



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 946**

[Doc. No. AMS-SC-20-0062; SC20-946-1 PR]

**Irish Potatoes Grown in Washington; Suspension of Reporting and Assessment Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation from the State of Washington Potato Committee (Committee) to suspend the reporting and assessment requirements prescribed under the marketing order regulating Irish Potatoes grown in Washington (Order). In a separate action, the Committee also unanimously recommended terminating Marketing Order No. 946. This rule would indefinitely suspend the reporting and assessment requirements of the Order during the period that USDA is processing the termination request.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400

Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<https://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:

<https://www.regulations.gov>. All comments submitted in response to this proposal 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:** Gregory A. Breasher, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: [Gregory.Breasher@usda.gov](mailto:Gregory.Breasher@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington,

DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. Part 946 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers operating within the production area.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January

30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. 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.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

On June 11, 2020, the Committee met and, after much deliberation, unanimously recommended that USDA terminate the Order. Additionally, the Committee recommended that the Order's reporting and assessment requirements - the only regulatory activities of the Order currently in effect - be suspended while the recommendation for termination is being processed by USDA. The termination would be a separate regulatory action from the suspension of requirements as proposed herein.

Section 946.41 provides authority for the Committee to assess handlers for their pro rata share of the Committee expenses authorized each fiscal period. Section 946.70 authorizes the Committee to collect reports and other information necessary for the Committee to perform its duties under the Order. This proposed rule would suspend § 946.248, which established a continuing assessment rate of \$0.0025 per hundredweight, effective for the 2013-2014 and

subsequent fiscal periods, and \$ 946.143, which requires monthly reporting of fresh potato shipments from the production area.

The Order has been in effect since 1949, providing the Washington potato industry authority for grade, size, quality, maturity, pack, and container requirements, as well as authority for inspection requirements. Based on the Committee's recommendation in 2010, USDA suspended the Order's handling requirements for Russet potatoes. The Committee believed that the costs of inspection outweighed the benefits provided from having the Order's regulatory requirements in effect for that type potato.

In 2013, also upon the recommendation of the Committee, USDA suspended handling requirements temporarily, through June 30, 2014, for all yellow flesh and white type potatoes. Again, the Committee believed that the costs of inspection outweighed the benefits provided from regulating these type potatoes.

In 2014, the handling requirements for red type potatoes were indefinitely suspended. Also in 2014, the temporary suspension for yellow flesh and white types was extended indefinitely. The sum of the previous actions effectively suspended the handling requirements for all types of Washington potatoes after the 2013-2014 marketing

year. The Committee believed operating without handling regulation offered Washington potato handlers a cost savings through the elimination of mandatory inspection fees. Also, the Committee had determined that the potential negative market impact of operating without mandatory quality and inspection requirements was minimal.

Following the suspension of the handling requirements in 2014, the Committee continued to levy assessments and to maintain its administrative function. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event that regulating quality was again deemed necessary.

The Committee met on June 11, 2020, to discuss the current status of the Washington potato industry and the relevance of the Order. The Committee determined that the suspension of the Order's handling requirements has not negatively impacted the industry and that there is no longer a need for the Order. Also, the Committee concluded that the collection of information under the Order's authority is redundant, as the Washington Potato Commission has similar handler reporting requirements and that the statistical information collected by it is provided to the

industry. Thus, the Committee unanimously recommended terminating the Order.

In addition, the Committee determined that there is no need to continue collecting assessments and requiring reports while USDA considers its termination recommendation. Therefore, the Committee also unanimously recommended that the assessment and reporting requirements of the Order be immediately suspended. This action would relieve handlers of the assessment and reporting burden during the pendency of the termination process.

At the June meeting, the Committee recommended a budget of \$41,150 for the indefinite period leading up to the termination of the Order. The budgeted amount was established on the basis of the funds remaining in the Committee's monetary reserve and expected future expenses. The budget, in its entirety, would provide for such operating expenses as are necessary during the termination process, including a final financial review and management compensation.

#### **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 proposed 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 businesses 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.

There are approximately 250 producers of Washington potatoes and approximately 26 fresh potato handlers in the production area subject to regulation by the Order.

Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000.

According to USDA Market News, the average shipping point price for fresh Washington potatoes during the 2019 shipping season was approximately \$15.79 per hundredweight. The Committee reported 2019-2020 marketing year fresh potato shipments were 9,687,170 hundredweight. Given the number of handlers, average annual handler receipts are less than \$30,000,000 ( $\$15.79/\text{hundredweight} \times 9,687,170$

hundredweight equal \$152,960,414, divided by 26 handlers equals \$5,883,093 per handler).

In addition, USDA National Agricultural Statistics Service reported an average producer price of \$8.20 per hundredweight for the 2019 crop. Given the number of Washington potato producers, average annual producer revenue is below \$1,000,000 (\$8.20/hundredweight times 9,687,170 hundredweight equal \$79,434,794, divided by 250 producers equals \$317,739 per producer). Therefore, most handlers and producers of fresh Washington potatoes may be classified as small agricultural businesses.

This proposed rule would suspend the reporting and assessment requirements of the Order. The handler reporting requirement that would be suspended is the monthly collection of Washington fresh potato shipment information. The assessment rate that would be suspended is the \$0.0025 per hundredweight rate in effect for the 2013 fiscal period and continuing to the present day. The Committee also recommended a budget of expenditures of \$41,150 for the period beginning July 1, 2020 and ending with termination of the Order. The budget was based on the Committee's estimated financial resources on June 30, 2020. Budgeted expenditures include administrative expenses and a final financial review.

The Committee made the recommendation to suspend the reporting and assessment requirements as an adjunct to the recommendation to terminate the Order. As such, the only other alternative discussed by the Committee was to maintain the status quo, continue to assess handlers, and to require monthly handling reports. After consideration, the Committee determined that the Order is no longer beneficial to the industry and that the best recourse was to cease operations and terminate the Order.

This action would suspend the reporting and assessment obligations imposed on handlers. When in effect, assessments are applied uniformly on all handlers, and some of those costs may be passed on to producers. The suspension of the reporting and assessment requirements would reduce the regulatory burden on handlers and would also be expected to reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this proposed action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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.

The Committee's meeting was widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 11, 2020, meeting was a public meeting, and all entities, both large and small, were able to express their views on these issues. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposed action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Services proposes to amend 7 CFR part 946 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 and 946.248 [Suspended]**

2. Suspend §§ 946.143 and 946.248 indefinitely.

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**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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