

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV06-922-2 IFR]

#### Apricots Grown in Designated Counties in Washington; Temporary Relaxation of the Minimum Grade Requirement

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

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

**SUMMARY:** This rule relaxes the minimum grade requirement 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 rule relaxes the minimum grade requirement for fresh apricots from Washington No. 1 grade to Washington No. 2 grade. This rule will enable handlers to ship more fruit into fresh market channels, taking into consideration hail damage caused to Washington apricots during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers.

**DATES:** Effective August 3, 2006, through March 31, 2007. Comments received by October 2, 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>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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:

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."

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 relaxes the minimum grade requirement for fresh apricots from Washington No. 1 grade to Washington No. 2 grade. This rule will enable handlers to ship more fruit into fresh market channels, taking into consideration hail damage caused to Washington apricots during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers. The minimum grade requirement will revert to Washington No. 1 grade on April 1, 2007, for the 2007 and future seasons.

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 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 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.

Minimum grade, maturity, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation 21*. Section 922.321 provides, in part, 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. In addition, the section provides that the Moorpark variety in open containers must be generally well matured. That section also provides that, with the exception of exempt shipments, apricots must be at least reasonably uniform in color, and be not less than 1 5/8 inches in diameter, except

for the Blenheim, Blenril, and Tilton varieties which must be not less than 1¼ inches in diameter. Individual shipments of apricots are exempt from these requirements if sold for home use only, do not, in the aggregate, exceed 500 pounds net weight, and each container is stamped or marked with the words "not for resale."

This rule revises paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 to Washington No. 2 for the 2006 season only. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons.

Based on a request from a handler representing several producers, the Committee recommended by a vote of nine to one that the grade requirement be relaxed for the 2006 season to facilitate the handling of fruit damaged by hail. The Committee requested that this relaxation be effective by the beginning of the 2006 Washington apricot shipping season, which is expected to be around July 1, 2006.

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 USDA reviews information submitted by, and recommendations from, the Committee and other available information to determine whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee has conveyed to USDA that widely scattered hail damage was reported within the Washington apricot production area as a result of late spring storms. The severe weather conditions resulted in damage to the crop making it difficult for apricots to meet the minimum grade requirements of Washington No. 1. The Committee's original crop estimate for the 2006 season was established at 5,000 tons. With the full extent of hail damage unknown at this time, the Committee has not established a revised crop estimate. However, taking into account the reported damage, this rule provides for the handling of a larger portion of the Washington apricot crop this season than would be allowed if the minimum grade requirement were to remain at Washington No. 1. Relaxation of the grade requirement for the 2006 Washington apricot crop is intended to

increase fresh shipments to meet consumer needs and improve returns to producers.

This rule relaxes the grade requirement specified in § 922.321. This rule will not effect the color and minimum size requirements for all varieties or the well matured requirements for the Moorpark variety.

#### **Initial 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 initial 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 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.

Average revenue per handler can be estimated using f.o.b. prices. According to USDA's Market News Service, 2005 fresh apricot 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 (which weigh an average of about 20 pounds each). Total apricot sales revenue at the f.o.b. shipper level can be estimated by taking the midpoints of each of the two ranges (\$17.50 and \$19.00) as representative annual average prices for each of the container types. The 2005 season fresh apricot pack-out of 4,471 tons can be assumed to be equally divided between the two

container types, yielding an estimated quantity packed in each container type of 2235.5 tons, or 4.471 million pounds. Dividing this quantity by the pounds per container yields the following handler sales revenue estimates: (a) 186,292 24-pound loose-pack containers, with an average price of \$17.50, valued at \$3,260,110 and (b) 223,550 two-layer tray pack containers, with an average price of \$19.00, valued at \$4,246,500. Combining the estimated handler sales revenue for the two container types (\$7,506,610) and dividing by the number of handlers (22) yields an annual average fresh apricot sales revenue estimate per handler of \$341,210. Since this figure is well under \$750,000 (the SBA definition of the minimum sales of a large agricultural service firm), it is reasonable to assume that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule revises paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 to Washington No. 2 for the 2006 season only. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons. 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 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52.

