

in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### **Paperwork Reduction Act of 1995**

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements, which were approved by OMB under control number 0584-0045, will not change as a result of this rule.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the preamble. Prior to any judicial challenge to the application of the provisions of this proposed rule, all applicable administrative procedures must be exhausted.

#### **List of Subjects in 7 CFR Part 246**

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

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## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

[Docket No. FV01-948-3 PR]

#### **Irish Potatoes Grown in Colorado; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Colorado Potato Administrative Committee, Area II (Committee) for the 2001-02 and subsequent fiscal periods from \$0.0015 to \$0.0035 per hundredweight of potatoes handled. The Committee locally administers the marketing order, which regulates the handling of potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 4, 2001.

**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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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

Dennis L. West, 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) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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) 720-8938, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating

the handling of Irish potatoes grown in Colorado, 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 (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 order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on September 1, 2001, and continue 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 608(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 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 would increase the assessment rate established for the Committee for the 2001-02 and subsequent fiscal periods from \$0.0015 to \$0.0035 per hundredweight of potatoes handled.

The Colorado potato 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 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 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.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 17, 2001, and unanimously recommended 2001–02 expenditures of \$73,618 and an assessment rate of \$0.0035 per hundredweight of potatoes handled. In comparison, last year's budgeted expenditures were \$71,132. The assessment rate of \$0.0035 is \$0.002 higher than the rate currently in effect. For budget purposes, the committee projected the quantity of assessable potatoes for 2001–02 at 16,500,000 hundredweight and assessment revenue of \$57,750 ( $\$0.0035 \times 16,500,000$  hundredweight). The Committee recommended the increased assessment rate because the current rate of \$0.0015 would not generate enough income to adequately administer the program through the 2001–02 fiscal period. The major expenditures recommended by the Committee for the 2001–02 year include \$40,793 for salaries, \$9,950 for office expenses, which include telephone service, supplies and postage, and \$7,650 for building maintenance. Budgeted expenses for these items in 2000–01 were \$39,793, \$10,700, and \$6,250, respectively.

The Committee developed the \$0.0035 assessment rate recommendation by taking into consideration the 2001–02 budget, the estimated 2001–02 potato crop, the relatively small size of the current monetary reserve (\$32,000), and other factors such as the recent attrition in farms and handlers. Although the recommended increase would more than double the current assessment rate, the Committee may need to draw up to an additional \$15,868 from its reserves to meet budgeted expenses. The current reserve of approximately \$32,000 is below the maximum amount authorized by the order of approximately two fiscal periods' expenses (\$948.78). At the current rate, funds to cover anticipated expenses would not be adequate.

As mentioned earlier, based on projected shipments of 16,500,000 hundredweight, the recommended assessment rate of \$0.0035 should provide \$57,750 in assessment income. Income from such handler assessments,

combined with interest income and funds from the Committee's authorized reserve, would be adequate to meet budgeted expenses for the 2001–02 fiscal period.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2001–02 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

#### Initial Regulatory Flexibility Analysis

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. 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 250 producers of Colorado Area II potatoes and approximately 93 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) 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.

Based upon information provided by the Committee, 96 percent of the

handlers of Area II potatoes have shipped under \$5,000,000 worth of potatoes during the most recent season for which statistics are available. In addition, information provided by the National Agricultural Statistics Service was considered in determining the number of large and small producers by acreage, production, and producer prices. According to the information provided, the recent average yield per acre was 335 hundredweight of potatoes, and the recent season average producer price was \$4.20 per hundredweight. This equates to average gross annual producer receipts of approximately \$430,542 each. Based on the foregoing, it can be concluded that a majority of producers and handlers of Area II potatoes may be classified as small entities, excluding receipts from other sources.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.0015 to \$0.0035 per hundredweight of potatoes handled. The Committee unanimously recommended 2001–02 expenditures of \$73,618 and an assessment rate of \$0.0035 per hundredweight. The proposed assessment rate of \$0.0035 is \$0.002 more than the rate currently in effect and would increase the financial burden on handlers by approximately \$33,000. The quantity of assessable fresh potatoes for the 2001–02 season is estimated at 16,500,000 hundredweight. The \$0.0035 rate should provide \$57,750 in assessment income which, when combined with interest income and income from the Committee's monetary reserve, would be adequate to cover budgeted expenses. The current rate would not provide enough funds to cover anticipated expenses.

The major expenditures recommended by the Committee for the 2001–02 year include \$40,793 for salaries, \$9,950 for office expenses, which include telephone service, supplies and postage, and \$7,650 for building maintenance. Budgeted expenses for these items in 2000–01 were \$39,793, \$10,700, and \$6,250, respectively.

The Committee recommended the increased assessment rate to help offset higher administration costs and to decrease the rate in which the monetary reserve has been relied upon in recent fiscal periods. Based on the Committee's 2001–02 crop estimate, the current reserve of \$32,000 could be reduced by as much as \$15,868 with the recommended assessment rate.

The Committee reviewed and unanimously recommended 2001–02

expenditures of \$73,618. This compares to last year's approved budget of \$71,132. Prior to arriving at a budget, alternative expenditures and assessment levels were discussed by the Committee, including higher and lower rates of assessment. When considering the relatively poor economic returns the industry has faced during the past six seasons and the resultant instability within the potato industry, as well as the 2001-02 budget and the current size of the monetary reserve (\$32,000), the Committee concluded that an increase in the rate of assessment to \$0.0035 per hundredweight of potatoes would allow it to properly administer the program.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001-02 season could range between \$2.06 and \$7.35 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2001-02 fiscal period as a percentage of total producer revenue could range between 0.170 and 0.048 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Colorado Area II potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 17, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large potato handlers. 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.

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

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001-02 fiscal period begins on September 1, 2001, and the order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (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.

#### 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 proposed to be 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. Section 948.216 is revised to read as follows:

#### § 948.216 Assessment rate.

On and after September 1, 2001, an assessment rate of \$0.0035 per hundredweight is established for Colorado Area II potatoes.

Dated: July 27, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV01-948-1 PR]

#### Irish Potatoes Grown in Colorado; Modification of Area No. 3 Handling Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed exemptions to the handling regulation prescribed under the marketing order (order) for Colorado Area No. 3 potatoes. These relaxations were unanimously recommended by the Colorado Potato Administrative Committee for Area No. 3 (Committee), the agency responsible for local administration of the order. This rule would exempt potatoes shipped for the purpose of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, inspection and assessment requirements of the order. Relaxing handling requirements is expected to provide handlers with greater marketing flexibility, producers with increased returns, and consumers with more choices in buying fresh potatoes. This rule also clarifies the regulatory text by specifying that potatoes shipped for livestock feed, charity, and certified seed are exempt from assessment requirements.

**DATES:** Comments must be received by August 22, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto: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:** Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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) 720-8938.

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