

is an adequate supply of high quality limes to meet consumer demands during the requested deregulation period. However, the committee also believes that a test of the deregulation period will determine if consumer demand will keep quality high or result in substitution of lemons and loss of market share.

Four of the opposing comments allege that the proposed rule was passed by a committee with unqualified members seated, and therefore the proposal should not have been acted on by the Department. Commenters claim that, when the original recommendation was made on December 13, 1995, some members were serving in positions that they were not qualified to hold. However, since that time, a new committee has been seated. At its organizational meeting on April 17, 1996, the newly elected members of the committee took up the discussion of the suspension. The new committee voted to recommend that the proposed rule be modified from a permanent change to a one year trial basis. Consequently, the changes provided for in this rule were affirmed by the current committee with a majority vote of seven in support, none opposed, and one abstention.

The jointly signed comment disagreed with the proposed rule's contention that, historically, the June 1 through December 31 period is a time when fruit prices are low, and the overall quality of the crop is good. They argued that prices in June, September, October, November and December often have differed from year to year, between low to moderately high, and that lime prices in 1993 and 1994 remained moderate during the months of July and August.

In terms of quality, they state that during the June through December time period, quality is not considered high quality. For example, they state there is a relatively large amount of stylar-end breakdown, which is a weakening of the rind at the fruit's blossom end which deteriorates over time. In its deliberations of this rule, the committee considered the availability of quality fruit during the proposed period of suspension. The proposed rule noted that historically prices are low, and the overall quality of the crop is good, indicating a trend and general view of the time period. This does not mean to imply that fluctuations do not occur during various months within the period or from year to year. However, during the period from June to December, juice content improves, fruit matures, and the overall quality of limes is better. The committee plans to review the effects of the suspension on the

market, and base further action on its analysis.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

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 the provisions of the regulations to be suspended, as hereinafter set forth, no longer tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 911 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

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

#### **PART 911—LIMES GROWN IN FLORIDA**

##### **§§ 911.311, 911.329, 911.344 [Amended]**

2. Effective June 1, 1997, through December 31, 1997, §§ 911.311, 911.329, and 911.344 are suspended.

#### **PART 944—FRUITS; IMPORT REGULATIONS**

##### **§ 944.209 [Amended]**

3. Effective June 1, 1997, through December 31, 1997, § 944.209 is suspended.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96-21210 Filed 8-20-96; 8:45 am]

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#### **7 CFR Part 947**

[Docket No. FV96-947-1 FIR]

#### **Oregon-California Potatoes; Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with an addition, the provisions of an interim final rule that established an assessment rate for the Oregon-California Potato Committee (Committee) under Marketing Order No. 947 for the 1967-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Oregon-California. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** Effective on July 1, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Martha Sue Clark, Program Assistant, 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, FAX 202-720-5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724, FAX 503-326-7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California, 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. Under the marketing order now in effect, Oregon-California potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1,

1996, and continuing until amended, suspended, or terminated. 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 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (FRA), 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 550 producers of Oregon-California potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. 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 Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers

of Oregon-California 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 and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on March 28, 1996, and unanimously recommended 1996-97 expenditures of \$61,200 and an assessment rate of \$0.005 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$46,200. The assessment rate of \$0.005 is \$0.001 less than last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$30,000 for an agreement with the Oregon Potato Commission to provide services to the Committee and \$8,100 for a contingency fund. Budgeted expenses for these items in 1995-96 were \$24,000 and \$100, respectively. The contingency fund was increased as the Committee is considering a possible marketing research and development project in conjunction with the Oregon Potato Commission.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year are estimated at 7,400,000 hundredweight which should provide \$37,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the May 31, 1996, issue of the Federal Register (61 FR 27247). That interim final rule added a new subpart heading—Assessment Rates and § 947.247 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 1, 1996. No comments were received.

This action will reduce the assessment obligation imposed on handlers. While this rule 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 from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant

economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material 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.

This final rule also adds a new subpart heading—Handling Regulations to the Code of Federal Regulations immediately preceding § 947.340 Handling regulation.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule 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 1996-97 fiscal period began on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such 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 assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

**List of Subjects in 7 CFR Part 947**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 61 FR 27247 on May 31, 1996, is adopted as a final rule with the following change:

**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.

**PART 947—[AMENDED]**

2. Part 947 is amended by adding a new subpart heading immediately preceding § 947.340 to read as follows:

Note: This subpart heading will appear in the Code of Federal Regulations.

**Subpart—Handling Regulations**

Dated: August 8, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96-20662 Filed 8-20-96; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 953**

[Docket No. FV96-953-1 FIR]

**Southeastern Potatoes; Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with an addition, the provisions of an interim final rule that established an assessment rate for the Southeastern Potato Committee (Committee) under Marketing Order No. 953 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**DATES:** Effective on June 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Program Assistant, 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, FAX 202-720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

**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), 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. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning June 1, 1996, and continuing until amended, suspended, or terminated. 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 of 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 in the production area and approximately 60 handlers subject to regulation under the marketing order. 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 Southeastern potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Southeastern 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 and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on April 18, 1996, and unanimously recommended 1996-97 expenditures of \$12,000, the same as last year, and an assessment rate of \$0.0075 per hundredweight. The assessment rate of \$0.0075 is \$0.0025 higher than last year's established rate. The major expenditures include \$7,800 for the manager's and secretarial salaries and \$900 for travel expenses.

The assessment rate recommended by the Committee was based on last year's shipments of 1,549,268 hundredweight of Southeastern potatoes, which should provide \$11,619,51 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.