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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Docket No. FV95-953-1IFR]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 953 for the 1995-96 fiscal period. Authorization of this budget enables the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective June 1, 1995, through May 31, 1996. Comments received by July 3, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). 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 interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995-96 fiscal period, which begins June 1, 1995, and ends May 31, 1996. This interim final 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 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 150 producers of Southeastern potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Southeastern potatoes, based on last season's crop of approximately 1,124,736 hundredweight. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 20, 1995, and unanimously recommended a 1995-96 budget of \$12,000, \$1,000 more than the previous year. The budget item for 1995-96 which has increased compared to that budgeted for 1994-95 (in parentheses) is: Manager's salary, \$5,800 (\$4,800). All other items are budgeted at last year's amounts.

The Committee also recommended an assessment rate of \$0.0050 per hundredweight, \$0.0025 less than last season's rate. Planting for the 1995 crop has not been completed. However, it is estimated that shipments will generate about \$5,624 in assessment income. This, along with \$6,376 from the Committee's reserve, will be adequate to cover the expenses incurred. Funds remaining at the end of the 1995-96 fiscal period should be within the maximum permitted by the order of approximately one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Irish potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 953.252 is added to read as follows:

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

§ 953.252 Expenses and assessment rate.

Expenses of \$12,000 by the Southeastern Potato Committee are authorized, and an assessment rate of \$0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: May 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

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where the inspection requirements of AD 93-21-12 were accomplished also prompted this action. The actions specified by this AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

EFFECTIVE DATE: July 7, 1995.

ADDRESSES: Information that applies to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA-25 series airplanes was published in the **Federal Register** on January 20, 1995 (60 FR 4119). The action proposed to supersede AD 93-21-12 to require repetitively inspecting (using ultrasonic and dye penetrant procedures) the wing forward spar fuselage attachment assembly for cracks or corrosion, and replacing or repairing any cracked or corroded part.

Accomplishment of the proposed actions would be in accordance with the APPENDIX included at the end of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

A number of commenters recommend a longer inspection interval for the affected airplanes, specifically:

- Four commenters recommend that the FAA establish a more frequent inspection interval for those airplanes operating in agricultural conditions. Two of the commenters recommend utilizing the proposed two-year inspection interval for those in agricultural operation and a longer interval for those in non-agricultural operation;

- One commenter recommends that the repetitive inspection only apply to those airplanes in agricultural operation;
- One commenter recommends a repetitive inspection interval of 2,000 hours time-in-service (TIS);
 - Six commenters recommend a 10-year repetitive inspection interval;
 - One commenter recommends a 5-year repetitive inspection interval;
 - One commenter recommends a 3- to 5-year repetitive inspection interval for those airplanes in non-agricultural operation;