

# Proposed Rules

Federal Register

Vol. 67, No. 126

Monday, July 1, 2002

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. FV02-922-1 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 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by July 31, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning 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 e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.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.ams.usda.gov/fv/moab.html>.

#### 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](mailto: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 would 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 would increase 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, would 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 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 in effect 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 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would 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. 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 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 would increase 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 proposed assessment rate is \$.50 higher than the rate currently in effect. 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, would 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 rate of \$2.00 per ton and an estimated 2002 apricot production of 3,650 tons, the projected reserve on March 31, 2003, would be \$3,872. The Committee believed that this reserve would not be adequate should there be another reduced crop. At the rate of \$2.50 per ton (assessment income of \$9,125) and expenditures of \$11,685, the Committee may draw up to \$2,540 from its reserve. The projected reserve would 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 would be 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 maintain the reserve at an adequate level. Prior to arriving at this budget, 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 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 marketing 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. 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 production area commodity 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 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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period began on April 1, 2002, 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 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 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 and after April 1, 2002, an assessment rate of \$2.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 25, 2002.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02–16478 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. 99–012–1]

#### Standards for Permanent, Privately Owned Horse Quarantine Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations pertaining to the importation of horses to establish standards for the approval of permanent, privately owned quarantine facilities for horses. We are taking this action because recent demand for quarantine services for horses has exceeded the space available at existing facilities. We believe that allowing imported horses to be quarantined in permanent, privately owned horse quarantine facilities that meet these criteria would facilitate the importation of horses while continuing to protect against the introduction of communicable diseases of horses.

**DATES:** We will consider all comments that we receive by August 30, 2002.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 99–012–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–012–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require that some of these animals be quarantined upon arrival in the United States as a condition of entry. APHIS operates animal quarantine facilities and authorizes the use of privately owned quarantine facilities for certain animal importations. The regulations in part 93 currently contain requirements for the approval of various privately owned quarantine facilities. The regulations at subpart C of part 93 (9 CFR 93.300 through 93.326, referred to below as the regulations) pertain to the importation of horses and include requirements for privately owned quarantine facilities for horses. These requirements are for the approval and establishment of temporary quarantine facilities for the purpose of quarantining imported horses for a specific event.

In addition to operating Federal animal quarantine facilities and authorizing the operation of temporary, privately owned quarantine facilities for horses, APHIS currently authorizes the operation of one permanent, privately owned animal import quarantine facility, located in Los Angeles County, CA.

The demand for import quarantine facilities for horses has risen in recent years as the amount of trade between the United States and other countries has risen. From 1992 to 1999, the number of horses imported annually into the United States increased substantially. In some cases, the demand for quarantine services for horses has exceeded the space available at existing facilities. In addition, in some locations, such as Hawaii and Puerto Rico, no facilities exist for quarantining imported horses. The demand for quarantine services for horses cannot always be filled by temporary, privately owned quarantine facilities because such facilities are established, approved, and operated by importers on a temporary basis to handle only horses imported for a unique importation, race, or show.

As a result of the increasing demand for quarantine space for imported horses and a request from the horse industry to establish standards for permanent, privately owned horse quarantine facilities, we are proposing to establish requirements in the regulations for the approval and operation of such facilities. We have considered the