

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV06-922-1 FIR]

#### Apricots Grown in Designated Counties in Washington; Temporary Suspension of Container Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that suspends the container regulations prescribed under the Washington apricot marketing order for the 2006 shipping season only. The marketing order regulates the handling of fresh apricots grown in designated counties in the State of Washington, and is administered locally by the Washington Apricot Marketing Committee (Committee). This relaxation of the regulations provides the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or type of container. The Committee recommended a temporary suspension of the container regulations so that it can thoroughly evaluate the impact the relaxation has on the apricot industry prior to taking any action for subsequent seasons.

**DATES:** *Effective Date:* Effective August 17, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724; Fax: (503) 326-7440.

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 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."

USDA 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 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 continues in effect the temporary suspension of the container regulations (§ 922.306) prescribed under the order until March 31, 2007. This rule provides additional flexibility to the apricot industry by allowing handlers to pack apricots in any type,

shape, or size container. The container regulations prescribed under § 922.306 will resume on April 1, 2007, for the 2007-2008 and future seasons unless the Committee recommends, and the USDA approves, action to extend the suspension. The Committee recommended a temporary suspension of the regulations rather than an open-ended suspension to help ensure that a thorough analysis of the 2006 shipping season is completed prior to any possible future action regarding the issue of container regulation suspension.

Section 922.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of apricots grown in the production area. Section 922.52(a)(3) specifically authorizes the establishment of the container regulations found in § 922.306. Section 922.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52.

Authority to regulate the size, weight, dimension and pack of containers used in the marketing of fresh apricots was included in the order when promulgated in 1957. Container regulatory authority was included in the order to provide container standardization, to enhance orderly marketing conditions, and to provide for increased producer returns. To provide the industry with needed flexibility, handlers are also authorized to make test shipments in experimental containers. When container regulations are effective, this provision (§ 922.110) allows handlers to apply to the Committee seasonally to pack and ship in containers that would otherwise not be authorized by the regulations.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of any regulatory requirements for Washington apricots that are issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews the Committee recommendations along with any supportive information submitted by the Committee, as well as information from other available resources, and determines whether modification, suspension, or termination of the

regulatory requirements would tend to effectuate the declared policy of the Act.

During such a review at its February 8, 2006, meeting, the Committee unanimously recommended suspending the container regulations for the 2006 shipping season. The Committee recommended that this rule be effective no later than June 1, 2006, to ensure that the earliest shipments of apricots benefit from the relaxed regulations.

When effective, § 922.306 provides that apricots must be handled domestically in (1) open containers or telescopic fiberboard cartons weighing 28 pounds or greater; (2) closed containers with 14 pounds or more of apricots packed in a row-faced or tray-pack configuration; (3) closed containers with 12 pounds (or more) of random sized, non row-faced apricots; or (4) closed containers with 24 pounds or more of loose-packed apricots.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Handlers report, however, that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Packaging options could also include consumer-friendly "clam shell" containers or other similar type containers designed to enhance the appearance of individual pieces of fruit.

This temporary suspension of the container regulations provides the industry with needed flexibility, while providing the Committee with the ability to evaluate the affect the relaxation has on the orderly marketing of the apricot crop during the 2006 shipping season.

### 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 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 \$6,500,000.

For the 2005 apricot shipping season, the Washington Agricultural Statistics Service has prepared a preliminary report showing that the total 5,600 ton apricot utilization sold for an average of \$997 per ton. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2005 can thus be estimated at approximately \$18,611. In addition, based on information from the Committee and USDA's Market News Service, 2005 f.o.b. prices ranged from \$15.00 to \$20.00 per 24-pound loose-pack container, and from \$14.00 to \$24.00 for 2-layer tray pack containers. With about half of the 2005 season fresh apricot pack-out of 4,471 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), all the industry's handlers would have averaged gross receipts of less than \$750,000 from the sale of fresh apricots. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

At its February 8, 2006, meeting the Committee unanimously recommended the temporary suspension of the order's container regulations (§ 922.306). Section 922.52(a)(3) of the order specifically authorizes the establishment of container regulations. Further, § 922.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52. The temporary relaxation in the container regulations is expected to provide the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or type of container. Container regulations have been utilized in past seasons to provide a degree of standardization and thus have helped in providing the industry with orderly marketing conditions. Rapidly changing market dynamics have convinced the Committee that such standardization may no longer be necessary to ensure orderly marketing. The Committee recommended a temporary suspension so it can conduct a thorough evaluation of the impact the relaxation had on the industry during the 2006 shipping season prior to taking any further action for subsequent seasons.

The Committee anticipates that this rule will not negatively impact small businesses. This rule suspends the container requirements found under § 922.306 of the order's rules and regulations and should provide enhanced marketing opportunities. The Committee anticipates that the only additional costs this rule may have on the industry would be associated with the development and use of any new containers.

The Committee discussed alternatives to its recommendation to suspend the container regulations. Primary amongst these was the option of leaving the container regulations intact without change. After some discussion, the Committee rejected this option as being an inadequate response to the growing interest for greater flexibility in packaging. The Committee also discussed whether to recommend an indefinite suspension of the container regulations—an alternative which was rejected in favor of evaluation of the suspension's impact.

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 compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

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 Committee deliberations. Like all Committee meetings, the February 8, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule regarding this action was published in the **Federal Register** on April 5, 2006. Copies of the rule were made available by the Committee staff to all Committee members and apricot handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period

which ended June 5, 2006. 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/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 Committee's recommendation, and other information, it is found that finalization of the interim final rule, without change, as published in the **Federal Register** (71 FR 16982, April 5, 2006) will tend to effectuate the declared policy of the Act.

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

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922 which was published at 71 FR 16982 on April 5, 2006, is adopted as a final rule without change.

Dated: July 12, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6-11302 Filed 7-17-06; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV06-948-1 IFR]

#### Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

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

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

**SUMMARY:** This rule suspends the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2006–2007 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of

lowering the monetary reserve to a level consistent with program requirements. The fiscal period begins July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

**DATES: Effective Date:** July 19, 2006. Comments received by September 18, 2006, 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 or Gary D. 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.

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, 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 order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such

assessments. For the 2005–2006 fiscal period, an assessment rate of \$0.02 per hundredweight of potatoes handled was approved by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the assessment rate for the 2006–2007 fiscal period, which begins July 1, 2006, and will continue in effect until reinstated. 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 suspends § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of \$0.02 per hundredweight of Colorado potatoes handled for 2005–2006 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule suspends the \$0.02 assessment rate for 2006–2007 and will remain in effect during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

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. In addition, the order authorizes the use of monetary reserve funds to cover program expenses (§ 948.78). The members of the Committee are producers and handlers of Colorado potatoes. 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 in a public meeting.