

# 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

[Doc. No. AMS-FV-10-0050; FV10-922-1 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 2010–11 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 15, 2010.

**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>. All

comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Robert Curry or Gary 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@ams.usda.gov](mailto:Robert.Curry@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 690–3919; Fax: (202) 720–8938; or E-mail: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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.” 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, 2010, and continue until amended, suspended, or terminated.

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 2010–11 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 2009–10 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 19, 2010, and unanimously recommended 2010–11 expenditures of \$8,145. In comparison, last year’s budgeted expenditures were \$7,843. In addition, the Committee recommended that the \$1.00 per ton assessment rate be increased by \$0.50 to \$1.50 per ton of apricots handled. Committee members reported that apricot production this season may be lower than that of last season since portions of the Washington apricot production area experienced

freezing weather in October 2009, and high winds in April of this year. As a result, the Committee has estimated that shipments of fresh apricots will approximate 5,550 tons this season—somewhat less than the 6,860 tons of fresh apricots reported last season. The Committee thus recommended that the assessment rate be increased by \$0.50 to help ensure that budgeted expenses are adequately covered.

The major expenditures recommended by the Committee for the 2010–11 fiscal period include \$4,800 for the management fee, \$1,300 for Committee travel, \$100 for compliance, \$750 for the annual audit review, and \$1,195 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2009–10 fiscal period included \$4,800 for the management service fee, \$1,000 for travel, \$100 for compliance, and \$1,943 for audits, insurance and bonds, equipment maintenance and miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of \$8,145 by the projected 2010 apricot production of 5,550 tons. Applying the \$1.50 per ton recommended assessment rate to this crop estimate should provide \$8,325 in assessment income. Funds in the Committee's monetary reserve are projected to be \$7,854 on March 31, 2011. This is within the order's limit 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 would evaluate the Committee's 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 2010–11 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.

There are approximately 94 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 \$7,000,000.

The Washington Agricultural Statistics Service reported that the total 8,500 ton Washington apricot utilization (including both fresh and processed markets) in 2009 sold for an average of \$888 per ton. The total 2009 farm-gate value was approximately \$7,551,000. Based on the number of producers in the production area (94), the average annual producer revenue from the sale of apricots in 2009 can thus be estimated at approximately \$80,330. In addition, based on information from the Committee and USDA's Market News Service, 2009 f.o.b. prices for WA No. 1 apricots ranged from \$14.00 to \$24.00 per 24-pound loose-pack container, and from \$12.00 to \$22.00 for 2-layer tray pack containers. The average 2009 price across all sizes and packs was \$17.50, with an estimated industry gross intake of approximately \$10,913,636 in f.o.b. receipts for the 2009 crop—leaving average receipts for each of the 22 handlers well below the SBA's \$7,000,000 threshold for small businesses. Therefore, 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 2010–11 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for apricots handled under the order's

authority. The Committee also unanimously recommended 2010–11 expenditures of \$8,145. With a 2010–11 Washington apricot crop estimate of 5,550 fresh market tons, the Committee anticipates assessment income of about \$8,325. The Committee recommended the assessment rate increase to help ensure that budgeted expenses are adequately covered.

The major expenditures recommended by the Committee for the 2010–11 fiscal period include \$4,800 for the management fee, \$1,300 for Committee travel, \$100 for compliance, \$750 for the annual audit review, and \$1,195 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2009–10 fiscal period included \$4,800 for the management service fee, \$1,000 for travel, \$100 for compliance, and \$1,943 for audits, insurance and bonds, equipment maintenance and miscellaneous expenses. Funds in the Committee's monetary reserve are projected to be \$7,854 on March 31, 2011. This is within the order's limit of approximately one fiscal period's operational expenses.

The Committee discussed alternatives to this recommended assessment increase. Leaving the assessment rate at the current \$1.00 per ton would earn the Committee \$5,550, an amount considerably less than the 2010 budgeted expenditures of \$8,145. This would have significantly depleted the Committee's reserves, and thus was not seriously considered. The Committee did not consider an assessment rate greater than \$1.50.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2010–11 season could average about \$1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2010–11 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.

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 19, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Additionally, 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. Additionally, 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 orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2010–11 fiscal period began on April 1, 2010, 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, 2010, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 25, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–15941 Filed 6–29–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742 and 774

[Docket No. 080724907–91435–01]

RIN 0694–AE44

#### Addition of New Export Control Classification Number 6A981 Passive Infrasonic Sensors to the Commerce Control List of the Export Administration Regulations, and Related Amendments

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** The Bureau of Industry and Security proposes to amend the Export Administration Regulations (EAR) by adding Export Control Classification Number (ECCN) 6A981 to the Commerce Control List (CCL) to control passive infrasonic sensors because of their military and commercial utility. Items under this new ECCN will be controlled for Regional Stability (RS) and Anti-Terrorism (AT) reasons. In addition, BIS proposes to control technology and software for the development, production, or use of these items for RS and AT reasons under revised ECCNs 6D991 and 6E991, respectively.

**DATES:** Comments must be received by August 30, 2010.

**ADDRESSES:** You may submit comments, identified by RIN–AE44 by any of the following methods:

*E-mail:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) or via [www.regulations.gov](http://www.regulations.gov). Include

“RIN–AE44” in the subject line of the message.

*Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

*Mail or Hand Deliver/Courier:* Sharron Cook, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, *Attn:* RIN–AE44.

Send comments regarding the collection of information associated with the rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov), or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** James Thompson, Sensors and Aviation Division, Bureau of Industry and Security, *Telephone:* (202) 482–4252.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Bureau of Industry and Security proposes to amend the Export Administration Regulations (EAR) by imposing new foreign policy export and reexport controls on certain infrasonic sensors (*i.e.*, sensors capable of detecting sound from 0.01 to 16 Hertz).

Infrasonic sensors are used by the oil exploration industry, meteorologists, seismologists, and the military to detect natural or man-made infrasonic sources including earthquakes, volcanic eruptions, rocket launch, and/or nuclear explosions.

Passive infrasonic sensors, which possess civil and military utility, are not currently specified in the CCL, but similar sensors are subject to the EAR. Today's passive infrasonic sensors have updated electronics, which increase their sensitivity and allow the detection of additional infrasonic sources. Because of the enhanced capabilities of current sensors, these passive infrasonic sensors have military and commercial applications, and therefore should be controlled under the EAR for regional stability (RS) and antiterrorism (AT) reasons.

BIS proposes to amend the EAR, Supplement No. 1 to Part 774 (Commerce Control List), Category 6 (Sensors and Lasers) by adding Export Control Classification Number (ECCN) 6A981. This new ECCN 6A981 would be controlled for RS and AT reasons and