

not beginning farmers or socially disadvantaged farmers.”

Signed at Washington, DC, on December 2, 2008.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AMS-FV-08-0037; FV08-946-2 FR]

Irish Potatoes Grown in Washington; Modification of Late Payment and Interest Charge Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the late payment and interest charge regulation 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 revises the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule will contribute to the efficient operation of the marketing order by reducing billing for nominal late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

DATES: *Effective Date:* December 9, 2008.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326-2724, Fax: (503) 326-7440, or e-mail: Teresa.Hutchinson@usda.gov or GaryD.Olson@usda.gov.

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.

SUPPLEMENTARY INFORMATION: 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, 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 final 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 final rule modifies the late payment and interest charge regulation prescribed under the order. This rule revises the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule will contribute to the efficient operation of the order by reducing the number of nominal billings for late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

The Washington potato marketing 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 of Washington potatoes. They are familiar with the Committee's needs and 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 and the authority to recommend late payment charges or interest charges on late payment, are formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 946.41 of the order specifies that if handlers do not pay their assessments within the time prescribed by the Committee, the assessments may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the Committee with approval of USDA.

Prior to this regulatory change, section 946.141 of the order's administrative rules and regulations prescribed that the Committee impose a monthly interest charge of one percent of the unpaid balance on any handler who fails to pay his or her assessment within thirty days of the billing date. The interest charge regulation has been effective since May 25, 1995 (60 FR 27683). At that time, the committee expressed difficulty with handlers that were continually late with their assessment payments and recommended the interest charge to be incurred 30 days after the billing date. It was believed that the charges were high enough to encourage timely payment and that this would be an effective means to ensure the Committee had adequate funds to administer the program.

The Committee unanimously recommended this rule during a video conference meeting held on April 16, 2008, followed by an unanimous mail vote. The Committee has determined that most handlers pay their assessments within 60 days but there are a few that pay later than 60 days. The interest billing that occurs 30 days after the billing date has proven to be administratively cumbersome as the amounts billed are nominal amounts and many times the handler's payment is received shortly after the bill including interest is mailed.

As an example, the Committee's budget for the current fiscal year (2008-2009) is \$38,600 and estimated assessment income is \$35,000. Since there are approximately 43 handlers, the average each handler will pay in assessments is approximately \$814. Committee records indicate that for the most recent fiscal year, there were 316 invoices billed to handlers. The average amount on an invoice was \$110.44, with

a high of \$626.54 and a low of \$0.18. Therefore, the interest amount owed on a payment that is 30 days late, but not more than 60, would often be less than a dollar, rarely more than five dollars. The Committee believes that handlers that pay later than 60 days would be considered a greater risk for nonpayment than handlers who pay within 60 days.

The Committee recommended retaining \$ 946.141, but recommended modifying the regulation by providing an additional 30 days for handlers to pay. By waiting until 60 days past the billing date to charge interest on late assessment payments, the Committee will only have to charge interest to the few handlers who do not pay within 60 days. The Committee believes the interest charge applied after 60 days will continue to encourage handlers to pay promptly.

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 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Currently, there are approximately 43 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 267 potato producers in the regulated 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 \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2006–2007 marketing year, 9,932,874 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market by 43 handlers, according to Committee data. The Committee reports that an industry consensus estimate of an average fresh potato f.o.b. price is \$8.45 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average f.o.b. price of \$8.45 yields a handler-level fresh market crop value of \$83,932,785. Dividing \$83,932,785 by

43 handlers gives an average annual sales value per handler estimate of about \$1,951,949. The Committee estimates that 41, or about 95 percent of these 43 handlers, had annual receipts of less than \$7,000,000.

A comparable computation can be made to estimate annual average revenue per producer. Based on information provided by the National Agricultural Statistics Service, the 2006 season average producer price for Washington potatoes was \$6.25 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average producer price of \$6.25 provides a producer-level fresh market crop value of \$62,080,463. Dividing \$62,080,463 by 267 Washington potato producers yields an average annual fresh market sales value per producer of approximately \$232,511.

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

This final rule changes the date interest is charged on late assessment payments from 30 to 60 days past the billing date. This rule will contribute to the efficient operation of the marketing order by reducing billing for nominal late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

The authority for late payment and interest charges is provided in § 946.41 of the order. Section 946.141 of the order's administrative rules and regulations prescribes the amount of interest charged and when interest charges are imposed.

This change is expected to reduce the cost to administer the order.

Regarding the impact of this rule on affected entities, modification of the late payment and interest charge regulation is expected to benefit handlers. Most handlers pay their assessments within 60 days of the billing date. Only a few handlers pay later than 60 days. Imposing the interest charge on late assessment payments at 60 days instead of 30 days past due will allow the Committee to operate more efficiently by only billing after 60 days to handlers whose late payments are considered more serious and a greater risk. 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 changing the date interest charges would be imposed and suspending the entire section. However, the Committee believed that it is important that interest charges be continued to encourage handlers to pay assessments in a timely manner. Further, the additional 30 days should allow adequate time to receive assessment payments by mail and allow the Committee to reduce administrative costs.

This final 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.

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

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 20, 2008 (73 FR 62215). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers. The rule was also made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending November 4, 2008, was provided to allow 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.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 matter 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already being billed for assessments and this rule will allow an additional 30 days to remit assessment payments. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed 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. Section 946.141 is revised to read as follows:

§ 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within sixty (60) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 60 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

Dated: December 3, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29045 Filed 12–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 760

[Docket No. 080220216–81424–03]

RIN 0694–AD59

Conforming Changes to Certain End-User/End-Use Based Controls in the EAR; Clarification of the Term “Transfer” and Related Terms as Used in the EAR; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Tuesday, November 18, 2008 (73 FR 68321) that amended the Export Administration Regulations (EAR) to, among other things, clarify that the terms “transferred” and “transfer”, in the context of two sections of the EAR, meant “assigned to” and “assignment”, respectively. That final rule contained one inadvertent error in the amendatory instruction used for revising one of those two sections. This error in the amendatory instruction led to one sentence of the revised regulatory text to not be revised as was intended in the regulatory text of that final rule. This document corrects that amendatory instruction error by revising that one sentence from that section.

DATES: *Effective Date:* This rule is effective: December 8, 2008.

ADDRESSES: Written comments on this rule may be sent to the **Federal Register** eRulemaking Portal: <http://www.regulations.gov>, or by e-mail to publiccomments@bis.doc.gov. Include RIN 0694–AD59 in the subject line of the message. Comments may be submitted by mail or hand delivery to Timothy Mooney, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230, ATTN: RIN 0694–AD59; or by fax to (202) 482–3355.

Send comments regarding the collection of information to Jasmeet Sehra, Office of Management and Budget (OMB), by e-mail to jsehra@omb.eop.gov, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482–2440; or by fax: 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2008, the final rule, Conforming Changes to Certain End-User/End-Use Based Controls in the EAR; Clarification of the Term “Transfer” and Related Terms as Used in the EAR was published in the **Federal Register** (73 FR 68321). The amendments in that rule included a revision to paragraph (b)(4)(viii) in Section 760.1 (Definitions). The November 18 rule intended to revise the first three sentences of paragraph (b)(4)(viii), but because of an inadvertent error in the amendatory instruction the third sentence of that paragraph was not revised as was intended in the regulatory text of that final rule. This rule corrects that amendatory instruction error by revising the third sentence of paragraph (b)(4)(viii).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on November 18, 2008, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before December 30, 2008. Any such items not actually exported or reexported before midnight, on December 30, 2008, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required