

Regarding the “impracticable” prong, the United States Court of Appeals for the District of Columbia has held that agency action could be sustained on this basis if it addresses an “imminent hazard” to persons or property of the United States, *Jifty v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004), or if the rule in question is of “life-saving importance.” *Council of the S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 581 (D.C. Cir. 1981). The Board does not believe that the circumstances surrounding the publication of this interim final rule render the use of APA notice and comment procedures impracticable.

The “unnecessary” prong of the agency’s good cause inquiry is “confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Mack Trucks, Inc. v. Environmental Protection Agency*, 682 F.3d 87, 94 (D.C. Cir. 2012) (citation omitted). As is noted above, the amendment set forth herein will not relieve federal agencies of the responsibility to ensure that employees who receive notice of an action appealable to MSPB have actual and effective access to the MSPB appeal form. Rather, the amendment simply recognizes that a document such as the MSPB appeal form can reliably be made available to employees via the Internet or other means. Moreover, if a federal employee requests that he or she be provided a copy of the document, the agency would be required to provide it. The MSPB therefore finds that the amendment set forth herein is sufficiently routine, insignificant in nature and inconsequential to warrant a finding of good cause to exempt this amendment from the normal APA notice-and-comment procedures.

The public interest prong of the good cause exception is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest. *Mack Trucks*, 682 F.3d at 95. This exception is therefore invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal. *Id.* Here, the reproduction costs this amendment seeks to avert are significant. If, for example, 800,000 Department of Defense employees are issued furlough notices, we estimate that the cost of giving each employee a paper copy of the MSPB appeal form could be on the order of \$720,000 (800,000 employees x 9-page MSPB appeal form x \$0.10 per page reproduction costs). Additional costs

would be imposed upon other federal agencies. Given that an unprecedented and sizeable number of furlough notices could be issued in the days and weeks to follow, MSPB finds that the purpose of this amendment—saving significant needless expense in a time of severe budgetary constraints—would be defeated if normal notice and comment procedures were utilized. Therefore, the Board concluded that the public interest is served by a determination to exempt this interim final rule from the normal APA notice-and-comment procedures.

Finally, MSPB also elected to make the amendment set forth herein effective immediately upon publication of this interim final rule. Under 5 U.S.C. 553(d)(3), “the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except \* \* \* as otherwise provided by the agency for good cause found and published with the rule.” For the reasons identified above, MSPB further finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day publication requirement and implement this amendment immediately.

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—PRACTICES AND PROCEDURES

- 1. The authority citation for 5 CFR part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

- 2. Revise paragraph (c) of § 1201.21 to read as follows:

##### § 1201.21 Notice of appeal rights.

\* \* \* \* \*

(c) A copy, or access to a copy, of the MSPB appeal form available at the Board’s Web site (<http://www.mspb.gov>), and

\* \* \* \* \*

**William D. Spencer,**

*Clerk of the Board.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Doc. No. AMS–FV–12–0027; FV12–922–1 FIR]

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

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2012–13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of Washington apricots handled. The Committee locally administers the marketing order that regulates the handling of apricots grown in designated counties in Washington. The interim rule decreased the assessment rate to reflect a reduction in the manager’s salary and the Committee’s operating expenditures.

**DATES:** Effective April 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 805 SW Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724; Fax: (503) 326–7440; or Email: [Manuel.Michel@ams.usda.gov](mailto:Manuel.Michel@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 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.”

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

Under the order, Washington apricot handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington apricots for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee’s fiscal period begins April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on December 6, 2012, and effective on December 7, 2012, (77 FR 72861, Doc. No. AMS–FV–12–0027, FV12–922–1 IR), § 922.235 was amended by decreasing the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of Washington apricots handled under the order. The decrease in the assessment rate reflects a reduction in the manager’s salary and the Committee’s operating expenditures, and will help reduce industry costs while still providing adequate funding to meet program expenses.

#### 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 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 94 producers of apricots in the production area and approximately 20 handlers subject to regulation under the marketing order. 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 having annual receipts of less than \$7,000,000. (13 CFR 121.201)

The National Agricultural Statistics Service reported that in 2011 the Washington apricot total utilization

(including both fresh and processed markets) of 3,900 tons sold for an average of \$1,830 per ton. Accordingly, the total farm-gate value in 2011 was approximately \$7,132,000. Based on the number of producers in the production area (94), the 2011 average revenue from the sale of apricots is estimated at approximately \$75,925 per producer. In addition, based on information from the USDA’s Market News Service, 2011 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. Therefore, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from \$1.50 to \$0.50 per ton of Washington apricots handled under the order. The Committee unanimously recommended 2012–13 expenditures of \$4,695 and an assessment rate of \$0.50 per ton of Washington apricots. The assessment rate of \$0.50 is \$1.00 lower than the rate previously in effect. Applying the assessment rate of \$0.50 per ton of Washington apricots to the Committee’s crop estimate of 6,600 tons should provide approximately \$3,300 in assessment income. Thus, income derived from handler assessments, along with funds from the Committee’s monetary reserve, will be adequate to cover the budgeted expenses, while maintaining a financial reserve within the limit authorized by the order.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee’s meeting was widely publicized throughout the Washington apricot industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2012, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

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

Comments on the interim rule were required to be received on or before February 4, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0027-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (77 FR 72681, December 6, 2012) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim rule amending 7 CFR part 922, published at 77 FR 72681 on December 6, 2012, is adopted as a final rule, without change.

Dated: April 5, 2013.

**David R. Shipman,**  
Administrator, Agricultural Marketing Service.

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