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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV00-946-1 FIR]

#### Irish Potatoes Grown in Washington; Exemption From Handling and Assessment Regulations for Potatoes Shipped for Experimental Purposes

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule exempting potatoes shipped for experimental purposes from the handling and assessment regulations of the Washington State potato marketing order. The marketing order regulates the handling of potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). Experimental shipments of potatoes by handlers utilizing new and innovative packaging, including the commingling of different varieties of potatoes in the same package, or shipments of non-traditional experimental varieties of potatoes will continue to be exempt from the grade, size, maturity, pack, inspection, and assessment requirements of the marketing order. By relaxing the requirements on shipments of such potatoes, this rule continues to provide the industry with greater marketing flexibility and with the ability to investigate new methods for increasing producer returns. It also is expected to provide consumers with more choices in buying fresh potatoes.

**EFFECTIVE DATE:** May 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**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 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. 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 the Secretary 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary'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 continues in effect exemptions for shipments of potatoes for experimentation from the grade, size, maturity, pack, inspection, and assessment requirements of the marketing order. By relaxing the requirements on new and innovative packaging and on non-traditional varieties of fresh potatoes, this rule continues to provide the industry with greater marketing flexibility and the ability to investigate new methods for increasing producer returns, and provides consumers with more choices in buying fresh potatoes. The Committee unanimously recommended the exemption for experimental packs and varieties at its meeting held on June 8, 2000.

Section 946.51 of the order provides authority for the Committee to recommend the implementation, modification, suspension, or termination of regulations. Section 946.52 provides the necessary authority for the Department to issue regulations, and to modify, suspend, or terminate such regulations. Furthermore, § 946.54 provides authority for the modification, suspension, or termination of handling regulations for the purpose of facilitating the handling of potatoes for special purposes, while § 946.55 provides for adequate safeguards to prevent such special purpose shipments from entering unauthorized outlets. The order's handling regulations, § 946.336, establish the grade, size, maturity, pack, and inspection requirements for potatoes grown in Washington. The assessment rate for Washington potatoes is established in § 946.248, pursuant to § 946.41.

Handlers have expressed a desire to experiment with shipping potatoes of different varieties in the same container. This has been a problem, however, since the order requires that all potato varieties, as a minimum, meet U.S. No. 2 grade as defined in the U.S. Standards for Grades of Potatoes. These standards specify that a particular lot of potatoes has "similar" varietal characteristics. Although the order's handling regulations do allow the mixing of any size and variety in a 3-pound or smaller container, handlers have been unable to

ship a large enough quantity of the experimental packs to determine market feasibility. With this action, however, marketers will have the ability to experiment with various packs, including containers with a mixture of different potato varieties and sizes.

Prior to this action, the order's regulations required that all potatoes shipped to the fresh market, with the exception of those meeting the minimum quantity and special purpose exemptions, be inspected and assessed. The handling regulations did not provide adequate relief for commercially viable shipments of non-traditional or experimental potato varieties that could not meet minimum inspection requirements. Several producers and handlers within the production area are attempting to develop and market new varieties of potatoes. Some of the new varieties have irregular shapes or are small in size and will not meet minimum order requirements. In order to market these unique potatoes, handlers were required to utilize the order's minimum quantity exemption, which allows shipments up to, but not in excess of, 500 pounds of potatoes daily without regard to assessment and inspection requirements. This had prevented handlers from shipping larger quantities of these potatoes and thus adequately determining marketability and consumer acceptance. By allowing handlers to ship the quantities of new varieties they believe are necessary to determine marketability, this rule adequately addresses this issue.

As is currently required for all special purpose shipments, handlers shipping experimental potato packs or experimental potato varieties will need to apply for and obtain a special purpose certificate from the Committee. To help ensure compliance with the revised provisions and to statistically track the shipments of experimental potato packs and varieties, the Committee will require that shipments made pursuant to this action be reported on the Special Purpose Shipment Report, as modified to include potatoes shipped for experimental purposes. Such reports will help the Committee in determining whether applicable requirements have been met and whether proper disposition has occurred, and will be furnished to the Committee for each shipment made pursuant to the applicable Special Purpose Certificate. The Committee's intent is to keep reporting requirements at the minimum level necessary to monitor compliance while determining the viability and extent of any changes

in the packaging and marketing of Washington potatoes.

The Committee contends that the purpose of the order is to provide quality assurance and minimum grade standards for Washington potatoes and not to inhibit innovation. This rule thus provides the Washington potato industry with the ability to seek new and innovative ways to market its fresh potato crop without the costs and constraints of regulation that otherwise provide a necessary service to the industry. This rule provides the industry with the flexibility to explore new markets while enhancing product development, and helps in identifying niche markets which may benefit producers, handlers, buyers, and consumers of Washington State potatoes. Should a particular experimental pack or variety become commercially significant and some form of quality control or assessment reinstatement be needed, the Committee will consider further changes in the exemptions.

