



Agricultural Marketing Service

7 CFR Part 946

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends the reporting and assessment requirements prescribed under the marketing order regulating Irish potatoes grown in Washington. In a separate action, the State of Washington Potato Committee recommended termination of the marketing order. This final rule indefinitely suspends the reporting and assessment requirements of the marketing order during the period that USDA is processing the termination request.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] §§ 946.143 and 946.248 are stayed indefinitely.

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 or 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, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final 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 State of Washington Potato Committee (hereinafter referred to as the "Committee") locally administers the Order and is comprised of producers and handlers of Irish potatoes operating within the production area.

The Department of Agriculture (USDA) is issuing this final 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final 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 will 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 in effect at the time - be suspended while the recommendation for termination is being processed by USDA. The termination is a separate regulatory action from the suspension of administrative requirements.

Section 946.41 of the Order provides authority for the Committee to assess handlers for their pro rata share of the Committee expenses authorized each fiscal period. Section 946.70 of the Order authorizes the Committee to collect reports and other information necessary for the Committee to perform its duties under the Order. This rule suspends - or "stays" - § 946.248, which establishes 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. The Committee believed that the costs of inspection outweighed the benefits provided from regulation for these type potatoes as well.

In 2014, the handling requirements for red type potatoes were indefinitely suspended. Also in 2014, the temporary suspension of handling requirements 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 if regulating quality was again deemed necessary.

The Committee met on June 11, 2020, to discuss the 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 as the Order, and that the statistical information collected by the Commission 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

relieves 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 based on the funds remaining in the Committee's monetary reserve and expected future expenses. The budget, in its entirety, will provide for such operating expenses as are necessary during the termination process, including a final financial review and management compensation.

Final 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 final rule 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 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. Using the average price and shipment information along with the number of handlers, average annual receipts for a handler were significantly less than \$30,000,000 ($\$15.79 \times 9,687,170 \text{ hundredweight} = \$152,960,414$, 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, the average annual producer revenue is well below \$1,000,000 ($\$8.20 \times 9,687,170 \text{ hundredweight} = \$79,434,794$, 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 final rule suspends the reporting and assessment requirements of the Order. The handler reporting

requirement that is suspended is the monthly collection of Washington fresh potato shipment information. The assessment rate that is suspended is the \$0.0025 per hundredweight rate that was established beginning July 1, 2013. 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 suspends the Order's 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. Suspension of the reporting and assessment requirements reduces the regulatory burden on handlers and is also 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. This final rule suspends those information collection requirements, and any reporting and recordkeeping requirements under the Order.

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 final 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.

A proposed rule concerning this action was published

in the **Federal Register** on October 13, 2020 (85 FR 64415). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 14, 2020, was provided to allow interested persons to respond to the proposal. No comments were submitted. Accordingly, no changes have been made to the rule as proposed.

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/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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

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 Service amends 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 [Stayed]

2. Stay §§ 946.143 and 946.248 indefinitely.

Bruce Summers, Administrator,
Agricultural Marketing Service.

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