

**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 (a)(2)(i) is revised to read as follows:

**§ 946.336 Handling regulation.**

\* \* \* \* \*

(a) \* \* \*

(2) *Size:* (i) At least 1 $\frac{1}{8}$  inches in diameter, except that all red, yellow fleshed, and white types may be  $\frac{3}{4}$  inch (19.1 mm) minimum diameter, if they otherwise meet the requirements of U.S. No. 1.

\* \* \* \* \*

Dated: September 5, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–20999 Filed 9–5–08; 4:15 pm]

BILLING CODE 3410–02–P

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 8**

[Docket No. OCC–2008–0013]

RIN 1557–AD06

**Assessment of Fees**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is adopting as final and without change the interim final assessments rule issued on February 19, 2008. The interim final rule added two new asset-size categories to the table in 12 CFR 8.2(a) used to calculate each national bank's semiannual assessment. The addition of these categories is warranted to take account of significant structural changes in the national banking system since 1992, when the table was last revised, and has enabled the OCC to realign assessments to better reflect industry structure and OCC's corresponding expenses of operations. No comments

were received in response to the request for comment on the interim final rule.

**DATES:** *Effective Date:* Effective September 10, 2008 the rule published on February 19, 2008 (73 FR 9012) and corrected at 73 FR 9625, Feb. 21, 2008 is adopted as final without change.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Nash, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; or Colette Baylson, Accounting Operations Manager, Financial Management, (202) 874–4403, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:****Background**

The National Bank Act authorizes the OCC to fund the expenses of its operations through assessments on national banks.<sup>1</sup> Under this authority, the OCC collects semiannual assessments from national banks in accordance with part 8 of our regulations and with the OCC's Notice of the Comptroller of the Currency Fees (Notice of Fees).<sup>2</sup>

Part 8 establishes categories, or brackets, each of which comprises a range of size values for a national bank's total assets. Each national bank's assessment is the sum of a base amount, which is the same for every national bank in that asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount of total assets in excess of the lower boundary of the asset-size bracket.<sup>3</sup> The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision, which factor into the OCC's overall cost of operations. Both the base amounts and the marginal rates applicable to each asset-size bracket are published at least once a year in the OCC's Notice of Fees.<sup>4</sup>

Prior to the issuance of the interim final rule, the national bank assessments

were based on asset-size brackets that had been last updated in 1992<sup>5</sup> and no longer reflected the structure and distribution of assets in the national banking system as a whole. For example, since 1992, there has been a significant increase not only in the amount of assets held by the largest banks, but also in the assets held by national banks in other asset-size brackets, resulting in a general upward shift in the distribution of the population of national banks on the asset-size bracket table in 12 CFR 8.2(a). The growth in the average assets held by national banks reflects the consolidation in the banking industry that has occurred since 1992.

Given these developments, the OCC has determined that it is appropriate to update the existing asset-size brackets to reflect the current structure of the national banking system. The interim final rule has enabled the OCC to adjust the assessment framework to better reflect industry structure and the OCC's corresponding expenses of operations.

**Interim Final Rule and Comments**

On February 19, 2008, the OCC published and requested comment on an interim final rule that expanded the number of asset-size assessment brackets in the table at 12 CFR 8.2(a) by revising the current top bracket, presently \$40 billion and above, to cover banks with assets between \$40 billion and \$250 billion.<sup>6</sup> In addition, the interim final rule created a new top bracket that applies to banks with assets in excess of \$250 billion.

The OCC also made a conforming change to delete the word “ten” from the description of the asset-size brackets in § 8.2(a)(1) of the assessment rules since it no longer accurately described the number of brackets.

The OCC received no comments in response to the interim final rule and has determined that it is appropriate to adopt as final the interim final rule as originally published on February 19, 2008.

**Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>7</sup> Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are not required prior to the issuance of a final rule if an

<sup>1</sup> 12 U.S.C. 482.

<sup>2</sup> Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes provided for in this final rule will also apply to assessments of Federal branches and Federal agencies.

<sup>3</sup> See 12 CFR 8.2(a) (listing the asset-size brackets).

<sup>4</sup> See, e.g., OCC Bulletin 2007–46, “Notice of the Comptroller of the Currency Fees for Year 2008” (December 1, 2007). The OCC's regulations provide for the annual publication of the Notice of Fees and also authorize the publication of interim, or amended, notices of fees “from time to time throughout the year as necessary.” 12 CFR 8.8.

<sup>5</sup> 57 FR 22413 (May 28, 1992).

<sup>6</sup> 73 FR 9012 (February 19, 2008).

<sup>7</sup> 5 U.S.C. 601(2).

agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>8</sup>

As we have described, the asset brackets in the assessments table in 12 CFR 8.2(a) were last revised in 1992 and did not reflect the current structure of the national banking industry. The OCC adopted the changes to that framework in the form of an interim final rule because completion of notice and comment rulemaking procedures prior to issuing the interim final rule would have required delaying implementation of the new asset brackets beyond the next scheduled assessment date. Such a delay would have been contrary to the public interest since it would have resulted in national banks’ continued payment of assessments under a framework that the OCC has determined is no longer representative of current industry structure and the OCC’s corresponding expenses of operation. Issuance of the interim final rule also furthered the public interest and reduced regulatory burden because it allowed the OCC, as appropriate, to issue an amended Notice of Fees that better reflects the structure of the national banking system and allocates the OCC’s expenses of operation on that basis. For the same reasons, the OCC found good cause to publish the interim final rule with an immediate effective date. See 5 U.S.C. 553(d)(1), 553(d)(3).<sup>9</sup>

Because the OCC determined for good cause that the APA did not require public notice and comment on the interim final rule, we did not publish a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this final rule because it is not a rule for which the OCC was required to publish a general notice of proposed rulemaking pursuant to section 553(b) of the APA.

#### Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995<sup>10</sup> (Unfunded Mandates Act) requires that an agency prepare a budgetary impact

statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), we have reviewed the final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

#### Lists of Subjects in 12 CFR Part 8

Assessment of fees.

#### PART 8—ASSESSMENT OF FEES

■ Accordingly under the authority at 12 U.S.C. 482 the interim rule amending 12 CFR part 8 which was published at 73 FR 9012 on February 19, 2008, and corrected at 73 FR 9012, Feb. 21, 2008 is adopted as final without change.

Dated: August 11, 2008.

**John C. Dugan,**

*Comptroller of the Currency.*

[FR Doc. E8–20905 Filed 9–9–08; 8:45 am]

**BILLING CODE 4810–33–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Bureau of Customs and Border Protection

#### 19 CFR Part 122

[CBP Dec. 08–39]

#### Technical Amendment to List of User Fee Airports: Addition of Valley International Airport, Harlingen, TX

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect the recent user fee airport designation for Valley International Airport in Harlingen, Texas. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

**DATES:** *Effective Date:* September 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Scott Welch, Office of Field Operations, 202–344–2642.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security<sup>1</sup> as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the

<sup>1</sup> Sections 403(1) and 411 of the Homeland Security Act of 2002 (“the Act,” Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the “Customs Service” as the “Bureau of Customs and Border Protection.” Effective on March 31, 2007, DHS changed the name of “Bureau of Customs and Border Protection” to “U.S. Customs and Border Protection (CBP)” (See 72 FR 20131, April 23, 2007).

<sup>8</sup> 5 U.S.C. 553(b)(B).

<sup>9</sup> Although notice and comment were not required prior to the effective date of the interim final rule, the OCC nonetheless invited comments on all aspects of this interim final rule and intended to revise the interim final rule if necessary or appropriate in light of the comments received. As explained above, however, the OCC received no comments on the interim final rule.

<sup>10</sup> 2 U.S.C. 1532.