

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 946**

[Doc. No. AMS-FV-11-0024; FV11-946-3IR]

Irish Potatoes Grown in Washington; Modification of the Rules and Regulations**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim rule with request for comments.

SUMMARY: This rule extends the one-year suspension of the minimum quality, maturity, pack, marking, and inspection requirements prescribed for russet potato varieties under the Washington potato marketing order for the 2011–2012 and subsequent fiscal periods. The current one-year suspension of the russet potato handling regulation ends June 30, 2011. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule also extends the reporting requirement for russet potato handlers for the purpose of obtaining information necessary for administering the marketing order. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while allowing the industry the opportunity to continue exploring alternative marketing strategies.

DATES: Effective July 1, 2011; comments received by July 12, 2011 will be considered prior to formal adoption as 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 Internet: <http://www.regulations.gov>. All comments should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the

comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, 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. This rule is not intended to have retroactive effect.

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 there from. A 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 extends the one-year suspension of the order’s handling regulation for russet potato varieties for the 2011–2012 and subsequent fiscal periods. The current one-year suspension of the russet potato handling regulation ends June 30, 2011. This

action also extends the reporting requirement for russet potato handlers to obtain information necessary for the collection of assessments and statistical data. This rule allows the Washington potato industry to continue marketing russet potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements prescribed under the Washington potato marketing order.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both. Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal State Inspection Program (FSIP), and certified as meeting the applicable requirements of such regulations.

Section 946.70 authorizes the Committee, with the approval of USDA, to require information from handlers that will enable the Committee to exercise its duties under the order.

Section 946.336 of the order’s administrative rules and regulations prescribes the grade, size, quality, cleanness, maturity, pack, marking, and inspection requirements for fresh market Washington potatoes.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington potatoes 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 Committee recommendations, 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.

The Committee met on June 1, 2010, and recommended suspending the minimum quality, maturity, pack, marking, and inspection requirements (handling regulation) for a one-year period. In addition, the Committee recommended that a new reporting provision be implemented to require handlers to report their russet potato shipments during this period to enable

the Committee to collect assessments and compile statistics. This information replaced similar information obtained from FSIP reports, which would not be available as a result of the suspension of the handling regulations. These recommendations were implemented by the USDA with an interim rule published in the **Federal Register** on July 23, 2010 (75 FR 43042), and finalized on December 14, 2010 (75 FR 77749).

The handling regulation was suspended temporarily so the Committee could evaluate the effects of operating without regulation, such as potential cost savings to handlers through elimination of mandatory inspection of product, and the potential market impact of operating with no mandatory quality and inspection requirements.

During the period when the temporary suspension of the handling regulation was in effect, most handlers reportedly continued to have their product inspected prior to shipment to satisfy their customer's needs and market requirements. However, since full-time inspection was not mandatory, handlers were able to coordinate the timing and utilization of inspection services to meet the needs of their individual operations, resulting in improved efficiencies and reduced costs. No negative market impacts were experienced as a result of the temporary suspension. Handlers have continued to meet their customer's specifications and needs, either with voluntary inspection or no inspection. The Committee believes that the suspension of the russet potato handling regulation, effective from July 24, 2010, through June 30, 2011, has been successful. Therefore, at its January 26, 2011, meeting, the Committee recommended extending the suspension of the handling regulation for russet potatoes for the 2011–2012 and subsequent fiscal periods. The Committee also recommended extending the reporting requirement for russet potato handlers to obtain information necessary for the collection of assessments and statistical data.

This rule permits handlers to continue shipping russet potatoes without regard to minimum quality, maturity, pack, marking, and inspection requirements for the 2011–2012 and subsequent fiscal periods. This rule also continues the reporting requirement for russet potato handlers to collect assessments and compile statistical data. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

Although this rule continues to provide russet potato handlers the opportunity to decrease their total costs by elimination of the expenses associated with mandatory inspection, it does not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of the suspension on marketing and on producer returns at future Committee meetings.

Although continuing to require handler reports, this rule, through the suspension of the handling regulation and thereby mandatory inspection, is expected to reduce overall industry expenses.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order (inclusive of the 33 russet potato handlers) and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2009–2010 fiscal period, the Committee reports that 9,765,131 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2010 was \$7.55 per hundredweight. The average gross annual producer revenue for each of the 267 Washington potato

producers is therefore calculated to be approximately \$276,130. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule extends the one-year suspension of the handling regulation for russet potato varieties for the 2011–2012 and subsequent fiscal periods. This rule also extends the reporting requirement for russet potato handlers to obtain information necessary to administer the order. This rule is expected to reduce overall industry expenses while providing the industry with the opportunity to continue exploring alternative marketing strategies.

The authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. In addition, the handling regulation and reporting requirement are specified under §§ 946.336 and 946.143, respectively, of the order's administrative rules and regulations.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will extend the one-year suspension of minimum quality, maturity, pack, marking, and inspection requirements indefinitely. Though inspections will not be mandated for russet potatoes handled under the order, handlers may at their discretion choose to have their potatoes inspected. Handlers are thus able to control costs—which are generally passed on to producers—based on the demands of their customers. The Committee reports that during the 2009–2010 fiscal period, the total cost of inspection—at \$0.07 per hundredweight for the approximately 7,421,500 hundredweight of Washington russet potatoes shipped—was about \$519,505. This is approximately \$15,743 per handler.

The Committee discussed alternatives to this recommendation. The Committee considered suspending the handling regulation for russet potatoes for another one-year period. However, the Committee believes that the current one-year suspension has been successful and recommended extending the suspension of the handling regulation for russet potatoes indefinitely.

This rule continues the monthly reporting requirement for russet potato handlers. The reports provide the Committee with information necessary to track shipments and collect assessments. The information collection burden generated from the temporary suspension of the handling regulation (75 FR 77749) was merged into the generic vegetable package under OMB

Number 0581-0178 and continues in effect until March 31, 2014.

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 complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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 potato industry and all interested persons were invited to participate in Committee deliberations. Like all committee meetings, the January 26, 2011, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on modifications to the handling regulation and reporting requirement for russet potatoes under the Washington potato marketing order. The modifications revise the introductory text of both regulations by removing a sentence in § 946.143 and by removing and replacing text in § 946.336. 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 this interim rule, as hereinafter set forth, will tend 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) Any changes resulting from this rule should be effective July 1, 2011, because the one-year suspension of the russet potato-handling regulation ends June 30, 2011; (2) the Committee discussed and unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; and (3) 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 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is 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.

§ 946.143 [Amended]

- 2. Amend the introductory text of § 946.143 by removing the words "Provided, That the first report shall include all required information from July 24, 2010 through the end of the month in which the assessment report and its collection of information is approved by the Office of Management and Budget."

§ 946.336 [Amended]

- 3. Amend the introductory text of § 946.336 by removing the words "from July 24, 2010, through June 30, 2011" and adding in their place the words "beginning July 1, 2011".

Dated: May 9, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-11713 Filed 5-12-11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-FV-10-0094; FV11-985-1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2011-2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which begins on June 1, 2011. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 694,774 pounds and 34 percent, respectively, and for Class 3 (Native) spearmint oil of 1,012,983 pounds and 44 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2011, through May 31, 2012.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326-2724, *Fax:* (503) 326-7440, or *E-mail:* Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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:* Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington,