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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 922**

[Doc. No. AMS-FV-13-0040; FV13-922-1 IR]

**Apricots Grown in Designated Counties in Washington;**

**Suspension of Handling Regulations**

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

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

**SUMMARY:** This rule suspends the minimum grade, size, quality, maturity, and inspection requirements prescribed under the Washington apricot marketing order (order) for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. The order regulates the handling of apricots grown in designated counties in Washington and is administered locally by the Washington Apricot Marketing Committee (Committee). This rule follows a suspension of the handling regulations that was enacted in the 2012-2013 fiscal period, and is expected to reduce overall industry expenses and increase net returns to growers and handlers.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER] will be considered prior to the 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 and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made 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 comments will be made public on the internet at the address provided above.

**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;

Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Manuel.Michel@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation 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 E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 132 and 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 Orders 12866 and 13563.

This 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 then 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 entry of the ruling.

This rule suspends the handling regulations prescribed under the order for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. Specifically, this rule suspends the minimum grade, size, quality, maturity, and inspection requirements under the order. This rule follows a suspension of the handling regulations enacted in the 2012-2013 fiscal period. Notwithstanding the suspension of the order's handling regulations, apricots handled in Washington must still meet Washington State's minimum grade requirement of Washington No. 2.

In addition, as a direct result of the suspension of the order's handling regulations, information from the Federal-State Inspection Service will no longer be available for the Committee to use to compile industry statistics and assess handlers. However, through a collaborative agreement, the Washington State Department of Agriculture is expected to provide the Committee access to apricot handling data similar to the information that has been previously collected and provided by the Inspection Service.

Section 922.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for apricots grown in the production area. The minimum grade, size, quality, maturity, and inspection requirements for apricots regulated under the order are specified in § 922.321.

Section 922.53 authorizes the modification, suspension, or termination of regulations issued under § 922.52 when such changes tend to effectuate the declared policy of the Act. Further, on the same basis and in a like manner, whenever the Secretary finds that a regulation previously established obstructs or does not tend to

effectuate the declared policy of the Act, such regulation shall be suspended or terminated.

Section 922.55 provides that whenever the handling of any variety of apricots is regulated pursuant to § 922.52 or § 922.53, such apricots must be inspected by the Inspection Service and certified as meeting the applicable requirements. The cost of inspection and certification is borne by handlers. Section 922.111 provides for the waiver of the inspection requirement upon certain conditions for certain handlers when inspection by the Inspection Service is not readily available.

The Committee meets regularly to review and consider recommendations for the regulatory requirements of Washington apricots. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations, information submitted by the Committee, and other available information and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 2013, meeting, the Committee unanimously recommended suspending the order's handling

regulations for the 2013-2014 and subsequent fiscal periods. The Committee requested that this rule be effective immediately for the remainder of the 2013-2014 fiscal period.

The objective of the handling regulation has been to ensure that only acceptable quality apricots enter fresh market channels to foster consumer satisfaction, increase sales, and improve returns to growers.

The Washington apricot industry recognizes that quality is an important factor that helps to maintain sales. Some Committee members expressed concern that suspension of the handling and inspection requirements could potentially result in lower quality apricots being shipped to fresh markets, affecting consumer demand. There is also concern that if overall quality declines, the Washington apricot industry could lose sales to other apricot producing regions. However, due to the evolving nature of fresh fruit marketing, many wholesale and retail apricot buyers have developed their own specific criteria that their suppliers are required to meet to ensure a high quality product. Therefore, the Committee believes that the cost of complying with the order's handling

regulations, when such regulations are in effect, may exceed the benefits.

Furthermore, the Committee suspended the order's handling regulations, effective January 9, 2013, during the 2012-2013 fiscal period, and did not receive complaints related to the quality of Washington apricots. Therefore, the Committee believes that the marketing order's minimum handling requirements can be suspended without negatively affecting the Washington apricot industry.

After carefully evaluating all available information, the Committee recommended suspending the handling regulations prescribed under the order for the 2013-2014 and subsequent fiscal periods. However, if marketing conditions change, the Committee may take the appropriate action to reinstate the handling regulations or recommend termination of the order.

This rule enables Washington apricot handlers to ship apricots without regard to the order's minimum grade, size, quality, maturity, and inspection requirements for the remainder of the 2013-2014 and subsequent fiscal periods. This action will also allow handlers to decrease their total costs by eliminating the expenses associated with mandatory inspections. However, this rule does not impede

handlers from seeking product inspection on a voluntary basis, if they find inspection desirable. At the end of each season, the Committee will evaluate the impact of the suspension of the handling regulations on marketing conditions and grower returns. Should modification become necessary, the Committee would recommend a change to USDA.

As a result of the suspension of the handling regulations, the Inspection Service will no longer generate and forward inspection certificates to the Committee. Prior to the temporary suspension of the handling regulation during the 2012-2013 season, the Committee used these certificates as the basis for collecting handler assessments and compiling apricot industry statistics. In the absence of such inspection certificates for upcoming seasons, the Committee intends to enter into a memorandum of understanding with the Washington State Department of Agriculture in order to obtain the information necessary to collect assessments and generate statistical information. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

Consistent with the suspension of § 922.321, this rule also suspends § 922.111 of the rules and regulations in

effect under the order. Section 922.111 contains provisions for handlers to apply for a waiver from mandatory inspection when such inspection is not readily available from the Inspection Service. With the suspension of the handling regulations, such waivers are no longer necessary.

