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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV05-946-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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 will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* June 18, 2005.

**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 Avenue, 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 issued herein will be applicable to all assessable potatoes beginning July 1, 2005, and continue until amended, suspended, or terminated. 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 increases 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 that would continue 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 assessment rate of \$0.0035 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$38,500. The assessment rate of \$0.0035 is \$0.0015 higher than the rate for the 2004-2005 fiscal period. 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 2004-2005 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 will 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 will be within the maximum permitted by the order of approximately two fiscal period's operational expenses (\$ 946.42).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will 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 will evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will 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.

#### Final 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 final 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 48 handlers of Washington potatoes subject to regulation under the order and approximately 286 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 \$6,000,000, 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 45 handlers, or about 94 percent, had annual receipts of less than \$6,000,000.

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 286 Washington potato producers is therefore calculated to be approximately \$195,544. In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule increases 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 assessment rate of \$0.0035 is \$0.0015 higher than the rate for the 2004–2005 fiscal period. 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 will 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 will

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 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 to 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 increases 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 are 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.

This rule imposes 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 proposed rule concerning this action was published in the **Federal Register** on April 1, 2005 (70 FR 16759). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 2, 2005, was provided for interested persons to respond to the proposal. No comments were received.

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.

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, 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** 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. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

#### 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.

■ 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: June 9, 2005.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12005 Filed 6–16–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 381

[Docket No. 04–036F]

**RIN 0583–AD13**

#### Termination of Designation of the State of North Dakota With Respect to the Inspection of Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations by terminating the designation of the State of North Dakota under sections 1 through 4, 6 through 10, 11(b), 11(c), and 12 through 22 of the Poultry Products Inspection Act (PPIA). FSIS has concluded that North Dakota is in a position to administer a State poultry inspection program, which is at least equal to the Federal poultry products inspection program.

**DATES:** Effective on June 17, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Royce E. Sperry, Deputy Director; Review Staff; Office of Program Evaluation, Enforcement and Review, FSIS, USDA, telephone (402) 221–7401, extension 7484.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 5(c)(1) of the PPIA (21 U.S.C. 454(c)) authorizes the Secretary of Agriculture to designate a State as one in which the provisions of sections 1 through 4, 6 through 10, 11(b), 11(c), and 12 through 22 of the PPIA will apply to operations and transactions wholly within the State if the Secretary has determined that requirements at least equal to those imposed under the Act have not been developed and effectively enforced by the State.

The Secretary of Agriculture designated the State of North Dakota under paragraph 5(c)(1) of the PPIA, effective January 2, 1971 (42 FR 2949). The designation specified that North Dakota is a State in which the United States Department of Agriculture is responsible for providing poultry products inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA.

In addition, on July 23, 1973, a notice was published in the **Federal Register** (38 FR 19671) announcing that, effective on that date, the Department would assume the responsibility of administering the authorities provided for under sections 11(b) and (c) (21 U.S.C. 460(b) and (c)) of the PPIA regarding certain categories of processors of poultry products.

This designation was undertaken by the Department when USDA determined that the State of North Dakota was not in a position to enforce inspection requirements under State laws for poultry and poultry products in intrastate commerce that were at least equal to the requirements of the PPIA enforced by the Federal Government.

Section 5(c)(3) of the PPIA provides that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State poultry products inspection requirements that are at least equal to those imposed by the Federal Government under the PPIA, with respect to operations and transactions within the State, the Secretary will terminate the designation of the State. The Secretary has determined that the State of North Dakota has developed and will enforce a State poultry products inspection program in accordance with the provisions of the PPIA. FSIS has evaluated the North Dakota program and determined that it is at least equal to the Federal Government requirements. This evaluation also has shown that the State of North Dakota is in a position to enforce effectively the provisions of section 11(b) and (c) of the PPIA. Therefore, the designation of the State of North Dakota under sections 1 through 4, 6 through 10, 11(b), 11(c), and 12 through 22 of the PPIA is terminated.

FSIS published a proposed rule on March 14, 2005 (70 FR 12420). The public comment period ended on April 13, 2005. No comments were received.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant,