



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 922**

[Doc. No. AMS-FV-15-0033; FV15-922-1 IR]

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

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) for a decrease in the assessment rate from \$1.50 to \$0.75 per ton of Washington apricots handled for the 2015-2016 and subsequent fiscal periods. The Committee locally administers the marketing order and is comprised of producers and handlers 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 begins April 1 and ends March 31. The new assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this 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: [www.regulations.gov](http://www.regulations.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: [www.regulations.gov](http://www.regulations.gov). All comments submitted in response to this 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 the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary 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: Teresa.Hutchinson@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 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 (7 CFR 922), as amended, 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, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing 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 issued herein will be applicable to all assessable Washington apricots beginning April 1, 2015, 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 decreases the assessment rate established for the Committee for the 2015-2016 and subsequent fiscal

periods from \$1.50 to \$0.75 per ton of Washington apricots handled under the order.

The Washington apricot 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 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 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 2013-2014 and subsequent fiscal periods, the Committee recommended, and the 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 12, 2015, and unanimously recommended expenditures of \$7,610 for the 2015-2016 fiscal period. In comparison, the previous fiscal period's

budgeted expenditures were \$7,095. The Committee also unanimously recommended an assessment rate of \$0.75 per ton of apricots. The recommended assessment rate of \$0.75 is \$0.75 lower than the current rate of \$1.50 per ton.

The Committee believes that decreasing the assessment rate will allow the Committee to fund its financial obligations and reduce its current monetary reserve of \$10,353. If the current assessment rate was continued, then the Committee's monetary reserve would exceed the maximum permitted by the order of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2015-2016 fiscal period include \$3,000 for the management/administration fee, \$2,500 for the annual audit review, \$1,200 for Committee travel, and \$500 for computer tech services, software, and equipment. In comparison, major expenditures for the 2014-2015 fiscal period included \$3,000 for the management/administration fee, \$2,500 for the annual audit review, \$1,000 for Committee travel, and \$50 for computer tech services, software, and equipment.

Committee members estimated the 2015 fresh apricot production to be approximately 5,800 tons. The Committee's recommended assessment rate was then derived by dividing

the 2015-2016 anticipated expenses by the expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. The recommended assessment rate of \$0.75 per ton of apricots multiplied by the 5,800 tons of estimated 2015 Washington apricot shipments would generate \$4,350 in handler assessments. The projected revenue from handler assessments, along with funds from the Committee's monetary reserve of \$10,353, will be adequate to cover the 2015-2016 budgeted expenses of \$7,610. The Committee's monetary reserve is expected to be approximately \$7,093 at the end of the 2015-2016 fiscal period which is within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The assessment rate established in this rule 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 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 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 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 2015-2016 budget and those for subsequent fiscal periods will be reviewed, and continue to be 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 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 100 producers of apricots in the production area and approximately 17 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

The National Agricultural Statistics Service reported that in 2014 the Washington apricot total utilization (including both fresh and processed markets) of 8,500 tons sold for an average of \$1,080 per ton. Consequently, the total farm-gate value in 2014 was approximately \$9,180,000. Based on the number of producers in the production area (100), the 2014 average revenue from the sale of apricots is estimated at approximately \$91,800 per producer. In addition, based on information from the USDA's Market News Service, 2014 f.o.b. prices for WA No. 1 apricots ranged from \$20.00 to \$26.00 per 24-pound loose-pack container, and from \$22.00 to \$30.00 for 2-layer tray-pack containers. Using average price 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 can be concluded that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate established by the Committee and collected from handlers for the 2015-2016 and subsequent fiscal periods from \$1.50 to \$0.75 per ton of apricots handled under the order's authority. The Committee also unanimously recommended 2015-2016 expenditures of \$7,610. With a 2015-2016 Washington apricot crop estimate of 5,800 fresh market tons, the Committee anticipates assessment income of approximately \$4,350. Income derived from handler assessments, along with funds from the Committee's monetary reserve, will be adequate to cover budgeted expenses for the 2015-2016 fiscal period. At this assessment rate and expense level, the Committee's monetary reserve will approximate \$7,093 by March 30, 2016, which is within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2015-2016 fiscal period include \$3,000 for the management/administration fee, \$2,500 for the annual audit

review, \$1,200 for Committee travel, and \$500 for computer tech services, software, and equipment. In comparison, major expenditures for the 2014-2015 fiscal period included \$3,000 for the management/administration fee, \$2,500 for the annual audit review, \$1,000 for Committee travel, and \$50 for computer tech services, software, and equipment.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Although lower assessment rates were considered, none were selected because they would not generate sufficient income to administer the order.

A review of historical crop and price information, as well as preliminary information pertaining to the 2015-2016 fiscal period, indicates that the producer price could average approximately \$1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2015-2016 fiscal period as a percentage of total producer revenue is 0.08 percent for Washington apricots.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers. Decreasing the assessment rate reduces the burden on handlers. 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 12, 2015, 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 comments on this interim 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 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.

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 rule.

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 is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give

preliminary notice prior to putting this rule into effect, and 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 2015-2016 fiscal period began on April 1, 2015, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the action decreases the assessment rate for assessable apricots beginning with the 2015-2016 fiscal period; (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; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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, 2015, an assessment rate of \$0.75 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 13, 2015

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Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service  
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