exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee has recommended prompt termination of the marketing order regulating the handling of Washington-Oregon fresh prunes and no longer requires reports or assessment income; (2) this action is a relaxation in the order's regulatory requirements; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) 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 924

Prunes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 924.160 and 924.236 [Suspended]

■ 2. Sections 924.160 and 924.236 are suspended in their entirety.

Dated: July 20, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–18086 Filed 7–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–10–0052; FV10–946–1 IR]

Irish Potatoes Grown in Washington; Temporary Change to the Handling Regulations and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule suspends, for the 2010–2011 season only, the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed for russet potato varieties 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). During the suspension of the russet potato handling regulation, reports from handlers will be required for the purpose of obtaining information necessary to administer the marketing order. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while allowing the industry the opportunity to explore alternative marketing strategies.

DATES: Effective July 24, 2010; comments received by September 21, 2010 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by September 21, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document 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.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: *Antoinette.Carter@ams.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."

The Department of Agriculture (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.

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 suspends the order's handling regulation for russet potato varieties for the 2010–2011 season. This rule allows the Washington potato industry to market russet potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed under the Washington potato marketing order. It is intended that the suspension will apply to the season beginning on July 1, 2010, and continuing through June 30, 2011. The minimum quality, maturity, pack, marking, and inspection requirements will resume July 1, 2011, for the 2011–2012 season and continue unless modified, suspended, or terminated.

This rule also establishes a new reporting requirement for russet potatoes handled during the same 12 month period. As assessments will remain in effect on all fresh russet potatoes handled under the order, reporting requirements will allow the Committee to obtain information necessary to facilitate assessment collection.

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 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 State Inspection Program (FSIP), and certified as meeting the applicable requirements of such regulations.

Section 946.70 authorizes the Committee, with the approval of USDA, to require information from handlers that will enable the Committee to exercise its duties under the order.

Section 946.336 of the order's administrative rules and regulations prescribes the grade, size, quality, cleanness, maturity, pack, marking, and inspection requirements for fresh market Washington potatoes.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington potatoes which 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 USDA reviews Committee recommendations, 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 January 26, 2010, meeting, the Committee was asked to evaluate the benefits of handling regulations and mandatory inspection for Washington potatoes. As a consequence, the Committee formed a subcommittee that met on May 11, 2010, to consider the implications of regulatory and inspection requirement suspension. Subsequently, at its June 1, 2010, meeting, the Committee unanimously recommended suspending the handling regulation for russet potatoes for the period beginning July 1, 2010, and ending on June 30, 2011, as well as establishing a requirement that handlers report their russet potato shipments during this period to the Committee on a specially developed form.

Historically, an objective of the order's handling regulations has been to ensure that quality Washington potatoes enter the fresh market, thereby ensuring consumer satisfaction, increased sales, and improved returns to producers. While the industry continues to support quality as an important factor in maintaining sales, the Committee believes the cost of inspection (mandated when the handling regulations are in effect) may exceed the benefits derived from the russet potato quality regulations.

With russet potato prices reportedly at low levels in recent years, the Committee, as noted earlier, has been studying the possibility of reducing costs through the elimination of mandatory inspection. In evaluating the relative benefits of quality control versus a regulation-free market, some concern was expressed at the meeting that elimination of the quality requirements could result in low quality potatoes being shipped to the fresh market, thereby negatively affecting consumer demand. Also, there is some concern that overall quality of the product may decline, and that the Washington potato industry could lose russet potato sales to production areas that are covered by quality and inspection requirements. Furthermore, because russet potatoes comprise about 76 percent of the fresh market Washington potato crop, the Committee is concerned about future availability of inspection services if the FSIP reduced staff as a result of the decrease in the demand for their services. With these concerns in mind, and having the desire to explore the benefits of non-regulation, the Committee recommended that the suspension of the russet potato handling regulation be effective for a temporary period only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule permits handlers to ship russet potatoes without regard to minimum quality, maturity, pack, marking, and inspection requirements for the period July 1, 2010, through June 30, 2011. Although this rule provides russet potato handlers the opportunity to decrease their total costs by elimination of the expenses associated with mandatory inspection, it does not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the temporary regulatory suspension at its next meeting.

This action will result in the elimination of the monthly FSIP inspection report for russet potatoes. The Committee uses these monthly reports—compiled by the FSIP from inspection certificates—as a basis for assessment collection. During the suspension of the regulations for russet potatoes, the Committee will require handler reports specific to russet potato shipments in order to collect assessments and to compile statistics.

Therefore, a new § 946.143 *Assessment reports* is added to the administrative rules and regulations requiring each person handling russet type potatoes to submit a monthly report to the Committee containing the following information: (a) The name and address of the handler; (b) the date and quantity of russet potatoes shipped; (c) the assessment payment due; and (d) other information as may be requested by the Committee. The first report shall include all required information from the effective date of this rule through the end of the month in which the assessment report information is approved by the Office of Management and Budget.

Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. This reporting requirement will enable the Committee to continue collecting the funds needed to cover necessary program costs. Although adding reporting requirements, this rule, through the suspension of the handling regulation and thereby inspection, is expected to reduce overall industry expenses.

