

Rules and Regulations

Federal Register

Vol. 65, No. 132

Monday, July 10, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV00-947-1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County; Suspension of Handling, Reporting, and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends for the 2000-2001 and future seasons the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). This rule will reduce industry-operating expenses.

DATES: Effective July 1, 2000. Comments received by September 8, 2000 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 to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204-2807; 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, P.O. Box 96456, Room 2525-S, 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. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, 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. This rule maintains continuity with the current suspension. 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.

This rule suspends the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee. This rule will reduce industry expenses, as it decides whether the marketing order should be continued.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under part 947. Termination or suspension authority also is specified in § 947.71.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Prior to the 1999-2000 season, minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order were specified in § 947.340 *Handling Regulation* [7 CFR part 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provided that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4

ounces, and be not more than moderately skinned. Additionally, potatoes packed in cartons had to be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also included waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day. Related provisions appear in the regulations at § 947.130, *Special Purpose Certificates—application and issuance*; § 947.132 *Reports*; § 947.133 *Denial and appeals*; and § 947.134 *Establishment of list of manufacturers of potato products*.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes that have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and inspection regulations and related sections for the 2000–2001 and future seasons. It also recommended that all reporting and assessment collection requirements be suspended, too. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin.

The objective of the handling and inspection requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived. It would like to further assess this matter during the 2000–2001 and future seasons.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the

Committee continues to explore various alternatives for reducing costs.

The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommended continuing the suspension of the handling and inspection requirements indefinitely. Last season's suspension was implemented by the Department with an interim final rule published in the **Federal Register** on June 25, 1999 (64 FR 34113) and finalized on September 13, 1999 (64 FR 49352). Continuation of the suspension for the 2000–2001 and subsequent seasons will enable the Committee to further study the impacts on the industry and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements, and continue to decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place. Section 947.125 regarding minimum quantity assessment exemptions, and § 947.180 regarding monthly assessment reports expire by their own terms on June 30, 2000.

The September 13, 1999, interim final rule also established reporting requirements for the 1999–2000 season so the Committee could obtain information on which to collect assessments. In previous seasons, it had obtained this information from inspection reports. However, these reports were eliminated with the suspension of mandatory inspection. The reporting requirements will not be needed during the 2000–2001 and future seasons because the Committee recommended that no assessments be collected from handlers during these seasons.

Section 947.247 of the marketing order currently prescribes an assessment rate of \$0.004 per hundredweight of assessable potatoes for the Oregon-California Potato Committee. Authorization to assess potato handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and reporting requirements, a limited Committee budget will be needed for program administration during the 2000–2001 and future seasons. For 2000–2001, the Committee recommended a budget of \$2,000 for management and its spring meetings. It has about \$10,000 in operating reserves to cover approved Committee expenses.

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 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 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 having annual receipts of less than \$500,000.

The Committee estimates that about 83 percent of the handlers ship under \$5,000,000 worth of Oregon-California

potatoes and about 17 percent of the handlers ship over \$5,000,000 worth of Oregon-California potatoes on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately \$294,000, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and related regulations. It also recommended suspending all reporting and assessment collection regulations. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs. The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommends continuing the suspension that was finalized by the Department on September 13, 1999 (64 FR 49352). This

will enable the Committee to further study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, inspection, and related requirements. It will decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season was estimated at \$600,000. The 1998–99 marketing season was the most recent year for mandatory inspection. This is approximately \$20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The suspension of the assessment collection requirements for the 2000–2001 and future seasons also will result in some cost savings. Assessment collections during the 1999–2000 season totaled \$25,500. Absent the suspension of § 947.247, assessments collected during the 2000–2001 season would have been about \$26,000, according to Committee estimates.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of all of the reporting requirements is expected to reduce the reporting burden on small or large Oregon-California potato handlers by almost 300 hours, and should further reduce industry expenses. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sectors.

In addition, the Department 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 Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 31, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on suspension of the handling, reporting, and assessment collection regulations under the Oregon-California potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this action no longer 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) This rule suspends the current handling and related regulations for Oregon-California potatoes beginning July 1, 2000; (2) this rule was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Oregon-California potato handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by July 1, 2000, the date 2000–2001 season shipments of the Oregon-California potato crop are expected to begin, and this action should apply to the entire season's

shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 947, §§ 947.120, 947.123, 947.125, 947.130, 947.132, 947.133, 947.134, 947.141, 947.180, 947.247, and 947.340 are suspended in their entirety effective July 1, 2000.

Dated: July 5, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17415 Filed 7–6–00; 9:48 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE–120; Special Conditions No. 35–001–SC]

Special Conditions: Hamilton Sundstrand, Model NP2000 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Hamilton Sundstrand model NP2000 constant speed propeller. This eight-bladed propeller uses a dual acting digital electro-hydraulic propeller control system and has blades constructed of composite materials. These design features are novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective date August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1999, Hamilton Sundstrand applied for type certification for a new model NP2000 propeller. The NP2000 propeller uses a digital electro-hydraulic control system and blades that are constructed of composite material.

Conventional propellers on turboprop aircraft use a mechanical governor in the propeller control system that senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct revolutions per minute (RPM). When the mechanical governor fails, the propeller pitch is controlled by a backup mechanical overspeed governor.

The Hamilton Sundstrand model NP2000 propeller uses a digital electronic governor in the propeller control system. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic governor logic commands speed governing, synchrophasing, failure monitoring and provides beta scheduling. The digital electronic governor introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. In addition to these features, the system has a backup mechanical overspeed governor.

The special conditions address the following airworthiness issues for the Hamilton Sundstrand model NP2000 propeller:

1. Safety assessment;
2. Propeller control system;
3. Centrifugal load tests;
4. Fatigue limits and evaluation;
5. Bird impact; and
6. Lightning strike.

The Hamilton Sundstrand model NP2000 propeller incorporates propeller blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite

materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with metal propeller blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

Part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

The existing certification requirements only address structural and fatigue evaluation of metal propeller blades or hubs, and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

The applicable airworthiness requirements do not contain adequate or appropriate safety standards for these novel and unusual design features.

Type Certification Basis

Under § 21.17, Hamilton Sundstrand must show that the model NP2000 propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (*i.e.* part 35), do not contain adequate or appropriate safety standards for the model NP2000 propeller because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions