

year began on April 1, 2005, and the assessment rate applies to all avocados received during the 2005–06 and subsequent seasons. 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 and no comments were received.

#### List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

#### PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

##### § 915.235 Assessment rate.

On and after April 1, 2005, an assessment rate of \$0.27 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12617 Filed 6–24–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV05–922–1 IFR]

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

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2005–2006 and subsequent fiscal periods from \$2.50 per ton to \$1.00 per ton of fresh 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 begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Effective June 28, 2005.

Comments received by August 26, 2005, will be considered prior to issuance of a final rule.

**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; E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Curry, 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 George J. 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 and Order No. 922 (7 CFR 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, 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, 2005, 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 decreases the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from \$2.50 per ton to \$1.00 per ton of fresh 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$2.50 per ton of apricots handled. This assessment rate 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 10, 2005, and unanimously recommended 2005–2006 expenditures of \$10,594—the same as last year's approved expenditures—and a decreased assessment rate of \$1.00 per ton of apricots handled. The \$1.00 assessment rate is \$1.50 lower than the rate approved for the 2004–2005 and subsequent fiscal periods. Based on the Committee's 2005–2006 crop estimate of 3,800 tons, assessment income should approximate \$3,800. The Committee recommended the lower assessment rate taking into account the anticipated crop shortfall on the industry, while also reducing the Committee's authorized monetary reserve to a level commensurate with program requirements. The anticipated \$3,800 assessment revenue, when combined with \$6,794 from the monetary reserves, is adequate to cover budgeted expenses for the 2005–2006 fiscal period. By drawing funds from the reserve (currently \$13,962), the Committee estimates that by the end of the current fiscal period the reserve will approximate \$7,168. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include staff salaries (\$5,892), rent and maintenance (\$864), compliance (\$100), and Committee travel and compensation (\$1,000). These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

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 Committees or other available information.

Although this assessment rate is effective 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'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 2005–2006 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 272 apricot producers within the regulated production area and approximately 28 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 \$6,000,000.

For the 2004 apricot season, Washington Agricultural Statistics Service reported that the total 6,400 ton apricot utilization sold for an average of \$973 per ton. Based on the number of producers in the production area (272), the average annual producer revenue from the sale of apricots in 2004 can thus be estimated at approximately \$22,894. In addition, based on information from the Committee and USDA's Market News Service, 2004 f.o.b. prices ranged from \$14.50 to \$18.50 per 24-pound loose-pack container, and from \$18.00 to \$24.00 for 2-layer tray pack containers. With about half of the 2004 season fresh apricot pack-out of 4,911 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), each of the industry's 28 handlers would have averaged less than \$225,000 from the sale of fresh apricots. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from \$2.50 to \$1.00 per ton of fresh apricots

handled. The Committee unanimously recommended 2005–2006 expenditures of \$10,594. With the 2005–2006 crop estimate of 3,800 tons, the Committee anticipates assessment income of \$3,800, which, when combined with \$6,794 from the monetary reserves, will be adequate to cover budgeted expenses for the 2005–2006 fiscal period. At this assessment rate and expense level, the Committee's reserve fund will approximate \$7,168 by March 30, 2006. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range from about \$973 per ton to about \$1,100 per ton for Washington apricots. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.09 and 0.10 percent.

This action decreases 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 industries and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all marketing order committee meetings, the May 10, 2005, 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 action 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 small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ama.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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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 2005–2006 fiscal period began on April 1, 2005, and the order requires that the rate of assessment apply to all assessable Washington apricots handled during such fiscal period; (2) this action reduces the assessment rate; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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, 2005, an assessment rate of \$1.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12620 Filed 6–24–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

**[Docket No. FV05–948–2 IFR]**

#### **Irish Potatoes Grown in Colorado; Decreased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2005–2006 and subsequent fiscal periods from \$0.03 to \$0.02 per hundredweight of potatoes. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess Colorado potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective June 28, 2005. Comments received by August 26, 2005, will be considered prior to issuance of a final rule.

**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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); 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.ams.usda.gov/fv/moab.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Marketing Specialist, 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 George J. 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. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, 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, Colorado potato handlers 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 Colorado potatoes beginning July 1, 2005, 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