

on small sizes will provide useful information. The information can be used by handlers in making marketing decisions, and may help stabilize the pricing for all red seedless grapefruit. Also, having access to this shipping information will assist the Committee in maintaining yearly statistical information on small sizes. The Committee believes this information will be useful when considering establishing future percentage of size regulation. Knowing the volume of small sizes shipped during the 2005–06 season and its market impact may also help the Committee when considering the implementation of percentage size regulation during other crop reduced years. Consequently, the Committee recommended maintaining the reporting requirement for small sizes for the remainder of the 2005–06 season. As individual handlers are already accustomed to reporting this information, continuing to report it will not create any additional costs on handlers.

The Committee considered several alternatives when discussing these actions. At the May 10, 2005, meeting, one alternative discussed was maintaining the way a handler's average week was calculated using the immediately preceding three seasons. The Committee believes including numbers from the 2004–05 season would result in averages unreflective of a handler's shipments. Therefore, this alternative was rejected. The Committee also considered not recommending percentage of size regulation for the 2005–06 season. However, the Committee agreed percentage of size regulation should be established at the levels recommended and then be revisited throughout the season as more information became available. Therefore, this alternative was also rejected. At the November 3, 2005, meeting, the Committee considered maintaining the percentages at their current level, or relaxing the percentages to allow for the shipment of more small sizes. However, considering the size of the remaining crop following the damage sustained from Hurricane Wilma, the Committee rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sectors.

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, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 10, 2005, and November 3, 2005, meetings were public meetings 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 September 14, 2005. Copies of the rule were mailed by the Committee's staff to all Committee members and Florida citrus handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 30-day comment period which ended October 14, 2005. One comment was received.

The commenter raised concerns about fair trade for consumers and restraints of trade in general. However, the Agricultural Marketing Agreement Act of 1937 and the order provisions themselves provide authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. The comment has been noted. The Committee has recommended removing the weekly percentages established for the first 22 weeks of the 2005–06 season, and this action implements that recommendation. Therefore, no changes will be made as a result of this comment.

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, with a change, as published in the **Federal Register** (70 FR 54235, September 14, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 70 FR 54235 on September 14, 2005, is adopted as a final rule with the following change:

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 905.350 [Removed and reserved]

■ 2. Section 905.350 is removed and reserved.

Dated: March 30, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–3237 Filed 4–4–06; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV06–922–1 IFR]

#### Apricots Grown in Designated Counties in Washington; Temporary Suspension of Container Regulations

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

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

**SUMMARY:** This rule suspends the container regulations 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 relaxation of the regulations provides the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or

type of container. The Committee recommended a temporary suspension of the container regulations so that it can thoroughly evaluate the impact the relaxation has on the apricot industry prior to taking any action for subsequent seasons.

**DATES:** Effective April 6, 2006, through March 31, 2007. Comments received by June 5, 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, 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 George Kelhart, Technical Advisor, 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.

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 suspends the container regulations (§ 922.306) prescribed under the order until March 31, 2007. This rule will provide 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 resume on April 1, 2007, for the 2007-2008 and future seasons unless the Committee recommends, and the USDA approves, action to extend the suspension. The Committee recommended a temporary suspension of the regulations rather than an open-ended suspension to help ensure that a thorough analysis of the 2006 shipping season is completed prior to any possible future action regarding the issue of container regulation suspension.

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. To provide the industry with needed flexibility, handlers are also authorized to make test shipments in experimental containers. This provision (§ 922.110), whenever container regulations are effective, allows handlers to apply to the Committee seasonally to pack and ship in containers that would otherwise not be authorized by the container regulations.

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 8, 2006, meeting, the Committee unanimously recommended suspending the container regulations for the 2006 shipping season. The Committee recommended that this rule be effective no later than June 1, 2006, to ensure that the earliest shipments of apricots benefit from the relaxed regulations.

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.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Handlers report that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Packaging options could also include consumer-friendly "clam shell" containers or other similar type

containers designed to enhance the appearance of individual pieces of fruit.

