

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

■ 2. Section 205.603(d)(1) is revised to read as follows:

**§ 205.603 Synthetic substances allowed for use in organic livestock production.**

\* \* \* \*

(d) \* \* \*

(1) DL-Methionine, DL-Methionine—hydroxy analog, and DL-Methionine—hydroxy analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds.

\* \* \* \*

Dated: August 17, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–20977 Filed 8–23–10; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Doc. No. AMS–FV–10–0050; FV10–922–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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:** Effective Date: August 25, 2010.

## 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, 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 issued herein will 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 increases 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 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 Committee or other available information.

Although this assessment rate will be 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 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 has been reviewed and approved by USDA; those for subsequent fiscal periods would also be reviewed and, as appropriate, approved.

#### **Final 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 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 apricot producers within the regulated production area and approximately 20 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 20 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 increases 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. 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 the assessment rate increase. Leaving the assessment rate at \$1.00 per ton would have provided the Committee with about \$5,550 in income, an amount considerably less than the 2010 budgeted expenditures of \$8,145. The Committee felt that this would have significantly depleted its monetary reserves, and thus recommended the \$.50 increase. 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 increases 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.

This rule 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. As noted in the initial regulatory flexibility analysis, 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 proposed rule regarding this action was published in the **Federal Register** on June 30, 2010 (FR 75 37740). Copies of the proposed rule were also made available to all apricot handlers by Committee staff. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending July 15, 2010, was provided for interested persons to respond to the proposal. No comments were received.

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.

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 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 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) Washington apricots are currently being harvested and shipped to market; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (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; and (5) a 15-day comment period was provided in the proposed 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 and after April 1, 2010, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 17, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

487–5906, or E-mail:

*Jeffrey.Smutny@ams.usda.gov* or *Kurt.Kimmel@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) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. A 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 final rule revises the quality regulations for shelled walnuts under the Federal marketing order for California walnuts (order). The order regulates the handling of walnuts grown in California and is administered locally by the California Walnut Board (Board). This rule requires inspection and certification of shelled walnut products after manufacturing instead of before manufacturing. It also establishes a process to specify that manufactured products smaller than eight sixty-fourths of an inch in diameter are derived from walnut pieces that have been inspected and certified to U.S. Commercial grade standards. These changes will result in more efficient and cost-effective handler operations, and will certify the final Size And Grade Of All Manufactured Walnut Pieces.

**DATES: Effective Date:** August 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559)