

**PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

- 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

- 2. Section 930.107 is added to read as follows:

**§ 930.107 Fiscal period.**

Pursuant to § 930.7, fiscal period shall mean the period beginning October 1 and ending September 30 of each year.

Dated: December 9, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29599 Filed 12–12–08; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 946**

[Docket No. AMS–FV–08–0036; FV08–946–1 FIR]

**Irish Potatoes Grown in Washington; Relaxation of Handling and Import Regulations**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule relaxing the size requirement 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 continues in effect the action that relaxed the minimum size required for all fresh market red, yellow fleshed, and white types of potatoes from 1 inch (25.4 mm) to ¾ inch (19.1 mm) in diameter, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This rule also continues in effect the action that relaxed the minimum size requirement from July 1 through September 30 of each year for imported red-skinned, round type potatoes under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. The Committee recommended this change in response to the recently revised U.S. Standards

for Grades of Potatoes which added a definition for Creamer potatoes. This change is intended to provide potato handlers with greater marketing flexibility, growers with increased returns, consumers with a greater supply of small potatoes, and to bring the section 8e potato import regulation into conformity with the marketing order.

**DATES:** *Effective Date:* January 14, 2009.

**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](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto: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](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.”

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the same or comparable requirements established for that particular area. The requirements for red-skinned, round type potatoes imported from July 1 through September 30 are based on the Washington potato marketing order requirements.

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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that relaxed the size required for all fresh market red, yellow fleshed, and white types of potatoes produced in Washington State from 1 inch (25.4 mm) to ¾ inch (19.1 mm) minimum, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, growers with increased returns, and consumers with a greater supply of small potatoes. This rule also continues in effect the action that relaxed the minimum size requirement from July 1 through September 30 of each year for imported red-skinned, round type potatoes under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. This rule will not affect the current import requirements for all other round type or long type potatoes.

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. 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 or Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 946.336 of the order's administrative rules and regulations prescribes the quality, size, maturity, cleanness, pack, and inspection requirements for fresh market Washington potatoes. Section 946.336(a)(2) prescribes the size requirements. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

During a video conference meeting held on April 16, 2008, with a follow-up mail vote, the Committee unanimously recommended changing the minimum size requirement for all U.S. No. 1 grade fresh market red, yellow fleshed, and white types of potatoes produced under the order from 1 inch to  $\frac{3}{4}$  inch in diameter.

The Committee recommended this change in response to the recently revised U.S. Standards for Grades of Potatoes (Standards) which became effective on April 21, 2008 (73 FR 15051, March 21, 2008). The revised Standards added a definition for Creamer potatoes. The revised Standards define the Creamer size designation as  $\frac{3}{4}$  inch minimum diameter and  $1\frac{5}{8}$  inch maximum diameter with no minimum or maximum weight.

Before the Standards were revised to include a Creamer size designation, various states developed their own standards for Creamer potatoes in an attempt to meet the increasing consumer demand for small potatoes. The Washington potato industry had previously considered Creamer potatoes to have a 1 inch minimum diameter. The Committee recommended reducing the minimum diameter to  $\frac{3}{4}$  inch so that the handling regulation would correspond with the revised Standards and to ensure that the industry was being responsive to the desires of consumers. The Committee also believes that inconsistency between what was marketed in Washington as Creamer potatoes and what the Standards specify as Creamer potatoes would have caused confusion in the marketplace.

Within the past several years, consumer demand has increased for small potatoes which often command

premium prices. Decreasing the minimum size requirement from 1 inch to  $\frac{3}{4}$  inch will help handlers in Washington meet the needs of their customers.

Committee statistics show that approximately 25 percent (2,483,219 hundredweight) of fresh market Washington potatoes (9,932,874 hundredweight) are red, yellow fleshed and white types of potatoes. The relaxation in the size requirement is expected to increase the volume of red, yellow fleshed, and white types of potatoes that meet minimum size requirements. Shipping a larger portion of the crop to market would help meet consumer demand and is expected to increase returns to growers.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under marketing orders No. 945 (Idaho-Eastern Oregon potatoes), No. 948 (Colorado potatoes, Area No. 2 and Area No. 3), No. 946 (Washington potatoes), and No. 953 (Southeastern potatoes) since the marketing orders were established. Section 980.1 of the vegetable import regulations specifies that import requirements for potatoes are to be based on the seasonal categories of potatoes produced in all marketing order areas. In that regard, imported red-skinned, round type potatoes must meet the requirements of the Washington potato marketing order during the months of July through September and the Area No. 2 Colorado potato marketing order during the months of October through the following June. This rule will not affect the current import requirements for all other round type or long type potatoes.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products.

Currently, there are approximately 45 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 \$83.933 million. Dividing \$83.933 million by 43 handlers gives an average annual sales value per handler estimate of about \$1.952 million. 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 \$62.08 million. Dividing \$62.08 million by 267 Washington potato producers yields an average annual fresh market sales value per producer of approximately \$232,500.

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. Although it is not known how many importers of potatoes may be classified as small entities, we believe that many of the importers of potatoes can be classified as such.

This rule continues in effect the action that decreased the minimum size required for all fresh market red, yellow fleshed, and white types of potatoes produced under the order from 1 inch to  $\frac{3}{4}$  inch in diameter, if they otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers with the ability to respond to the consumer demand for small potatoes. As provided under section 8e of the Act, this change will also apply to all imported red-skinned, round type potatoes between July 1 through September 30 of each year. While no change will be required in the language of § 980.1, all imported red-skinned, round type potatoes from July 1 through September 30 will be required to meet the minimum size requirement of  $\frac{3}{4}$  inch in diameter.

The authority for the grade and size requirements is provided in § 946.52 of the order. Section 946.336(a)(2) of the order's administrative rules and regulations prescribes the size requirement. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

Regarding the impact of this rule on affected entities, relaxing the size required for these potatoes is expected to benefit handlers, importers and growers. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. By relaxing the minimum size required for these potatoes, a greater quantity of potatoes will meet the order's handling regulations and the import regulations. This could translate into an increased market for small potatoes and greater returns for handlers, importers, and growers.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Washington. The Committee believes that a relaxation in the size requirement will increase the available supply of small potatoes. The small potato market is a minor segment of the Washington potato market. As such, the Committee believes that these small potatoes do not compete directly with most of the fresh market potatoes and that this action will not adversely affect the overall Washington potato market.

By providing Washington handlers the flexibility to pack the smaller red, yellow fleshed, and white types of potatoes, the Committee believes the industry will remain competitive in the marketplace. The Creamer potato market is a premium market and this action is expected to further increase sales of Washington Creamer potatoes to benefit the Washington potato industry. 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 minimum size requirement. However, the Committee believes that it is important that the Washington potato handling regulations be consistent with the revised Standards to reduce confusion during the inspection and marketing of these types of potatoes. The Committee also determined that relaxing the minimum size requirement for these potatoes will provide the greatest benefit to the industry by augmenting the developing market for small potatoes and increasing grower returns.

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.

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, as noted in the initial regulatory flexibility analysis, 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. 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. In addition, the World Trade Organization and known importers of potatoes will be notified of this action.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2008. Copies of this rule were mailed by Committee staff to all Committee members and potato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal

Register. That rule provided for a 60-day comment period which ended November 10, 2008. 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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

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** (73 FR 52573, September 10, 2008) 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 73 FR 52573 on September 10, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–29600 Filed 12–12–08; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 987

[Docket No. AMS–FV–08–0056; FV08–987–1 FIR]

#### Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a