As referenced earlier, the Committee currently utilizes two forms for special purpose shipments. These are the Shippers Application for Special Purpose Certificate and the Special Purpose Shipment Report. To conform to this terminology, this rule also replaces the term "Certificate of Privilege" with the term "Special Purpose Certificate" wherever it appears in the Rules and Regulations and Handling Regulations established under the order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 40 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 340 Washington potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (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 \$500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule continues in effect exemptions for shipments of potatoes shipped for experimentation from the grade, size, maturity, pack, inspection, and assessment requirements prescribed under the regulations of the marketing order regulating the handling of potatoes grown in Washington. Pursuant to authority in §§ 946.51, 946.52, and 946.54, at its meeting on June 8, 2000, the Committee unanimously recommended that this exemption for experimental potato packs and varieties be added under § 946.336(d).

### Special Purpose Shipments

By relaxing the regulations, this rule continues to provide the Washington potato industry with the enhanced ability to seek new and innovative methods of marketing its fresh potato crop. This rule continues to provide the industry with the flexibility to explore new markets while enhancing product development, and helps to identify niche markets which may benefit producers, handlers, buyers, and consumers of Washington State potatoes.

The Committee believes that this rule will continue to have a positive economic impact on the Washington potato industry. Producers and handlers will be able to concentrate on developing innovative new packaging and marketable new potato varieties without the costs associated with inspection and administrative assessments, as well as most of the costs associated with grading. Although not having specific information regarding the volume of potatoes that will be marketed through this exemption, the Committee estimates that the initial volume being shipped will be low and thus will have little negative impact on Committee assessment income. However, since one of the objectives of this action is to increase the utilization of fresh potatoes produced in Washington, the Committee will consider changing the handling regulation and assessment requirements in the future, if needed, to help ensure quality control and adequate Committee income if the experimental shipments become commercially viable.

The current assessment rate is \$0.002 per hundredweight of potatoes handled. Also, the cost of inspection under the marketing order is \$0.06 per hundredweight of potatoes inspected. Handlers, both small and large, shipping

potatoes under the experimental shipment exemption will not incur these costs. Any savings accrued will be proportional to the quantities of potatoes shipped under the experimentation exemption.

With regard to alternatives, we believe that this action best reflects the marketing and product development goals of the Washington potato industry.

The Committee estimates that initially four or five handlers may apply for and obtain Special Purpose Certificates for the purpose of making shipments of experimental packs or varieties. In addition, such handlers will be required to furnish to the Committee a Special Purpose Shipment Report for each shipment made under the experimental purposes exemption. The Committee estimates that the time taken by the handlers who apply for the exemptions will total less than ten hours. Such time is currently approved under OMB No. 0581-0178 by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, 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. Like all Committee meetings, the June 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on November 24, 2000. Copies of the rule were mailed by the Committee's staff to all Committee members and Washington potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 23, 2001. 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.ams.usda.gov/fv/maob.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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 70461, November 24, 2000 and 65 FR 71201, November 29, 2000) 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.

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

Accordingly, the interim final rule amending 7 CFR part 946 which was published at 65 FR 70461 on November 24, 2000, and corrected at 65 FR 71201 on November 29, 2000, is adopted as a final rule without change.

Dated: April 4, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-8870 Filed 4-10-01; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF ENERGY

##### 10 CFR Parts 1040 and 1042

RIN 1901-AA87

#### Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; completion of regulatory review.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), DOE temporarily delayed for 60 days (66 FR 8747, February 2, 2001) the effective date of the rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" published in the **Federal Register** on January 18, 2001 (66 FR 4627). DOE has now completed its review of that regulation, and does not intend to initiate any further rulemaking action to modify its provisions.

**DATES:** The final rule published on January 18, 2001 (66 FR 4627) is effective April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Isiah Smith, Jr., (202) 586-8618, [Isiah.Smith@hq.doe.gov](mailto:Isiah.Smith@hq.doe.gov)

Issued in Washington, D.C. on April 4, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01-8898 Filed 4-10-01; 8:45 am]

**BILLING CODE 6450-01-P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 2000-NM-290-AD; Amendment 39-12172; AD 2001-07-07]

RIN 2120-AA64

#### Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the lift-dumper system prior to commanding the landing gear to extend. For Model F.28 Mark 0100 series airplanes, the existing AD also requires modification of the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. This amendment removes the previous revision of the AFM and requires a new limitation and a new warning. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inadvertent deployment of the lift-dumpers during approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane.

**DATES:** Effective May 16, 2001.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 2, 1999 (64 FR 52219, September 28, 1999).