

section, any waiver of eligibility for emergency crop loss assistance in connection with the crop will not be effective for the crop for the year in which the avoidance occurred.

#### 11. Exclusion of Coverage

(a) Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under this endorsement, except the Late Planting Agreement Option. Written agreements are not available for any crop insured under this endorsement.

(b) Notwithstanding any provision contained in any other crop policy, hail and fire coverage and high-risk land may not be excluded under catastrophic risk protection.

#### 12. Eligibility for Other USDA Program Benefits

(a) Even if it was a crop of economic significance for the previous crop year, if you do not intend to plant the crop in the current crop year, you do not have to obtain crop insurance or execute a waiver of your eligibility for any emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in subsection (e). However, if, after the sales closing date, you plant that crop, you will be unable to obtain insurance for that crop and you must execute a waiver of your eligibility for emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in section 12(e). Failure to execute such a waiver will require you to refund any benefits already received under a program specified in section 12(e).

(b) You are initially responsible to determine the crops of economic significance in the county. The insurance provider may assist you in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop, times your share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer in the county; and

(3) Divide the value of the specific crop by the result of section 12(b)(2).

(c) You may use the type of price such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that you use the same type of price for all crops in the county.

(d) You may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

(e) You must obtain at least catastrophic coverage for each crop of economic significance in the county in which you have an insurable share, if insurance is available in the county for the crop, unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for:

(1) Benefits under the Agricultural Market Transition Act;

(2) Loans or any other USDA provided farm credit, including: guaranteed and direct

farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(3) Benefits under the Conservation Reserve Program derived from any new or amended application or contracts executed after October 13, 1994.

(f) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If you breach the insurance contract, the execution of a waiver of any eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurs.

Signed in Washington, D.C., on August 13, 1996.

Kenneth D. Ackerman,  
*Manager, Federal Crop Insurance Corporation.*

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### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV96-922-1FIR]

#### Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule suspending for the 1996 season only, the minimum grade requirements (Washington No. 1), for fresh shipments of apricots grown in Washington. This change was recommended by the Washington Apricot Marketing Committee (committee), which works with the Department in administering the marketing order covering apricots grown in designated counties in Washington. This rule enables handlers to ship more fruit in fresh market channels, taking into consideration the damage caused to Washington apricots by freezing temperatures during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers.

**EFFECTIVE DATE:** September 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724;

or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5331. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922 (7 CFR Part 922), both as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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 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 75 handlers of Washington apricots who are subject to regulation under the order and approximately 400 producers in the regulated area. Small agricultural service firms, which includes handlers of Washington apricots, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of Washington apricot handlers and producers may be classified as small entities.

This rule finalizes an interim final rule suspending minimum grade requirements and therefore is a relaxation in regulations which should result in reduced costs and increased returns to handlers and producers. This will lower inspection costs and also enable handlers to ship a larger portion of their crop to the fresh market to meet consumer needs. Therefore, AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on June 12, 1996, and published in the Federal Register (61 FR 30495, June 17, 1996), with an effective date of June 15, 1996. That rule amended § 922.321 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended July 17, 1996. No comments were received.

Section 922.52 of the order authorizes the issuance of grade, size, quality, maturity, container markings, pack, and container regulations for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 further authorizes the modification, suspension, or termination of regulations issued under § 922.52. Section 922.55 provides that whenever apricots are regulated pursuant to §§ 922.52 or 922.53, such apricots must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

The minimum grade, maturity, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation 21* [7 CFR 922.321]. This

final rule finalizes the interim final rule to temporarily suspend the minimum grade requirement in § 922.321. This provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments subject to exemption under the regulation. Other parts of § 922.321 that remain in effect, provide that the Moorpark variety in open containers must be generally well matured. Also remaining in effect is the provision that with the exception of exempt shipments, apricots must be at least reasonably uniform in color, and be at least 1 $\frac{1}{8}$  inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1 $\frac{1}{4}$  inches in diameter. Individual shipments of apricots are also exempt from all these requirements if sold for home use only, do not exceed 500 pounds net weight, and containers are stamped or marked with the words "not for resale."

This rule finalizes the interim final rule that amended paragraph (a)(1) of § 922.321 by continuing temporary suspension of the minimum grade requirements for fresh shipments of apricots for the 1996 season only. The grade requirements currently specified in § 922.321 will resume April 1, 1997, for 1997 and future seasons.

At its May 16, 1996, meeting, the committee unanimously recommended suspending the grade requirements for the 1996 season. The committee requested that this suspension be effective by June 15, the date shipments of the 1996 Washington apricot crop are expected to begin.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and 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.

The committee reports that the apricot crop was severely damaged by several freezes last winter and early this spring. The severe weather conditions resulted in a high percentage of damage from russetting, scab spots, and other grade defects making it difficult for apricots to meet the minimum grade requirements of Washington No. 1. The committee estimates that only 2,300 tons of

apricots will be shipped fresh during the 1996 season, even with the grade requirements suspended as requested. This amount is 52 percent of last season's fresh shipments of 4,452 tons and 46 percent of the five-year average of 4,965 tons.

This final rule continues the suspension of the grade requirements specified in § 922.321. Thus, the color and minimum size requirements for all varieties and the well matured requirements for the Moorpark variety will remain unchanged.

This final rule enables handlers to continue to ship a larger portion of their crop to the fresh market this season, taking into account the abnormal growing conditions, than they would be allowed if the minimum grade requirements were not suspended. Continued suspension of the grade requirements for Washington apricots is intended to increase fresh shipments to meet consumer needs and improve returns to producers. It is the Department's view that the impact of this action upon producers and handlers, both large and small, will be beneficial because it will enable handlers to provide apricots consistent with 1996 season growing conditions.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 30495, June 17, 1996) will tend to effectuate the declared policy of the Act.

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

Marketing agreements, Apricots, 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**

Accordingly, the interim final rule amending 7 CFR part 922 which was published at 61 FR 30495 on June 17, 1996, is adopted as a final rule without change.

Dated: August 13, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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