The Committee anticipates that this rule will not negatively impact small businesses. This rule relaxes the minimum grade requirement in the order's handling regulations and should provide enhanced marketing opportunities.

Given the emergency nature of the relaxation, the Committee's recommendation was made via the vote-by-mail procedures of the order. With ten of the twelve members responding, nine members supported the temporary grade change and one member opposed it. The only alternative to a grade relaxation offered on the ballot was to leave the minimum grade at Washington No. 1, which was not adopted.

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.

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.

This rule invites comments on relaxation of the minimum grade requirement under the Washington apricot marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the minimum grade requirement in § 922.321 should be temporarily relaxed from Washington No. 1 grade to Washington No. 2 grade in order to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum grade requirement for Washington apricots for the 2006 shipping season; (2) Washington apricot handlers are aware of this recommendations and need no additional time to comply with the relaxed requirements; (3) this rule should be in effect as close as possible to July 1, 2006, the date shipments of the 2006 Washington apricot crop are expected to begin; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this 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

■ 1. The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

#### § 922.321 [Amended]

■ 2. Section 922.321 is amended by revising paragraph (a)(1) to read as follows:

(a) \* \* \*

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided*, That during the period July 1, 2006, through March 31, 2007, the minimum grade requirement for such apricots shall be not less than Washington No. 2; *Provided further*, That such apricots of the Moorpark variety in open containers shall be generally well matured: and

\* \* \* \* \*

Dated: July 27, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12410 Filed 8–1–06; 8:45 am]

BILLING CODE 3410–02–P

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### 29 CFR Part 1614

RIN 3046–AA74

#### Federal Sector Equal Employment Opportunity

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is issuing a final rule implementing the posting requirements set forth in Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174. The No FEAR Act requires a Federal agency to post on its public Web site summary statistical data pertaining to complaints of employment discrimination filed under 29 CFR part 1614 by employees, former employees and applicants for employment. Title III authorizes EEOC to issue rules concerning the “time, form and manner” of the postings, to define the terms “issue” and “basis,” and to issue any other “rules necessary to carry out” Title III.

**DATES:** *Effective Date:* August 2, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Schlageter, Assistant Legal Counsel, Gary John Hozempa, Senior General Attorney, or Mona Papillon, Senior General Attorney at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This final rule also is available in the following alternative formats: large print, braille, audiotape and electronic file on computer disk. Requests for the final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### Introduction

On January 26, 2004, EEOC published in the **Federal Register** an interim final rule setting forth the time, form and manner in which an agency shall post summary statistical EEO complaint data. 69 FR 3483 (2004). The interim rule included a 60-day comment period, which subsequently was extended an additional 30 days. 69 FR 13473 (2004).

EEOC received over 140 comments on the interim rule. One hundred and nine comments were submitted by persons identifying themselves as members of the “No FEAR Coalition.” Sixteen comments were submitted by Federal agencies and departments. Four comments were submitted by civil rights groups composed of Federal employees, one was submitted by a national civil rights group, one by an association of Federal EEO executives, one by a Member of Congress, and one was submitted by an association of Federal agency Web content managers. EEOC also received seventeen comments from individuals, most of whom identified themselves as Federal or former Federal employees.

The Commission has considered carefully all of the comments and has made some changes to the interim rule in response to the comments. The comments EEOC received and the changes made to the interim rule are discussed in more detail below.

##### Amendments to Complaints

When EEOC circulated its first draft of the interim rule under Executive Order 12067, the regulation required that, when posting information about the bases and issues raised in a complaint, agencies include bases and issues added by amendment. Agencies commenting on this provision argued that if bases and issues added by amendment were to be included among the data, withdrawals of issues and bases likewise should be reflected. When