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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS-FV-12-0028; FV12-922-2 FIR]

Apricots Grown in Designated Counties in Washington;

Temporary Suspension of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that temporarily suspended the handling regulations and inspection requirements prescribed under the marketing order for apricots grown in designated Counties in Washington. The interim rule suspended the minimum grade, size, quality, maturity, and inspection requirements for the 2012-2013 fiscal period. This change is expected to reduce overall industry expenses and increase net returns to producers and handlers.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement

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Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence 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 and Order No. 922, as amended (7 CFR 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.

The handling of apricots grown in designated Counties in Washington is regulated by 7 CFR part 922. Section

922.321, with exemptions for certain varieties and types of shipments, provides that all apricots shall grade not less than Washington No. 1, and are at least reasonably uniform in color; provided, that such apricots of the Moorpark variety in open containers shall be generally well matured. The regulation also includes a minimum quantity exemption, as well as specific tolerances for apricots that fail to meet color, minimum diameter, and quality requirements. The objective of the handling regulation has been to ensure that only acceptable quality apricots enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. However, due to the evolving nature of fresh fruit marketing, many wholesale and retail apricot buyers now require their own specific criteria for product quality from all handlers. Therefore, this rule continues in effect the interim rule that suspended the handling regulations prescribed in § 922.321 for the 2012-2013 fiscal period.

Section 922.111 contains provisions for handlers to apply for waivers from mandatory inspection when such inspection is not readily available from the Inspection Service. With the suspension of the regulation, such

waivers are no longer necessary. Therefore, consistent with the suspension of § 922.321, this rule also continues in effect the interim rule that suspended § 922.111 for the 2012-2013 fiscal period.

In an interim rule published in the **Federal Register** on January 8, 2013, and effective on January 9, 2013, (78 FR 1127, Doc. No. AMS-FV-12-0028, FV12-922-2 IR), §§ 922.321 and 922.111 were suspended for the 2012-13 fiscal period, ending March 31, 2013.

Final 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 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 20 handlers of Washington apricots who are subject to regulation under the marketing order and approximately 94 apricot producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reports that the total annual production of Washington apricots has fluctuated from approximately 4,200 to 8,900 tons per year for the past several years. NASS also reports that the 2011 value of utilized production for Washington apricots was \$7,132,000. Therefore, based on the 2011 value of Washington apricots and the approximate number of apricot producers in the production area, the 2011 average producer receipts were approximately \$76,000; which is considerably less than the \$750,000 threshold. In view of the foregoing, it can be concluded that a majority of the handlers and producers of Washington apricots may be classified as small entities.

This rule continues in effect the interim rule that suspended the handling regulations specified in §§ 922.111

and 922.321 for the 2012-2013 fiscal period. The suspension of these handling regulations allows the Washington apricot industry to market apricots without regard to the minimum grade, size, quality, maturity, and inspection requirements prescribed under the federal marketing order. Authority for this action is provided in § 922.53.

This action is not expected to increase the costs associated with the order requirements. Rather, this action allows handlers to decrease their costs during the 2012-2013 fiscal period by eliminating the expense associated with mandatory inspection. However, this rule does not impede handlers from seeking inspection on a voluntary basis if they find inspection desirable. The opportunities and benefits of this rule are equally available to all Washington apricot handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. 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. 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 Committee deliberations. Like all Committee meetings, the May 24, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before March 11, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0028-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. 3501-3520), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 1127, January 8, 2013) 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 - [AMENDED]

Accordingly, the interim rule that amended 7 CFR part 922 and was published at 78 FR 1127 on January 8, 2013, is adopted as a final rule, without change.

Dated: April 19, 2013

Rex A. Barnes

Acting Administrator
Agricultural Marketing Service

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