

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. AMS-FV-07-0085; FV07-922-2 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2007–2008 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Comments must be received by July 23, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <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: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail:

[Robert.Curry@usda.gov](mailto:Robert.Curry@usda.gov) or

[GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

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, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail:

[Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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 Order 12866.

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 proposed herein would be applicable to all assessable Washington apricots beginning April 1, 2007, 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 would increase the assessment rate established for the Committee for the 2007–2008 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots handled under the order.

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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–2006 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$1.00 per ton of apricots handled. This rate continues 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 24, 2007, and unanimously recommended 2007–2008 expenditures of \$6,743. In comparison, last year’s budgeted expenditures were \$6,400. In addition, the Committee recommended that the current \$1.00 per ton assessment rate be increased by \$0.50 to \$1.50 per ton of apricots handled. The Committee recommended the higher assessment rate to cover budgeted expenses while increasing its monetary reserve to a level commensurate with program objectives and requirements.

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include \$4,800 for management fees, \$1,000 for Committee travel, \$500 for the annual financial audit, and \$100 for compliance. Budgeted expenses for these items in 2006–2007 were \$4,800, \$1,000, \$600, and \$100, respectively. The Committee added \$343 to its budgeted expenses this year for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing its anticipated expenses of \$6,743 by the projected apricot crop of 5,400 tons. Applying the \$1.50 per ton assessment rate to the Committee's 5,400 ton crop estimate should provide \$8,100 in assessment income. Income derived from handler assessments would not only adequately cover budgeted expenses, but would also add approximately \$1,357 to the current \$3,980 reserve fund. As a consequence, the projected fiscal year-end reserve balance of \$5,337 would be within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The proposed assessment rate would 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 would be effective for an indefinite period, the Committee would 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's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's 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 2007–2008 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### **Initial 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 initial 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.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. 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 \$6,500,000.

The Washington Agricultural Statistics Service has prepared a report showing that the total 5,400 ton apricot utilization sold for an average of \$1,150 per ton in 2006 with a total value of approximately \$6,200,000. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2006 can thus be estimated at approximately \$20,700. In addition, based on information from the Committee and USDA's Market News Service, 2006 f.o.b. prices ranged from \$15.00 to \$20.00 per 24-pound loose-pack container, and from \$16.00 to \$18.00 for 2-layer tray pack containers. Of the approximate 3,728 tons of the 2006 season fresh apricots packed-out, about 1,569 tons were packed in loose-pack containers and about 2,159 tons in tray-pack containers (weighing an average of about 20 pounds each). The total receipts for 2006 were less than \$6,500,000. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2007–2008 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for apricots handled under authority of the order. The Committee also unanimously recommended 2007–2008 expenditures of \$6,743. With the 2007–2008 Washington apricot crop estimate of 5,400 tons, the Committee anticipates assessment income of \$8,100. The Committee recommended the assessment rate increase to cover budgeted expenses and to increase the monetary reserve. With this proposed assessment rate and budget, the

Committee would be in a position to add about \$1,357 to its monetary reserve, with a projected balance on March 31, 2008, of approximately \$5,337—an amount within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include \$4,800 for management fees, \$1,000 for Committee travel, \$500 for the annual financial audit, and \$100 for compliance. Budgeted expenses for these items in 2006–2007 were \$4,800, \$1,000, \$600, and \$100, respectively. The Committee added \$343 to its budgeted expenses this year for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The Committee discussed alternatives to this recommended assessment increase. Leaving the assessment rate at the current \$1.00 per ton was discussed, but not seriously considered since such a rate would have further eroded the Committee's reserves. Higher and lower rates were also considered but not recommended because the \$1.50 rate would not only meet the Committee's objectives for the 2007–2008 season, but also increase the reserve to a level commensurate with order provisions.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2007–2008 season could average about \$1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2007–2008 fiscal period as a percentage of total producer revenue is 0.15 percent for Washington apricots.

This action would increase 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 would be 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 and participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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 small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order 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.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2007–2008 fiscal period began on April 1, 2007, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Washington apricot harvest and shipping season is expected to begin as early as the last week of June; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) handlers are aware of this action, which was 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 proposed to be 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, 2007, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–13581 Filed 7–12–07; 8:45 am]

**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 984**

[Docket No. AMS–FV–07–0004; AO–192–A7; FV06–984–1]

#### **Walnuts Grown in California; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 984**

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Order No. 984, which regulates the handling of walnuts grown in California (order), and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments were proposed by the Walnut Marketing Board (Board), which is responsible for local administration of the order. The amendments would: change the marketing year; include “pack” as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept voluntary financial contributions and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The Department of Agriculture (USDA) proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to

ascertain producer support for the order, and to make any necessary conforming changes.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** The referendum will be conducted from August 1 to 17, 2007. The representative period for the purpose of the referendum is August 1, 2006, through July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, 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: [Melissa.Schmaedick@usda.gov](mailto:Melissa.Schmaedick@usda.gov).

Small businesses may request information on this proceeding 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on April 18, 2006, and published in the April 24, 2006, issue of the **Federal Register** (71 FR 20902) and a Recommended Decision issued on March 19, 2007, and published in the March 27, 2007, issue of the **Federal Register** (72 FR 14368).

This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

#### **Preliminary Statement**

The proposed amendments are based on the record of a public hearing held on May 17 and 18, 2006, in Modesto, California. The hearing was held to consider the proposed amendment of the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Notice of this hearing was published in the **Federal Register** on April 24, 2006 (71 FR 20902). The notice of hearing contained proposals submitted by the Walnut Marketing Board (Board), which is responsible for local