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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV95-922-1FIR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements for Apricots of the Patterson Variety

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 which temporarily suspended for the 1995 season only, the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety of apricots grown in Washington. The suspension will enable handlers of Patterson variety apricots to ship more fruit to the fresh market, taking into consideration the significant hail damage experienced by this variety during the growing season. This action will improve returns to producers of the Patterson variety of apricots. This rule was recommended by the Washington Apricot Marketing Committee (Committee), the agency responsible for the local administration of the marketing order for Washington apricots.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue,

room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." This 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, 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 8c(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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 30 handlers of Washington apricots subject to regulation under the order and approximately 400 producers of Washington apricots in the regulated production area. Small agricultural service firms, which includes handlers, 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 handlers and producers of Washington apricots may be classified as small entities.

This rule finalizes the temporary suspension of the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety apricot for the 1995 season only. This temporary suspension allowed handlers of the Patterson variety apricot to ship more fresh apricots to the market due to the significant hail damage the crop has received.

Section 922.52 (7 CFR 922.52) authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 (7 CFR 922.53) authorizes the modification, suspension, or termination of the regulations issued under § 922.52.

Minimum grade, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation 21* (7 CFR 922.321). Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments that are exempt from regulation. In addition, this section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⁵/₈ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¹/₄ inches in diameter.

This rule suspends the minimum grade requirements for fresh shipments of the Patterson variety of apricots for the 1995 season. The grade requirements for the Patterson variety will resume April 1, 1996, for the 1996 and future seasons. Color and size

requirements for the Patterson variety will remain unchanged.

The Committee met on May 11, 1995, and unanimously recommended the suspension of grade requirements for the Patterson variety. The Committee requested that this suspension be made effective by July 1, 1995, since the harvest of the Patterson variety was expected to begin shortly thereafter.

The Committee meets prior to 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.

Information available to the Committee indicates that the Patterson variety of apricots experienced severe hail damage this season. The excessive damage was a result of location and stage of fruit development. The Patterson variety is the latest variety of apricots produced within the production area. Earlier varieties of apricots did not experience significant hail damage.

This suspension will enable handlers to ship a larger portion of the Patterson variety to the fresh market this season, than if the minimum grade requirements were not suspended. Without suspension of the grade requirements for the Patterson variety, most of the fruit could not be shipped to fresh markets. Last year, 151 tons of the Patterson variety were shipped into the fresh market. Information available to the Committee indicates that with suspension of the grade requirements for the Patterson variety, approximately 125 tons might be shipped to the fresh market. Since the Patterson variety is the latest variety of apricots shipped within the production area, the suspension of the grade requirements for this variety should not adversely affect the marketing of other varieties.

Suspension of the grade requirements for the Patterson variety is intended to increase fresh shipments to meet consumer needs and improve returns to producers.

The interim final rule concerning this action was published in the June 22, 1995, **Federal Register** (60 FR 32429), providing a 30-day comment period ending July 24, 1995. Two comments

were received concerning the interim final rule.

Comments were submitted by Gene Stokes, general manager of the California Apricot Advisory Board (Board) and Steve Hash, Vice President of the Agricultural Division of A. Levy and J. Zentner Co., and member of the Board as well. Both contend that the Board is opposed to the temporary suspension of grade requirements because it would adversely affect the California fresh apricot market. Since the California apricot season ends (May through August) just when the Washington apricot season begins (July through September), Messrs. Stokes and Hash believe that any reduction in quality standards in Washington apricots would have a negative effect on purchases of California apricots during the 1996 season. They also contend that this temporary suspension would set a dangerous precedent for the future because hail damage is a common occurrence in Washington and California.

The Department has reviewed the comments of the Board and does not agree that the temporary suspension of grade requirements for one variety of Washington apricots will adversely affect the California market. There is a seven month period of time (from September to May) between the end of Washington apricot shipments for 1995 and the beginning of California apricot shipments for 1996. This period of time between the Washington and California shipping seasons is more than adequate not to have impact on the California apricot market.

After thoroughly analyzing the comments received and other available information, the Department agrees with and upholds the request of the Committee to temporarily suspend grade requirements for the Patterson variety apricot for the 1995 season, only. The Department does not believe that the comments of the Board have merit and concludes that this final rule is appropriate.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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** (60 FR 32429, June 22, 1995) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective

date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the interim final 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

Accordingly, the interim final rule amending 7 CFR part 922 which was published at 60 FR 32429 on June 22, 1995, is adopted as a final rule without change.

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-22949 Filed 9-14-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 927

[FV95-927-2IFR]

Winter Pears Grown in Oregon, Washington, and California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule reduces the reporting requirements for handlers who have shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season. This action decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program. This rule was recommended by the Winter Pear Control Committee (Committee), the agency responsible for the local administration of the marketing order for winter pears.

EFFECTIVE DATE: September 15, 1995. Comments received by October 16, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments