

# Rules and Regulations

Federal Register

Vol. 72, No. 133

Thursday, July 12, 2007

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. AMS-FV-07-0031; FV07-922-1 FIR]

#### Apricots Grown in Designated Counties in Washington; 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 suspending the container regulations prescribed under the Washington apricot marketing order. This rule continues in effect the action that indefinitely extended the temporary 2006 season container regulation suspension. 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 in the regulatory requirements allows handlers to pack and ship apricots in any size, shape, or type of container, thus providing the apricot industry with increased marketing flexibility.

**DATES:** *Effective Date:* August 13, 2007.

**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; or E-mail: [Robert.Curry@usda.gov](mailto:Robert.Curry@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

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."

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. 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 indefinite suspension of the order's container regulations. This regulatory suspension 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 remain suspended for the 2007 and future seasons unless the Committee recommends, and USDA approves, action to reinstate the regulations.

For the 2006 season only, the Committee recommended a temporary suspension of the container regulations to help ensure that a thorough analysis of that season would be completed prior to any possible future action regarding the container regulations. After reviewing the effects of the temporary suspension on the 2006 apricot shipping season, the Committee determined that the industry could successfully market its fresh apricot crop without the container regulations in place. The Committee consequently concluded that the Washington apricot industry would be best served by an open-ended suspension of § 922.306. To facilitate prompt reinstatement of the container regulations should future market conditions warrant such, the Committee recommended that the 2006 temporary regulation suspension be extended indefinitely rather than replaced by a permanent removal of the regulations from the order.

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.

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 15, 2007, meeting, the Committee determined, and unanimously recommended, that the 2006 season container regulation suspension (71 FR 16979; effective from April 1, 2006, through March 31, 2007) be extended indefinitely. For a seamless extension of the suspension, the Committee recommended that this rule be effective by April 1, 2007.

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.

In reaching a consensus to extend the 2006 regulatory suspension into the 2007 and future seasons, Committee members noted that, although container standardization had contributed to orderly marketing in the past, buyers today are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. In addition, with the regulations suspended, handler members concurred that they now enjoy greater latitude in choosing the optimum container weight for a particular pack or customer. Committee members were unanimous in the opinion that this indefinite container regulation suspension provides the industry with the flexibility needed to meet the challenges of marketing fresh apricots.

#### 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 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (SBA)(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.

Data from the Washington Agricultural Statistics Service shows that the total 5,900 ton Washington apricot utilization sold for an average of \$969 per ton in 2005 with a total value of \$5,715,000. 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 \$19,050. 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. Assuming that equal quantities of the 2005 season fresh apricot pack-out of 4,471 tons went into loose-pack (24-pound) containers and tray-pack containers (weighing an average of about 20 pounds each), average gross receipts per handler from the sale of fresh apricots would have been approximately one-half of the annual sales figure that the SBA uses to define the minimum size of a large agricultural service business (\$750,000). Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

At its February 15, 2007, meeting the Committee recommended that the temporary suspension of the order's container regulations (§ 922.306)—effective from April 1, 2006, through March 31, 2007—be indefinitely extended to cover the 2007 shipping season as well as all future seasons. 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. This indefinite extension of the container regulation suspension is expected to continue 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. However, changing market dynamics and the experience gained through the 2006 suspension have convinced the Committee that container standardization is no longer necessary to ensure orderly marketing. Last year, rather than seeking an indefinite suspension of the regulations, the Committee recommended a temporary suspension so that it could conduct a thorough evaluation of the impact the relaxation would have on the industry during the 2006 shipping season prior to taking any further action for subsequent seasons. In reviewing the 2006 season at the February 15, 2007, meeting, the Committee easily reached a consensus that an indefinite continuation of the container regulation suspension would best fit the industry's marketing needs.

The Committee anticipates that this rule will not negatively impact small businesses. This rule extends the suspension of the container requirements found under § 922.306 of the order's rules and regulations and should continue to provide enhanced marketing opportunities.

The Committee discussed—and subsequently rejected—alternatives to its recommendation to extend the container regulation suspension. These included allowing the reinstatement of the regulations (by not taking any action) and continuing with annual and temporary regulatory suspensions such as recommended for the 2006 season. With a successful season behind them, Committee members were unanimous in their decision to recommend to USDA an extension of the container regulations suspension for an indefinite period.

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. In addition, 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.

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 15, 2007, 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 concerning this action was published in the **Federal Register** on April 4, 2007. Copies of the rule were made available to the Washington apricot industry by Committee staff, as well as through the Internet by the USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended June 4, 2007. 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 finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 16263, April 4, 2007) 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 that was published at 72 FR 16263 on April 4, 2007, is adopted as a final rule without change.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-13538 Filed 7-11-07; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. AMS-FV-07-0043; FV07-959-2 FIR]

#### Onions Grown in South Texas; Exemption of Onions for Export

**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 exempting onions being shipped to export markets from regulations prescribed under the South Texas onion marketing order. The marketing order regulates the handling of onions grown in South Texas, and is administered locally by the South Texas Onion Committee (Committee). This rule continues in effect the action that provides a special purpose shipment exemption for onions being shipped to export markets. Under this change, onion shipments for export will continue to be exempt from the grade, size, quality, and inspection requirements of the marketing order.

This rule continues in effect the action that provides handlers additional flexibility in marketing onions of different grades and quality in various markets outside of the U.S. This change helps the South Texas onion industry develop additional markets for its onions, while increasing returns to producers and providing an increased supply of onions to help satisfy a rapidly developing export market.

**DATES:** *Effective Date:* August 13, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942, or E-mail: [Belinda.Garza@usda.gov](mailto:Belinda.Garza@usda.gov).

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 No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating

the handling of onions grown in South Texas, 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. 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 rule, unanimously recommended by the Committee at its March 16, 2007, meeting, continues in effect the action that exempts onion export shipments from the grade, size, quality and inspection requirements prescribed under the South Texas onion marketing order. To effectuate the exemption, paragraphs (e)(1) and (f) of § 959.322 were modified by adding the term "export" to the list of authorized special purpose shipment categories.

Section 959.52 of the order authorizes the issuance, amendment, modification, suspension, or termination of regulations for grade, size, quality, maturity, pack, and container for any variety of onions grown in the production area. Section 959.53 provides that regulations in effect pursuant to §§ 959.42, 959.52, or 959.60 may be modified, suspended or terminated to facilitate the handling of onions for specified special purpose shipments, including export. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the Federal-State Inspection Service, and