

For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 56 and 70 is amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$38.96 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$43.24 per hour. Information on legal holidays is available from the Supervisor.

3. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of \$30.56 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

4. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by \$0.038, except that the minimum charge per billing period shall be \$225 and the maximum charge shall be \$2,250. The minimum charge also applies where an approved application is in effect and no product is handled.

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5. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

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(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$225 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

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PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

6. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

7. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

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(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be \$38.96 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$43.24 per hour. Information on legal holidays is available from the Supervisor.

8. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, or examination or review of a grader's decision.

The costs of an appeal grading, or examination or review of a grader's decision, will be borne by the appellant at an hourly rate of \$30.56 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, or examination or review of a grader's decision, discloses that a material error was made in the original determination, no fee or expenses will be charged.

9. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

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(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$225

will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

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10. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by \$0.00033, except that the minimum charge per billing period shall be \$225 and the maximum charge shall be \$2,250. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$225 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

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Dated: April 7, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–9478 Filed 4–11–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV97–946–1 IFR]

Irish Potatoes Grown in Washington; Amended Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the State of Washington Potato Committee (Committee) under Marketing Order No. 946 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Washington.

Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1997.

Comments received by May 14, 1997, 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-9918; FAX 202-720-5698, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204; telephone 503-326-2724; FAX 503-326-7440. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and 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 marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1997, and continuing

until amended, suspended, or terminated. 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. Such 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 decreases the assessment rate established for the Committee for the 1997-98 and subsequent fiscal periods from \$0.003 to \$0.002 per hundredweight.

The Washington potato marketing order provides authority for the Committee, with the approval of the Department, 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 with 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 is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 7, 1997, and unanimously recommended 1997-98 expenditures of \$44,400 and an assessment rate of \$0.002 per hundredweight of potatoes. In comparison, last year's budgeted

expenditures were \$42,500. The assessment rate of \$0.002 is \$0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of two fiscal periods' operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997-98 fiscal period should include \$18,800 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and \$6,000 for compliance audits. Budgeted expenses for these items in 1996-97 were \$17,400 and \$6,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Potato shipments for the year are estimated at 10,000,000 hundredweight, which should provide \$20,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by 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 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 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 450 producers of Washington potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Washington potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent fiscal periods from \$0.003 to \$0.002 per hundredweight. The Committee unanimously recommended 1997-98 expenditures of \$44,400 and an assessment rate of \$0.002 per hundredweight of potatoes. The assessment rate of \$0.002 is \$0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of two fiscal periods' operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997-98 fiscal period should include \$18,800 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and \$6,000 for compliance audits. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action because continuation of the higher rate would not allow it to bring its operating reserve in line with the maximum amount authorized under the order. The reduced assessment rate will require the Committee to use more of its reserve for authorized expenses, and help bring the reserve within authorized levels.

Potato shipments for the year are estimated at 10,000,000 hundredweight, which should provide \$20,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997-98 marketing season will range between \$5.00 and \$8.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1997-98 fiscal period as a percentage of total grower revenue will range between .025 and .04 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, 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 on all issues. Like all Committee meetings, the February 7, 1997, meeting was a public meeting and 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.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Washington 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.

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.

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 exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997-98 fiscal period begins on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely 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.

§ 946.248 [Amended]

2. Section 946.248 is amended by removing "July 1, 1996," and adding in its place "July 1, 1997," and by removing "\$0.003" and adding in its place "\$0.002."

Dated: April 7, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[FV96-956-3 FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Container Marking Requirements and Special Purpose Shipment Exemptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule (1) establishes container marking requirements for all shipments of Walla Walla Sweet Onions, and (2) establishes exemptions from assessment and container marking requirements for certain special purpose shipments of Walla Walla Sweet Onions. This rule will contribute to the efficient marketing of Walla Walla Sweet Onions and assist in program compliance. This rule was recommended by the Walla Walla Sweet Onion Committee (Committee), the agency responsible for the local administration of the marketing order for sweet onions grown in the Walla Walla Valley.

EFFECTIVE DATE: This final rule becomes effective April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room