

estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2005 of the free and restricted percentages established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2005–2006 crop.

As mentioned earlier, the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which

implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

A proposed rule concerning this action was published in the **Federal Register** on November 7, 2005 (70 FR 67375). Copies of the rule were mailed or sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending December 7, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board 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 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 shipping tart cherries from the 2005–2006 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### 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 930.254 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

#### § 930.254 Final free and restricted percentages for the 2005–2006 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2005, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: January 6, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–273 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV05–946–3 FIR]

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

**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 that modified the pack requirements 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 modified the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons to better meet buyer needs. Prior to this action, only potatoes grading U.S. No. 1 or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, were allowed to be shipped in

cartons. The relaxation in pack requirements will help maximize producer returns.

**EFFECTIVE DATE:** February 13, 2006.

**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."

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 continues in effect the action that modified the 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. Prior to this action, only potatoes grading U.S. No. 1 grade or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, were allowed to 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. Requirements in effect prior to this action provided 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 potatoes failing U.S. No. 1 only account of internal defects 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 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 grade 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 its recommendation that cartons containing such potatoes be permanently and conspicuously marked to grade.

**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. 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 continues in effect the action that modified 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 change enables 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 sales 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 carton size, carton types, as well as the size and location of the marking 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, 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 July 26, 2005, meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 12, 2005. Copies of the rule were mailed by Committee staff to all Committee members and Washington 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 14, 2005. 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/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.

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** (70 FR 53723, September 12, 2005) 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 70 FR 53723 on September 12, 2005, is adopted as a final rule without change.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–274 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. FV06–982–1 IFR]

#### Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year

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

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

**SUMMARY:** This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2005–2006 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 11.4388 and 88.5612 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

**DATES:** *Effective Date:* January 13, 2006. This interim final rule applies to all 2005–2006 marketing year restricted hazelnuts until they are properly disposed of in accordance with