

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV05-946-3 IFR]

#### Irish Potatoes Grown in Washington; Modification of Pack Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule modifies the pack requirements currently prescribed under the Washington potato marketing order. 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 relaxes the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons to better meet buyer needs. Currently, only potatoes grading U.S. No. 1 or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, may be shipped in cartons. The relaxation in pack requirements will help maximize producer returns.

**DATES:** Effective September 13, 2005; comments received by November 14, 2005 will be considered prior to issuance of 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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George 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, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@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. 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. 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 relaxes pack requirements by allowing handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This change will enable handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Currently, only potatoes grading U.S. No. 1 grade or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, may be shipped in cartons.

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 the 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 (70 FR 41129; July 18, 2005). 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 Service, and certified as meeting the applicable requirements of such regulations.

Section 946.336 of the order's administrative rules prescribes the quality, size, maturity, cleanness, pack, and inspection requirements for fresh market Washington potatoes. Section 946.336(c) prescribes the pack requirements for domestic and export shipments of potatoes. Grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR part 51.1540-51.1566).

At a telephone meeting on July 26, 2005, the Committee unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons that are permanently and conspicuously

marked as to grade. Current requirements provide that all potatoes packed in cartons shall be U.S. No. 1 grade or better, except that potatoes failing to grade U.S. No. 1 only because of internal defects may be shipped in cartons. Lots of such potatoes cannot contain more than 10 percent damage by any internal defect or combination of internal defects, and not more than 5 percent serious damage by any internal defect or combination of internal defects.

Customers have been requesting U.S. No. 2 grade potatoes in cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers now purchase potatoes from other areas where U.S. No. 2 potatoes are packed in cartons. The Committee would like to respond to these changing market conditions so that handlers remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium packs of potatoes that grade U.S. No. 1 and potatoes that fail to grade U.S. No. 1 only because of internal defects. Without such distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on these premium packs. Therefore, the Committee included in their recommendation that cartons containing such potatoes be permanently and conspicuously marked to grade.

#### Initial 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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 51 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 272 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 \$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 48 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 (the most recent period that final statistics are available) was \$5.25 per hundredweight. The average annual producer revenue for each of the 272 Washington potato producers is therefore calculated to be approximately \$205,609.

In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule relaxes the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This would enable handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The authority for the pack and marking or labeling requirements is provided in § 946.52 of the order (70 FR 41129; July 18, 2005). Section 946.336(c) of the order's administrative rules prescribes the pack requirements for domestic and export shipments of potatoes.

The Committee believes that the recommendation should increase the sale of U.S. No. 2 grade potatoes. This action is expected to further increase shipments of U.S. No. 2 potatoes to the food service industry, and help the Washington potato industry benefit from the increased growth in the food service industry. These changes might require the purchase of new equipment to mark the cartons. However, these costs will be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in

cartons. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not allowing U.S. No. 2 grade potatoes to be shipped in cartons. However, the Committee believed that it was important to be able to respond to changing market conditions and meet customer needs.

The Committee considered restricting the size of carton, types of cartons as well as the size of the marking and location on the carton. However, the Committee decided not to specify size or type of container or size and location of the markings to allow handlers more flexibility in marketing U.S. No. 2 grade potatoes in cartons provided the cartons were marked permanently and conspicuously as to grade.

This rule will 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 rule.

Further, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations on all issues. All entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on 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/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.

This rule invites comments on a relaxation to the pack requirements currently prescribed under the Washington potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final 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 exist 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 as soon as practicable because the Washington potato shipping season began in July; (2) the Committee unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; (3) handlers are aware of this action and want to take advantage of this relaxation as soon as possible; and (4) 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.

■ 2. In § 946.336, paragraph (c)(1) is revised to read as follows:

#### § 946.336 Handling regulation.

\* \* \* \* \*

(c) *Pack and marking:*

(1) *Domestic:* Potatoes packed in cartons shall be either:

(i) U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped without regard to this requirement provided the lot contains no more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(ii) U.S. No. 2 grade, provided the cartons are permanently and conspicuously marked as to grade. This marking requirement does not apply to cartons containing potatoes meeting the requirements of (c)(1)(i).

\* \* \* \* \*

Dated: September 6, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–17964 Filed 9–9–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. 2001–NE–17–AD; Amendment 39–14265; AD 2005–01–15R1]**

**RIN 2120–AA64**

#### **Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is revising an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines with certain part number (P/N) low pressure compressor (LPC) fan blades installed. That AD currently requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots and defines a specific terminating action to the repetitive blade inspection requirements. This AD requires the same actions but clarifies the terminating action. We are issuing this AD to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane.

**DATES:** This AD becomes effective October 17, 2005. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of January 28, 2005 (70 FR 2336, January 13, 2005).

**ADDRESSES:** Contact Rolls-Royce plc, P.O. Box 31, Derby DE24 6BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for the service information identified in this AD.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace

Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On January 3, 2005, we issued AD 2005–01–15, Amendment 39–13940 (70 FR 2336, January 13, 2005). That AD superseded AD 2002–11–08, Amendment 39–12769 (67 FR 38852 June 6, 2002). AD 2005–01–15 requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots, and defines a specific terminating action to the repetitive blade inspection requirements. That AD was the result of a report of a cracked fan blade found before the blade reached the initial inspection threshold of AD 2002–11–08. That AD also reduced the repetitive inspection compliance time due to potential breakdown of blade coating and lubrication on certain blades. Those conditions, if not corrected, could result in uncontained engine failure and possible damage to the airplane.

#### **Actions Since We Issued AD 2005–01–15**

Since we issued AD 2005–01–15, we received a comment from an operator requesting that we clarify the terminating action in that AD. As that AD is currently written, you must install LPC fan blades in complete sets to comply with the terminating action. Our intent is that all blades must be replaced with blades that meet the replacement criteria to qualify as terminating action, but not necessarily replaced as a complete set. In response to the comment, we published a proposed AD in the **Federal Register** on March 9, 2005 (70 FR 11585). That action proposed to require initial and repetitive ultrasonic inspections of the fan blade dovetail roots, and to clarify a specific terminating action to the repetitive blade inspection requirements.

#### **Examining the AD Docket**

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

#### **Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.