Initial 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 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 45 handlers of Washington potatoes subject to regulation under the order (inclusive of the 33 russet potato handlers) and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (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 2008–2009 marketing year, the Committee reports that 10,279,734 hundredweight of Washington potatoes were shipped into the fresh market. Based on the USDA Economic Research Service estimate that the 2008 average f.o.b. price for fresh domestic potatoes was $8.42 per hundredweight, the average gross returns for each of the 45 handlers was less than $2,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2009 was $7.10 per hundredweight. The average gross annual producer revenue for each of the 267 Washington potato producers is therefore calculated to be approximately $273,356. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule suspends the handling regulation and establishes reporting requirements for russet type potatoes for the period beginning July 1, 2010, and ending June 30, 2011. This change is expected to reduce overall industry expenses while providing the industry with the opportunity to explore alternative marketing strategies.

The authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. In addition, the handling regulation is specified under § 946.336 of the order's administrative rules and regulations.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum quality, maturity, pack, marking, and inspection requirements. Though inspections will not be mandated for russet potatoes handled under the order, handlers may at their discretion choose to have their potatoes inspected. Handlers are thus able to control costs—which are generally passed on to producers—based on the demands of their customers. The Committee reports that during the 2008–2009 season, the total cost of inspection—at $0.07 per hundredweight for the approximately 7,800,000 hundredweight of Washington russet potatoes shipped—was about $546,000. This is approximately $12,133 per handler.

The Committee discussed alternatives to this recommendation. Other than not recommending any changes to the regulations, the Committee considered temporarily suspending the handling regulation for all types of potatoes, not just russet type potatoes. However, the Committee believes that it is beneficial to the industry to maintain the handling regulation and inspection requirements for round type potatoes. The Committee reports that round type potatoes generally command premium prices. The Washington potato industry believes that the order's round potato quality regulations, in conjunction with mandatory inspections, are valuable marketing tools. Therefore, the Committee recommended suspending the handling regulation for russet potatoes only.

An alternative to establishing the reporting requirements would have been relieving handlers from paying assessments on shipments of russet potatoes. Approximately 76 percent of the fresh potato shipments in Washington are russet varieties (as opposed to round white and round red or long white type potatoes), thus the Committee determined that it would not be able to cover its cost of operation should shipments of russet potatoes not be assessed.

This rule establishes a monthly reporting requirement for russet potato handlers. The report will provide the Committee with information necessary to track shipments and collect assessments. While this rule establishes new reporting requirements for russet potato shipments, the suspension of the handling regulation for russet potatoes also eliminates the more frequent reporting requirements that were included under the safeguard requirements for russet potatoes shipped under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large russet potato handlers are expected to be offset by the elimination of other reporting requirements currently in effect. In addition, the suspension of the handling regulation and inspection requirements for russet potatoes is expected to further reduce industry expenses.

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.

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

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all committee meetings, the January 26, May 11, and June 1, 2010, meetings were public meetings, and all entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including 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/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the additional burden has been merged into the information collection which is currently under review for renewal under OMB No. 0581–0178, Generic OMB Vegetable and Specialty Crops.

Title: Irish Potatoes Grown in Washington—Marketing Order No. 946.

OMB Number: 0581–0178.

Type of Request: Revision of a currently approved collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Washington potato order, which has been operating since 1949.

On June 1, 2010, the Committee unanimously recommended suspending the order's handling regulation for russet variety potatoes for the period beginning July 1, 2010, and ending June 30, 2011. To ensure that the Committee obtains handler information that is necessary for operation of the order, the Committee also unanimously recommended establishing a new reporting requirement. Information will be reported on a new Committee form, *Monthly Russet Fresh Potato Report,* which will require handlers to report, on a monthly basis, the total quantity of russet potatoes handled during the season. The first report shall include all required information from the effective date of this rule through the end of the month in which the assessment report information is approved by the Office of Management and Budget.

The new report is needed by the Committee to compile information that is essential for the collection of handler assessments and to provide statistical information to the industry. The Committee previously used monthly reports from the FSIP to obtain this information; reports that will no longer be available due to the suspension of the russet potato handling regulation. This new report will help to ensure compliance with the order's provisions and assist the Committee and the USDA with oversight and planning.

The information collected will be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS the secondary user.

The request for approval of the new information collection under the order is as follows:

Monthly Russet Fresh Potato Report.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Washington russet potato handlers.

Estimated Number of Respondents: 33.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 33 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Washington potato order (Marketing Order No. 946), and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. 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.

This rule invites comments on a temporary change to the handling regulations and reporting requirements for russet potatoes under the Washington 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 this interim 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) Any changes resulting from this rule should be effective as soon as practicable because the Washington russet potato shipping season begins in July; (2) the Committee discussed and unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of relaxation of the handling regulations as soon as possible; and (4) 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 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.

■ 2. A new § 946.143 is added to read as follows:

§ 946.143 Assessment reports.

During the period that russet type potatoes are exempt from handling requirements under § 946.336, each person handling russet type potatoes shall submit a monthly report to the committee by the 10th day of the month following the month such potatoes are handled: *Provided,* That the first report shall include all required information from July 26, 2010 through the end of the month in which the assessment report and its collection of information is approved by the Office of Management and Budget. Each assessment report shall contain the following information:

(a) The name and address of the handler;

(b) The date and quantity of russet type potatoes handled;

(c) The assessment payment due; and

(d) Other information as may be requested by the Committee.

■ 3. Section 946.336 is revised to read as follows:

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41: *Provided,* That from July 24, 2010, through June 30, 2011, russet type potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (d), (e), and (g) of this section.

Dated: July 20, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–18091 Filed 7–22–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–10–0031; FV10–983–1 IR]

Pistachios Grown in California, Arizona, and New Mexico; Modification of the Aflatoxin Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule modifies the aflatoxin sampling and testing regulations currently prescribed under the California, Arizona, and New