### **Initial 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 action 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 businesses 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 growers of Washington 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 as those having annual receipts of less than \$7,000,000. (13 CFR 121.201)

The National Agricultural Statistics Service (NASS) reports that the 2012 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 6,700 tons, the average price was \$1,250 per ton, and the total farm-gate value was approximately \$8,371,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2012 average revenue from the sale of apricots was approximately \$89,000. In addition, based on information from the USDA's Market News Service, 2012 f.o.b. prices for WA No.1 apricots ranged from \$16.00 to \$24.00 per 24-pound loose-pack container, and from \$18.00 to \$27.00 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. In view of the foregoing, it is concluded that the majority of growers and handlers of Washington apricots may be classified as small entities.

At its May 13, 2013, meeting, the Committee unanimously recommended suspending the handling regulations for the 2013-2014 and subsequent fiscal periods. This rule suspends the requirements specified in § 922.111 and § 922.321 of the order. The suspension of these regulations will allow the Washington apricot industry to market apricots without regard to minimum grade, size, quality, maturity, and inspection requirements prescribed under the Federal marketing order. Authority for this action is provided in § 922.53.

In prior years, the handling regulation has helped ensure that only acceptable, quality apricots enter fresh market channels, thereby fostering consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification may exceed the benefits. The Committee also believes that the demands of wholesale buyers and consumers will continue to drive growers and handlers to maintain a high level of product quality, without the necessity of imposing minimum quality standards and mandatory inspections. At the end of each fiscal period, the Committee will evaluate the results

of the regulatory suspension and determine if changes are necessary.

The apricot industry has seen considerable fluctuations in the price of apricots in recent years. As a result, at times some growers and handlers have faced difficulty covering their total production costs. In response to the adverse economic conditions experienced by the industry, the Committee discussed the possibility of reducing handling expenses by the eliminating mandatory inspections. The Committee considered the potential consequences of suspending the handling and inspection regulations, and how this may result in lower quality apricots being shipped to fresh markets. Also, if fruit quality were to decline, some Committee members were concerned that the Washington apricot industry could lose sales to other apricot producing regions.

The Committee believes that current market conditions make the inspection program unnecessary and that the costs associated with regulation are greater than the benefits. Therefore, the Committee recommended the suspension of the handling regulations for the remainder of the 2013-2014 and subsequent fiscal periods. The Committee will evaluate the effects of the suspension at the end of each season and

consider appropriate actions for the ensuing fiscal periods.

This rule enables handlers to ship apricots without regard to the order's minimum grade, size, quality, maturity, and inspection requirements for the remainder of the 2013-2014 year and subsequent fiscal periods. This action will also eliminate the costs associated with mandatory inspections. However, this rule does not prohibit handlers from seeking inspection on a voluntary basis if they find inspection desirable.

The suspension of the handling regulations will result in the elimination of mandatory inspections and, in turn, the inspection certificates generated by the Inspection Service. The Committee has used these certificates in prior years for assessment billing purposes and for compiling industry statistics. To replicate the information that was previously provided by the inspection certificates, the Committee intends to enter into a memorandum of understanding with the Washington State Department of Agriculture in order to obtain information on which to collect assessments and generate statistical information.

The Committee anticipates that this interim rule will not negatively impact small handlers or growers. The action is a relaxation of the regulations, suspending the minimum grade, size, quality, maturity, and inspection requirements prescribed under the order. The total cost of inspection and certification for fresh shipments of Washington apricots during the 2011 fiscal period was estimated by the Committee to have been \$0.23 per hundredweight, or approximately \$12,700 total. This represents approximately \$635 per handler. Since handlers may choose to have their apricots voluntarily inspected, the Committee expects that some handlers will continue to have at least a portion of their fresh apricots inspected and certified by the Inspection Service.

The Committee considered other alternatives to the indefinite suspension of the handling regulations, which included maintaining the status quo, suspending regulations on an annual basis, and terminating the marketing order in its entirety. The Committee believes that the continuation of mandatory regulation would be an unnecessary burden on the Washington apricot industry, given the evolving marketing conditions and future industry outlook. Thus, continuing to regulate as currently prescribed by the order

was not a viable option for the Committee. The Committee also discussed suspending the handling regulations on an annual basis, but rejected this alternative at this time. Finally, the Committee considered terminating the order in its entirety, but eliminated this option as well, after determining that such a drastic action was unwarranted at this time. The Committee will evaluate the impacts of the suspension at the end of each season and consider appropriate actions for ensuing fiscal periods.

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 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.

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.

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

Further, 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 the Committee's deliberations. Like all Committee meetings, the May 13, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to

Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the suspension of the handling regulations prescribed under the Washington apricot marketing order. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that the regulatory requirements no longer tend to effectuate the declared policy of the Act and are therefore being suspended indefinitely.

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) This interim rule is a relaxation of the apricot handling regulations and should be made effective as soon as possible for the 2013-2014 fiscal period, which began April 1, 2013; (2) handlers are already shipping apricots and should know as soon as

possible that they are able to market their apricots without regard to the order's handling regulations; (3) this issue has been widely discussed at various industry and association meetings, and the Committee has kept the industry well informed; (4) handlers are aware of this rule, which was recommended at a public meeting; and (5) this rule provides a 60-day comment period, and any comments 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.

**§§ 922.111 and 922.321 [Suspended]**

2. In Part 922, §§ 922.111 and 922.321 are suspended indefinitely in their entirety, beginning on [Insert date 1 day after the date of publication in the Federal Register].

Dated: October 17, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

[FR Doc. 2013-24900 Filed 10/22/2013 at 8:45 am;  
Publication Date: 10/23/2013]