This temporary suspension of the container regulations will provide the industry with such flexibility, while providing the Committee with the ability to evaluate the effect the relaxation has on the orderly marketing of the apricot crop during the 2006 shipping season.

#### 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 \$6,000,000.

For the 2005 apricot shipping season, the Washington Agricultural Statistics Service has 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. 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. With about half of the 2005 season fresh apricot pack-out of 4,471 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), all the industry's handlers would have averaged gross receipts of less than \$750,000 from the sale of fresh apricots. Thus, the majority of producers and

handlers of Washington apricots may be classified as small entities.

At its February 8, 2006, meeting the Committee recommended the temporary suspension of the order's container regulations (§ 922.306). 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. The temporary relaxation in the container regulations is expected 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. Rapidly changing market dynamics have convinced the Committee that such standardization may no longer be necessary to ensure orderly marketing. The Committee recommended a temporary suspension so it can conduct a thorough evaluation of the impact the relaxation had on the industry during the 2006 shipping season prior to taking any further action for subsequent seasons.

The Committee anticipates that this rule will not negatively impact small businesses. This rule suspends the container requirements found under § 922.306 of the order's rules and regulations and should provide enhanced marketing opportunities. The Committee anticipates that the only additional costs this rule may have on the industry would be associated with the development and use of any new containers.

The Committee discussed alternatives to its recommendation to suspend the container regulations. Primary amongst these was the option of leaving the container regulations intact without change. After some discussion, the Committee rejected this option as being an inadequate response to the growing interest for greater flexibility in packaging. The Committee also discussed whether to recommend an indefinite suspension of the container regulations—an alternative which was rejected in favor of evaluation of the suspension's impact.

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.

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 8, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

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 suspension of the container regulations 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 regulation should be temporarily suspended 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 suspends the container regulations for Washington apricots for the 2006 shipping season; (2) the temporary suspension of the container regulations was unanimously recommended by the Committee at a public meeting and all interested persons had an opportunity to express their views and provide input; (3) Washington apricot handlers are aware of this recommendation and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by June 1, 2006, the date 2006 season shipments of the Washington apricot crop are expected to

begin, and this action should apply to the entire season's shipments; and (5) 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.

#### § 922.306 [Suspended]

■ 2. In part 922, § 922.306 is suspended in its entirety through March 31, 2007.

Dated: March 30, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–3240 Filed 4–4–06; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV06–930–1 IFR]

#### Tart Cherries Grown in the States of Michigan, et al.; Change in Certain Provisions/Procedures Under the Handling Regulations for Tart Cherries

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

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

**SUMMARY:** This rule removes volume limitations on new product development, new market development and market expansion activities to facilitate such activities; allows handlers to receive diversion credit for the voluntary destruction of finished, marketable products that have deteriorated in condition to provide handlers more flexibility; adds a procedure to keep Cherry Industry Administrative Board (Board) representation in line with current district production levels; and revises grower application and mapping procedures under the grower diversion program to make the process less burdensome. These changes are

intended to improve the operation of the marketing order and to increase the demand for tart cherries and tart cherry products. The changes were unanimously recommended by the Board, the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** This rule becomes effective April 6, 2006.

Comments received by June 5, 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, or E-mail:

[moabdocket.clerk@usda.gov](mailto:moabdocket.clerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan,

New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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 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 exempt 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 in equity 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.

Section 930.162 will be changed to remove volume limitations on new product development, new market development, and market expansion activities utilized by handlers to earn diversion credits to meet restricted percentage regulation withholding requirements. Handler diversion is authorized under § 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products rather than placing tart cherries in an inventory reserve. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. Volume regulation percentages are in effect for the 2005–2006 crop year (71 FR 1915, 1/12/2006).

Section 930.62 provides that the Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41 (Assessments), 930.44 (Quality control), 930.51 (Issuance of volume regulations), 930.53 (Modification, suspension, or termination of regulations), and 930.55 through 930.57 (Reserve regulations) cherries which are diverted in