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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-16-0050; SC16-922-1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2016-17 and subsequent fiscal periods from \$0.75 to \$1.40 per ton of Washington apricots handled under the marketing order. The Committee, which is composed of growers and handlers, locally administers the 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 begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 28, 2016.

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 request information on complying with this regulation 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 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, 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 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, 2016, 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 2016-17 and subsequent fiscal periods from \$0.75 to \$1.40 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 2015-16 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 11, 2016, and unanimously recommended 2016-17 expenditures of \$7,160 and an assessment rate of \$1.40 per ton of apricots. In comparison, the previous fiscal period's budgeted expenditures were \$7,610. The recommended assessment rate of \$1.40 per ton is \$0.65 per ton higher than the rate currently in effect.

Last year at the May 12, 2015, meeting, Committee members voted to moderately increase the budget from \$7,095 to \$7,610, and to decrease the assessment rate from \$1.50 to \$0.75 per ton of apricots handled. The Committee was attempting to lower their excess reserve funds to approximately one fiscal period's operating expenses to remain in compliance with § 922.42(a)(2) of the order. The Committee based its recommendation on a crop estimate of 5,800 tons for the 2015-16 crop year. The actual crop yield for that period was 4,795 tons, 1,005 tons less than the 5,800 ton estimate used by the Committee for budgeting purposes. Low water supply and higher than average temperatures were reported by the industry at the May 11,

2016, meeting as the major factors for the short 2015-16 crop. As a result of the reduced crop size and related lower assessment revenue, the Committee was forced to use more funds from its reserve than previously anticipated. The Committee intends to fully fund ongoing operations and maintain adequate reserve funds through the implementation of the assessment rate increase for the 2016-17 and future fiscal periods.

The major expenditures recommended by the Committee for the 2016-17 fiscal period include \$3,000 for the contracted management fee to the Washington State Fruit Commission, \$1,200 for Committee travel, \$2,000 for the annual audit, \$500 for computer and technical services, and \$250 for office supplies. Budgeted expenses for these items in the 2015-2016 fiscal period were \$3,000 for the management fee, \$1,200 for Committee travel, \$2,500 for the annual audit, and \$500 for office supplies, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. Washington apricot shipments for the year are estimated at 5,000 tons

which should provide \$7,000 in assessment income at the rate of \$1.40 per ton of Washington apricots handled. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for the 2016-17 fiscal period. Funds in the reserve (currently \$7,301) would be kept within the maximum amount permitted by the order of approximately one fiscal period's operational expenses. Authority for maintaining a financial reserve is found in § 922.42(a)(2) of the order. The Committee expects its monetary reserve to decrease from \$7,301 at the beginning of the 2016-17 fiscal period to approximately \$7,141 at the end of the 2016-17 fiscal period. That amount would be within the provisions of the order and should provide the Committee with the ability to absorb fluctuations in assessment income and expenses into the future.

The assessment rate 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 the Committee meetings are available from the Committee or the 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 2016-17 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 100 growers and 17 handlers of Washington apricots subject to regulation under the marketing order in the regulated area. Most apricot producers and all handlers accounted for in the regulated area are engaged in the production of other crops in addition to apricots. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reports that the 2015 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 8,000 tons, the average price was \$1,050 per ton, and the total farm-gate value was

approximately \$8,400,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2015 average revenue from the sale of apricots was approximately \$84,000. In addition, based on information from the USDA's Market News Service, 2015 f.o.b. prices for Washington No.1 apricots ranged from \$20.00 to \$26.00 per 24-pound container for both loose pack and 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 \$7,500,000 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 2016-17 and subsequent fiscal periods from \$0.75 to \$1.40 per ton of Washington apricots handled. The new assessment rate of \$1.40 is \$0.65 higher than the 2015-16 rate. The quantity of assessable apricots for the 2016-17 fiscal period is estimated at 5,000 tons. Thus, the \$1.40 rate should provide \$7,000 in assessment income and, combined

with the existing reserve fund, should be adequate to meet this year's budgeted expenses.

The major expenditures recommended by the Committee for the 2016-17 fiscal period include \$3,000 for the contracted management fee to the Washington State Fruit Commission, \$1,200 for Committee travel, \$2,000 for the annual audit, \$500 for computer and technical services, and \$250 for office supplies. Budgeted expenses for these items in the 2015-2016 fiscal period were \$3,000 for the management fee, \$1,200 for Committee travel, \$2,500 for the annual audit, and \$500 for office supplies.

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.

A review of historical data and preliminary information pertaining to the 2016-17 season indicates that the grower price for Washington apricots could range between \$1,050 and \$1,300 per ton. Therefore, the assessment revenue for the 2016-17 fiscal period, as a

percentage of total grower revenue, could range between 0.133 and 0.108 percent.

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 order.

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 11, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this 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 rule 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. 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 23, 2016 (81 FR 57493). Copies of the proposed rule were also mailed or sent via facsimile to all apricot handlers. Finally, the proposal was made available through the internet by USDA and the

Office of the Federal Register. A 30-day comment period ending September 22, 2016, 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: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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 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 2016-17 fiscal period began on April 1, 2016, and the marketing order

requires that the rate of assessment 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 2016 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. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-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 or after April 1, 2016, an assessment rate of \$1.40 per ton is established for Washington apricots handled in the production area.

Dated: October 19, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service

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