

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV05-946-1 PR]

#### Irish Potatoes Grown in Washington; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the State of Washington Potato Committee (Committee) for the 2005-2006 and subsequent fiscal periods from \$0.002 to \$0.0035 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by May 2, 2005.

**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>. 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:** Teresa L. Hutchinson, Marketing

Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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 SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown 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. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning July 1, 2005, and continue until amended, suspended, or terminated. This rule would 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 would increase the assessment rate established for the Committee for the 2005-2006 and subsequent fiscal periods from \$0.002 to \$0.0035 per hundredweight of potatoes handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate was formulated and discussed at a public meeting, thus all directly affected persons had an opportunity to participate and provide input.

For the 1997-98 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.002 per hundredweight of potatoes handled. This assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 3, 2005, and unanimously recommended 2005-2006 expenditures of \$36,750 and an increased assessment rate of \$0.0035 per ton of potatoes. In comparison, last year's budgeted expenditures were \$38,500. The recommended assessment rate is \$0.0015 higher than the rate currently in effect. The Committee recommended the higher assessment rate to maintain its monetary reserve at a satisfactory level.

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include \$18,000 for surveillance inspections, \$4,800 for Washington State Potato Commission (Commission) expenses, \$3,000 for office supplies, \$3,000 for Committee expense, \$1,500 for Committee member compensation, and \$1,500 for the financial audit. The Committee operates under an agreement with the Commission. The Commission provides the Committee office space and administrative services. Budgeted expenses for these items in 2004–05 were \$20,000, \$4,800, \$3,000, \$1,500, \$1,500, and \$2,000, respectively.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington potatoes by various assessment rates. Applying the \$0.0035 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide \$35,000 in assessment income. Thus, income derived from handler assessments and interest (\$800) plus \$950 from the Committee's monetary reserve would be adequate to cover the recommended \$36,750 budget for 2005–2006. Funds in the reserve were \$50,277 as of January 31, 2005. The Committee estimates that \$17,700 will be deducted from the reserve to cover budgeted expenses for 2004–2005. Thus, the Committee estimates a reserve of \$32,577 on June 30, 2005, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (\$ 946.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although the assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods

would be reviewed and, as appropriate, approved by USDA.

#### 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 51 handlers of Washington potatoes subject to regulation under the order and approximately 272 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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 \$750,000.

During the 2003–2004 marketing year, 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than \$5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year was \$5.25 per hundredweight. The average annual producer revenue for the 272 Washington potato producers is therefore calculated to be approximately \$205,609. In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from \$0.002 to \$0.0035 per hundredweight for potatoes. The Committee unanimously recommended 2005–2006 expenditures of \$36,750 and the \$0.0035 per hundredweight assessment rate. The proposed assessment rate of \$0.0035 is \$0.0015 higher than the 2003–2004 rate. With an

estimated 2005–2006 potato crop of 10,000,000 hundredweight, the \$0.0035 rate should provide the Committee with \$35,000 in assessment income which combined with interest income and funds from the monetary reserve would be adequate to cover budgeted expenses. The Committee recommended the higher assessment rate to help ensure that its monetary reserve is maintained at a satisfactory level. Funds in the reserve were \$50,277 as of January 31, 2005. The Committee estimates that \$17,700 will be deducted from the reserve to cover budgeted expenses for 2004–2005. Thus, the Committee estimates a reserve of \$32,577 on June 30, 2005, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (\$ 946.42).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include \$18,000 for surveillance inspections, \$4,800 for Washington State Potato Commission (Commission) expenses, \$3,000 for office supplies, and \$3,000 for Committee expense, \$1,500 for Committee member compensation, and \$1,500 for the financial audit. The Committee operates under an agreement with the Commission. The Commission provides the Committee office space and administrative services. Budgeted expenses for these items in 2004–05 were \$20,000, \$4,800, \$3,000, \$1,500, \$1,500, and \$2,000, respectively.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The Committee ultimately determined that the recommended expenses were reasonable. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range from about \$5.25 per hundredweight and about \$5.85 per hundredweight. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.060 and 0.067 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's

meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the February 3, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington potato 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. 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.ama.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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2005–2006 fiscal period begins on July 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is proposed to be amended as follows:

#### PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 946.248 is revised to read as follows:

#### § 946.248 Assessment rate.

On and after July 1, 2005, an assessment rate of \$0.0035 per hundredweight is established for Washington potatoes.

Dated: March 28, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–6417 Filed 3–31–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–289–AD]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This document revises an earlier NPRM, applicable to all Boeing Model 737–100, –200, and –200C series airplanes. The original NPRM would have required repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. The original NPRM was prompted by reports of fatigue cracking of the skins and doublers located aft of the wing, between body station (BS) 727 and BS 1016, and between body stringers 14 and 25. This supplemental NPRM revises the original NPRM by adding requirements for certain airplanes, revising the compliance time for inspection of modified skin areas, and allowing alternative service information for certain actions. The actions specified by this new supplemental NPRM are intended to detect and correct fatigue cracking of the skin panels, which could cause rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 26, 2005.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2002–NM–289–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

For the service information referenced in the proposed rule, contact Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this