumers resulting from the decreased assessment rate. Therefore, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<https://www.federalregister.gov/documents/2017/09/15/2017-19553/apricots-grown-in-designated-counties-in-washington-decreased-assessment-rate>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the *Federal Register* (82 FR 43297, September 15, 2017) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, AMS adopts the interim rule published September 15, 2017, at 82 FR 43297, as final with the following non-substantive amendments:

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.

[Subpart Redesignated as Subpart A]

2. Redesignate the subpart labeled "Order Regulating Handling" as "Subpart A-Order Regulating Handling".

[Subpart Redesignated as Subpart B]

3. Redesignate the subpart labeled "Container Exemption; Waivers of Inspection and Certification" as "Subpart B-Container Exemption; Waivers of Inspection and Certification".

[Subpart Redesignated as Subpart C]

4. Redesignate the subpart labeled "Assessment Rate" as "Subpart C-Assessment Rate".

[Subpart Redesignated as Subpart D and Amended]

5. Redesignate "Subpart-Container Regulations" as subpart D and revise the heading to read as follows:

Subpart D - Container Requirements

[Subpart Redesignated as Subpart E and Amended]

6. Redesignate "Subpart "Grade and Size Regulation" as subpart E and revise the heading to read as follows:

Subpart E - Grade and Size Requirements

Dated: January 25, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

[FR Doc. 2018-01801 Filed: 1/30/2018 8:45 am; Publication Date: 1/31/2018]