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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV98-922-1 FIR]

Apricots Grown in Designated Counties in Washington; Change in Container Regulations

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 modified container requirements prescribed under the Washington apricot marketing order. The marketing order regulates the handling of apricots grown in designated counties in Washington and is administered locally by the Washington Apricot Marketing Committee (Committee). This rule continues in effect an action which removed the requirement requiring the use of a top pad when apricots are packed loose in closed containers weighing not less than 24 pounds. Continuation of that action will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions, and is expected to increase returns to producers and improve the quality of apricots available to consumers.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and 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." The marketing agreement and order are 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 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 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 to review the Secretary'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 revision to the language in the order's container regulations which removed the requirement requiring the use of a top pad when apricots are packed loose

in closed containers weighing not less than 24 pounds. A top pad is a pad made of various materials, typically paper, which is placed on top of fruit packed in a closed container. Continuing the removal of that requirement will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions, and is expected to increase returns to producers and handlers, and to improve the quality of apricots available to consumers.

Section 922.52 of the order provides authority for container regulations and § 922.53 provides for the modification, suspension, or termination of the container regulations due to changed conditions. The container regulations are prescribed in § 922.306. Paragraph (a)(4) of that section previously required handlers to use a top pad when apricots were packed loose in closed containers weighing not less than 24 pounds.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. The requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, are often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad when using closed containers depending on apricot variety or container dimensions. Previously, the container regulations required the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule continues to give handlers the flexibility to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. It also gives them the flexibility to use containers with different dimensions because some containers may not have sufficient space for a top pad. Continuing the removal of the top pad requirement is expected to increase returns to producers and handlers by eliminating the cost of a top

pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam), and to improve the quality of apricots available to consumers because of decreased fruit damage during transit. The removal of the requirement requiring mandatory use of a top pad for apricots packed loose in closed containers weighing not less than 24 pounds will save producers and handlers the cost of a top pad when the pad is not needed.

An editorial change which removes, for clarity, reference in § 922.306(a)(4) to containers being row-faced or tray-packed does not eliminate the current requirement in § 922.306(a)(2) which applies to all containers with a net weight of apricots greater than 14 pounds.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of Washington apricots who are subject to regulation under the order and approximately 400 apricot producers in the regulated area. Small agricultural service firms 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 having annual receipts of less than \$500,000. The majority of Washington apricot handlers and producers may be classified as small entities.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. The requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, were often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit

from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad in these closed containers depending on apricot variety or container dimensions.

Previously, the container regulations required the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule continues to provide handlers greater flexibility by allowing them to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. This rule also provides handlers greater flexibility by permitting them to use containers with different dimensions because some containers may not have sufficient space for a top pad. Continuing the removal of the top pad requirement, is expected to increase returns to producers and handlers by eliminating the cost of a top pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam) when the pad is not necessary, and to improve the quality of apricots available to consumers because of decreased fruit damage during transit.

The only alternative identified by the Committee was to continue the mandatory use of a top pad. However, this alternative was not adopted because use of the top pad in some containers damaged certain varieties of apricots during shipment.

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 sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department 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 14, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which four are handlers and eight are growers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on June 16, 1998 (63 FR 32717). Copies of the rule were mailed by the Committee's staff to all Committee

members and apricot handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 17, 1998. No comments were received.

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** (63 FR 32717, June 16, 1998) 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 63 FR 32717 on June 16, 1998, is adopted as a final rule without change.

Dated: October 5, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-27181 Filed 10-8-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98-948-1 FIR]

Irish Potatoes Grown in Colorado; Decreased Assessment Rate

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 decreased the assessment rate, from \$0.0030 to \$0.0015 per hundredweight of potatoes handled, established for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1998-99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to