

tolerance increase will not permit blending of additional sizes beyond those currently blended, but will grant more flexibility for varying shapes of the fruit. This relaxation is beneficial to both growers and handlers. The 10 percent size variation tolerance decreases the amount of handler repacking and reduces inspection time and cost, thereby making it more cost effective for handlers. This increase will not result in any visual difference in uniformity.

Section 920.302(a)(4) is amended by revising paragraphs (i) through (iv) and adding new paragraphs (v) and (vi). Included in these changes are editorial changes made for clarity. Diameter variances are specified for kiwifruit packed in cell compartments, cardboard fillers or molded trays. These provisions appear in § 51.2338(d) of the United States Standards for Grades of Kiwifruit (7 CFR 51.2338(d)). Also, these changes delete the phrase: "Provided, That for the season ending July 31, 1995, such containers may also hold 23-pounds net weight of kiwifruit" in § 920.320(a)(4)(iv) (59 FR 53565). This phrase is no longer needed as it applied to the 1994-95 season.

The proposed rule concerning this action was published in the April 24, 1995, **Federal Register** (60 FR 20062). That proposed rule provided a 30-day comment period which ended May 24, 1995. No comments were received.

This final rule impacts all handlers in the same manner. The increased size variation tolerance eases some of the burden associated with packing and sizing kiwifruit and enables handlers to pack and sell more kiwifruit. This change reduces costs for handlers and growers.

Based on the above, 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 relaxation of pack requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 920 is amended as follows:

**PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

2. In section 920.302, paragraphs (a)(4) (i) through (iv) are revised and new paragraphs (a)(4) (v) and (vi) are added to read as follows:

**§ 920.302 Grade, size, pack, and container regulations.**

- (a) \* \* \*
- (4) \* \* \*

(i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) Kiwifruit packed in cell compartments, cardboard fillers or molded trays may not vary in diameter more than:

Sizes	Diameter
30 or larger .....	1/2-inch (12.7 mm).
31-38 .....	3/8-inch (9.5 mm).
39 or smaller .....	1/4-inch (6.4 mm).

Kiwifruit packed in bags, volume fill or bulk containers, fruit may not vary more than:

Sizes	Diameter
30 or larger .....	1/2-inch (12.7 mm).
33, 36, 39, and 42 .....	3/8-inch (9.5 mm).
45 or smaller .....	1/4-inch (6.4 mm).

Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Size 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 10 percent) may fail to meet the requirements of this paragraph.

(iii) The fruit packed in containers with cell compartments, cardboard fillers, or molded trays shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.50

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample

unit may be more than 4 ounces less than such weight.

(iv) When kiwifruit is packed in bags, volume fill or bulk containers, the following table specifying the numerical size designation and maximum number of fruit per 8-pound sample is to be used.

Column 1 numerical count size designation	Column 2 maximum number of fruit per 8-pound sample
21 .....	22
25 .....	27
27/28 .....	30
30 .....	32
33 .....	35
36 .....	40
39 .....	45
42 .....	50
45 .....	55

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(v) For shipments in volume fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(vi) All volume fill containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

Dated: June 15, 1995.

**Sharon Bomer Lauritsen,**  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 95-15111 Filed 6-20-95; 8:45 am]  
BILLING CODE 3410-02-P

**7 CFR Part 948**

[Docket No. FV95-948-2IFR]

**Irish Potatoes Grown in Colorado; 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. 948 for the 1995-96 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (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 September 1, 1995, through August 31, 1996. Comments received by July 21, 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 number 202-720-9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone number 503-326-2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. 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, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such 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 September 1, 1995, and ends August 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 requesting 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 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 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 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 Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), 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 Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for 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 Colorado Area II potatoes. 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.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met May 18, 1995, and unanimously recommended a 1995-96 budget of \$62,328, which is \$3,596 less than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Audit fee, \$975, (\$900), other office, \$625 (\$500), and utilities, \$3,000 (\$2,000). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Assistant's salary, \$8,256 (\$10,320), part-time salary, \$3,640 (\$3,822), major purchase, \$2,125 (\$2,250), and (\$2,425) for property tax, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of \$0.0030 per hundredweight, \$0.0006 less than last season. This rate, when applied to anticipated potato shipments of 16,500,000 hundredweight, will yield \$49,500 in assessment income. This, along with \$12,828 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of \$101,064 in the Committee's authorized reserve at the beginning of the 1994-95 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all 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 recommendation 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 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 September 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable 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 rule.

#### List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

#### PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

2. A new § 948.214 is added to read as follows:

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

#### § 948.214 Expenses and assessment rate.

Expenses of \$62,328 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of \$0.0030 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-15108 Filed 6-20-95; 8:45 am]

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#### 7 CFR Part 981

[Docket No. FV95-981-1IFR]

#### Almonds Grown in California; 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. 981 for the 1995-96 crop year. Authorization of this budget enables the Almond Board of California (Board) 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 beginning July 1, 1995, through June 30, 1996. Comments received by July 21, 1995, 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 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:

Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487-5901, or FAX # (209) 487-5906; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456, telephone (202) 720-1509 or FAX # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. 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 (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 provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1995-96 crop year, which begins July 1, 1995, and ends June 30, 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 608c(15)(A), 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 7,000 producers of California almonds under this marketing order, and approximately 115 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