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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV02-922-1 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 2002-03 and subsequent fiscal periods from \$2.00 to \$2.50 per ton of apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Authorization to assess apricot handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Marketing 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 Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, 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 proposed herein will be applicable to all assessable apricots beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 2002-03 and subsequent fiscal periods from \$2.00 to \$2.50 per ton of apricots handled.

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 growers and handlers of Washington apricots. 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 1997-98 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 15, 2002, and unanimously recommended 2002-03 expenditures of \$11,685 and an assessment rate of \$2.50 per ton of apricots. In comparison, last year's budgeted expenditures were \$11,230. The recommended rate is \$.50 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop.

The major expenditures recommended by the Committee for the 2002-03 fiscal period include \$5,892 for salaries, \$1,000 for travel, \$816 for rent and maintenance, and \$540 for office equipment and repair. Budgeted expenses for these items in 2001-2002 were \$5,731, \$1,000, \$792, and \$264, respectively.

Washington apricot shipments for 2002 are estimated at 3,650 tons which should provide \$9,125 in assessment income. This income, along with approximately \$2,540 from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$8,257) would be kept within the maximum

permitted by the order. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's operational expenses (\$922.42).

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 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 2002-03 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), 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 business 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 200 producers of apricots in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) 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 \$5,000,000.

Based on a three-year average fresh apricot production of 4,406 tons

(Committee records), a three-year average of producer prices of \$832 per ton reported by the National Agricultural Statistics Service, and 200 Washington apricot producers, the average annual producer revenue is approximately \$18,329. In addition, based on Committee records and 2001 F.O.B. prices ranging from \$14.50 to \$22.50 per 24-pound container reported by USDA's Market News Service, all of the Washington apricot handlers ship under \$5,000,000 worth of apricots. In view of the foregoing, it can be concluded that all of the Washington apricot producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002-03 and subsequent fiscal periods from \$2.00 to \$2.50 per ton of apricots. The Committee unanimously recommended 2002-03 expenditures of \$11,685 and an assessment rate of \$2.50 per ton. The increased assessment rate is \$.50 higher than the 2001-02 rate. The quantity of assessable apricots for the 2002-03 fiscal period is estimated at 3,650 tons. Income derived from handler assessments (approximately \$9,125), along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002-03 fiscal period include \$5,892 for salaries, \$1,000 for travel, \$816 for rent and maintenance, and \$540 for office equipment and repair. Budgeted expenses for these items in 2001-02 were \$5,731, \$1,000, \$792, and \$264, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop. As of March 31, 2002, the Committee's reserve was \$8,257. At the previous assessment rate of \$2.00 per ton and an estimated 2002 apricot production of 3,650 tons, the projected reserve on March 31, 2003, would have been \$3,872. The Committee believed that such a level of reserve would not have been adequate should there have been another reduced crop. At the rate of \$2.50 per ton (assessment income of \$9,125) and expenditures of \$11,685, the Committee may need to draw up to \$2,540 from its reserve. If reserve funds in this amount are needed, the projected reserve will be approximately \$5,697 on March 31, 2003, which the Committee determined to be acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to \$2.50 per ton is adequate to maintain the reserve at an acceptable level. The Committee decided that an assessment rate between \$2.00 per ton and \$2.50 per ton would not have maintained the reserve at an adequate level. Prior to arriving at this rate of assessment, the Committee considered information from various sources, such as the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2002-03 fiscal period could range between \$800 and \$850 per ton of apricots. Therefore, the estimated assessment revenue for the 2002-03 as a percentage of total producer revenue could range between 0.31 and 0.29 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 15, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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.

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

A proposed rule concerning this action was published in the **Federal Register** on July 1, 2002 (67 FR 44095). Washington apricot handlers were also notified of the increased assessment rate. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending July 31, 2002, 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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 2002–03 fiscal period began on April 1, 2002, and the order requires that the rate of assessment for each fiscal period apply to all assessable 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; and (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.

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, 2002, an assessment rate of \$2.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 19, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–21538 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–2 FIR]

Grapes Grown in a Designated Area of Southeastern California; Revision to Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which revised the container and pack requirements currently prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). This rule continues in effect the addition of four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order. This rule continues to allow reusable plastic containers (RPCs) in shipping grapes, and continues in effect revisions to lot stamping requirements for RPCs, revisions exempting master containers containing individual consumer packages from the minimum net weight requirements specified under the order, and revisions to marking and minimum net weight requirements for clarity. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns.

EFFECTIVE DATE: September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence

Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), as amended, regulating the handling of grapes grown in California, 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.”

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. A 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 continues in effect language in § 925.304 of the order’s rules and regulations which added four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allowed RPCs in shipping grapes, revised the lot stamping requirements for RPCs, and exempted master containers containing individual consumer packages from the minimum net weight requirements specified under the order. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes at its February 12, 2002, meeting and clarified via a fax vote on February 21, 2002.