

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN: 0584-AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems—Delay of Implementation Date; Proposed Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would delay the implementation date of the final rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems, published in the **Federal Register** on December 29, 2000, 65 FR 83248, which became effective on April 28, 2001 and has an implementation date of February 27, 2002. The rule strengthens vendor management in retail food delivery systems by establishing mandatory selection criteria, training requirements, criteria to be used to identify high-risk vendors, and monitoring requirements, including compliance investigations. The proposed delay of the implementation date until October 1, 2002 is necessary to provide State agencies additional time to implement the rule, to promote more effective and efficient implementation of the new requirements, and because the new implementation date corresponds with the beginning of the Federal fiscal year.

DATES: To be assured of consideration, written comments must be postmarked on or before September 4, 2001. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments: "Delay of Implementation Date." Electronic transmissions of comments, including data faxes and electronic mail, will not be accepted.

Any comments received on requirements or provisions contained in the final rule published on December 29, 2000, will not be considered.

ADDRESSES: Comments should be sent to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1414, Alexandria, VA 22302. All written submissions will be available for public inspection at this address during normal business hours (8:30 a.m. to 5:00 p.m.), Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief, Policy and Program Development Branch, at the above address or by telephone to (703) 305-2746.

SUPPLEMENTARY INFORMATION:

Background

Why Are We Proposing To Delay the Implementation Date?

A final rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems, was published in the **Federal Register** on December 29, 2000, 65 FR 83248, with an implementation date of February 27, 2002. The rule strengthens vendor management in retail food delivery systems by establishing mandatory selection criteria, training requirements, criteria to be used to identify high-risk vendors, and monitoring requirements, including compliance investigations. Some of the requirements in the final rule, such as the annual identification of high-risk vendors and related monitoring requirements, are based on the Federal fiscal year. Further, the rule establishes many new State Plan requirements. Approval of State Plans for each fiscal year is a prerequisite to the receipt of Federal funds for that fiscal year. Moving the implementation date to the beginning of the fiscal year, October 1, 2002, is intended to result in more efficient and effective implementation of the rule by State agencies. For these reasons, we believe the October 1, 2002 date is a more appropriate alternative implementation date.

Why Is the Comment Period Limited to 30 Days?

In light of the noncontroversial nature and limited scope of this change, the

Department limited the comment period to 30 days to provide State agencies with notification of this change as quickly as possible.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the WIC Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth

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