

§ 930.200 Handler assessment rates.

On and after July 1, 2000, the assessment rate imposed on handlers shall be \$0.0017 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be \$0.00085 per pound.

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 945**

[Docket No. FV00-945-1 FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with change, the provisions of an interim final rule relaxing pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound cartons to better meet buyer needs. Prior to this action, only U.S. No. 1 and better grade potatoes could be shipped in cartons. This change was recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect relaxed pack requirements which allow handlers to ship a substantial amount of U.S. No. 2 grade potatoes in cartons, thus meeting customer demand and maximizing producer returns.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT:

Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room

2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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 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. A 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.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the Idaho-Eastern Oregon potato marketing order. Prior to this

action, pack requirements specified that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better, and that potato size be conspicuously marked on all cartons (except when used as a master container). Grade and size requirements in the order are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540-51.1566), and the size must be marked consistent with § 51.1545 of the standards. Also, all varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1-15, and the White Rose and red skinned varieties from August 1-December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements.

This rule continues in effect pack requirements which allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided each carton is permanently and conspicuously marked as to grade. This change allows handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Committee met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 or better grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade.

To meet the needs of the food service industry, the Committee recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color that are permanently and conspicuously marked as to grade. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed a motion to relax the pack requirements.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties encountered in handling the currently used 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 purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. The Committee is responding to these changing market conditions so that handlers will remain competitive with the 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 U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore the Committee included in their recommendation that fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked to grade.

In addition to finalizing the interim final rule published at 65 FR 25625, this final rule also corrects an error in that interim final rule that removed the maturity requirement for Norgold variety potatoes. This rule restores that maturity requirement as was in effect in § 945.341(b)(2) prior to the changes made in 65 FR 25625, and restores the paragraphs that were redesignated as paragraphs (b)(2) and (b)(3) in the interim final rule, as paragraphs (b)(3) and (b)(4), respectively. That is, the Norgold variety shall meet the maturity requirement of slightly skinned (except from August 1–15 this variety can be moderately skinned).

Pursuant to the 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 63 handlers of Idaho-Eastern Oregon potatoes who

are subject to regulation under the marketing order and about 1,600 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 \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule continues to relax the order's pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade. This change enables handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Prior to this action, the order required that all potatoes packed in cartons be inspected and certified to meeting U.S. No. 1 or better grade. At its meeting on January 18, 2000, it was the Committee's unanimous consensus that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed the pack relaxation motion.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties experienced 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 purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. In recommending this change, the Committee is responding to changing market conditions so that handlers will remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish U.S. No. 2 grade potatoes packed in cartons from the traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that

buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore, the Committee included in its recommendation the provision that the fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked as to grade.

During the meetings, the Committee discussed the impact one-piece 50-pound cartons of U.S. No. 2 potatoes might have on the industry. The Committee believes that the recommendation will increase the sale of U.S. No. 2 grade potatoes to the food service industry. Information from the Committee indicates that during an average season, approximately 10 percent of the fresh potato shipments from the production area are of U.S. No. 2 grade, and that approximately 20 percent of the potatoes going to the food service industry are of U.S. No. 2 grade. This action is expected to further increase shipments to the food service industry, and help the Idaho-Eastern Oregon potato industry benefit from the increased growth in the food service industry.

The relaxation of pack requirements allowing handlers to ship U.S. No. 2 grade potatoes in cartons might require the purchase of new equipment that can handle one-piece cartons. However, these costs are expected to be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in that manner. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

As alternatives to this action, the Committee considered various methods to distinguish cartons of U.S. No. 2 grade potatoes from the traditional premium carton pack of U.S. No. 1 grade potatoes. The Committee decided that it was important that there be a clear distinction between the packs to ensure that the shipments of U.S. No. 2 potatoes in cartons not negatively impact the market for U.S. No. 1 potatoes in cartons.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. 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, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's January 18, 2000, meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, this was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 3, 2000. A copy of the rule was faxed and mailed to the Committee's staff, which in turn, made the rule available to Committee members and potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 3, 2000. 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, with change, as published in the **Federal Register** (65 FR 25625, May 3, 2000) will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action corrects maturity requirements for Norgold variety potatoes which were inadvertently removed; (2) no useful purpose would be achieved by delaying the effective date of this action; and (3) no comments were received in response to the interim final rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 65 FR 25625 on May 3, 2000, is adopted as a final rule with the following change:

1. The authority citation for part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674

2. In § 945.341, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4) and a new paragraph (b)(2) is added to read as follows:

§ 945.341 Handling regulation.

* * * * *

(b) * * *

(2) *Norgold varieties*. Each year from August 1 through August 15, “moderately skinned”; during other periods “slightly skinned.”

* * * * *

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–88–AD; Amendment 39–11748; AD 2000–10–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD currently requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. This document clarifies the applicable compliance time for certain airplanes. This correction is necessary to ensure that fatigue cracking on longeron splice fittings, which could result in reduced controllability of the horizontal stabilizer, is detected and corrected in a timely manner.

DATES: Effective June 30, 2000.

The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of

June 30, 2000 (65 FR 34061, May 26, 2000).

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of January 13, 1998 (62 FR 67550, December 29, 1997).

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the Federal Aviation Administration (FAA) issued AD 2000–10–23, amendment 39–11748 (65 FR 34061, May 26, 2000), which applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. That AD was prompted by reports that fatigue cracking was found on longeron splice fittings. The actions required by that AD are intended to detect and correct such fatigue cracking, which could result in reduced controllability of the horizontal stabilizer.

Need for the Correction

Since the issuance of AD 2000–10–23, the manufacturer has informed the FAA that the correct compliance time for certain airplanes is unclear. Paragraph (a)(1) of the AD states the applicable compliance time, “For airplanes that have accumulated fewer than 17,000 total flight cycles or 63,000 total flight hours as of the effective date of this AD.” Paragraph (a)(2) of the AD states the applicable compliance time, “For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD.” The manufacturer points out that the use of the word “or” (“* * * fewer than 17,000 total flight cycles or 63,000 total flight hours * * *”) in paragraph (a)(1) makes it possible that some airplanes may inadvertently be subject to the compliance times in both paragraphs (a)(1) and (a)(2).

The FAA has reviewed this wording and determined that a correction to AD 2000–10–23 is necessary. The FAA's intent is that the compliance times in paragraph (a)(1) apply to airplanes with