

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV01-948-2 IFR]

#### Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule suspends the continuing assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) for the 2001-02 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period began July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

**EFFECTIVE DATES:** September 26, 2001. Comments received by November 26, 2001 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 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). 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, room 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 3267440; 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](mailto:Jay.Guerber@usda.gov).

**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, 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. For the 1999-00 fiscal period, an assessment rate of \$0.02 per hundredweight of potatoes handled was fixed by the Secretary to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the assessment rate for the 2001-02 fiscal period, which began on July 1, 2001, and will continue in effect until reinstated. 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 administration 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 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 suspends § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of \$0.02 per hundredweight of potatoes handled for 1999-00 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary. This rule suspends the \$0.02 assessment rate for 2001-02 and will remain in effect during subsequent fiscal periods until reinstated by the Secretary upon recommendation of the Committee.

Sections 948.75-948.77 of the Colorado potato order provide authority for the Committee, with the approval of the Secretary, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. In addition, § 948.78 of the order authorizes the use of monetary reserve funds to cover program expenses. The members of the Committee are producers and handlers of Colorado Area III 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. Recommendations concerning the budget and assessment rate are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 10, 2001, to discuss the proposed 2001–02 budget and assessment rate and to take appropriate action. However, with only three out of nine voting members in attendance at the meeting, the quorum necessary for the Committee to take action was not present. To ensure that the Committee would have a recommendation for the 2001–02 fiscal period budget, the Committee's manager subsequently polled all Committee members by U.S. mail, as provided for in § 948.61 of the order. The resultant unanimous recommendation by all nine members favored the establishment of a budget with expenditures of \$18,200 and an assessment rate of \$0.005 (½ cent) per hundredweight of potatoes handled during the 2001–02 fiscal period.

However, section 948.78(a)(2) of the order specifies that the Committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as a reserve, provided that funds already in the reserve are less than approximately two fiscal periods' expenses. After reviewing the Committee's initial recommendation for a \$0.005 rate of assessment, the Department requested that the Committee consider suspension of the assessment rate until the reserve is lowered to a level consistent with the order. Consequently, at its meeting of July 19, 2001, the Committee unanimously recommended suspension of the continuing assessment rate of \$0.02 for the 2001–02 and subsequent fiscal periods. The Committee concluded that an assessment rate will not be necessary for operation during the 2001–02 fiscal period as funds in the reserve, combined with interest and rental income, are adequate to meet expenses.

As of July 1, 2001, the Committee had \$59,579 in its reserve fund. With the 2001–02 budget set at \$18,200, the current maximum reserve permitted by the order is approximately \$36,400 (approximately two fiscal periods' expenses). To meet its 2001–02 expenses the Committee plans on drawing approximately \$14,700 from its reserve, and may additionally earn approximately \$3,500 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2001–02 fiscal period could be reduced to approximately \$44,879. Projecting a similar level of expenses in 2002–03 and continuation of the assessment rate suspension, the Committee's reserve on July 1, 2003, could be about \$30,179. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include \$7,000 for salary, \$6,300 for office expense (which includes equipment, telephone, and utilities), and \$3,000 for rent. Minor expenses total \$1,900. Budgeted expenses for these items in the 2000–01 fiscal period were \$4,250, \$6,800, and \$3,000, respectively. Minor expenses totaled \$3,600 that year.

Although the Committee foresees a need for the suspension of the continuing assessment rate established in this rule to continue in effect for approximately two fiscal periods, it will remain suspended until reinstated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Since the suspension of the assessment rate will continue for such subsequent fiscal periods as necessary to ensure that the monetary reserve is lowered to a level consistent with the order, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for reinstatement 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 such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed, and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been reviewed and approved by the Department and budgets for subsequent fiscal periods will also 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 26 producers of Colorado Area III potatoes in the production area and approximately 11 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 \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Information for the most recent season in which statistics are available, as reported 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 average yield per acre was 340 hundredweight, the average farm size was 53 acres, and the season average producer price was \$5.95 per hundredweight. This equates to average gross receipts to producers of approximately \$107,200. Furthermore, based upon information provided by the Committee, all handlers of Area III potatoes have shipped under \$5,000,000 worth of potatoes during the most recent season for which numbers are available. Based on the foregoing, it can be concluded that a majority of producers and handlers of Area III potatoes may be classified as small entities, excluding receipts from other sources.

This rule suspends § 948.215 of the order's rules and regulations, which established an assessment rate of \$0.02 per hundredweight of potatoes handled beginning with the 1999–00 fiscal period. This suspension will be in effect for the 2001–02 fiscal period and will remain in effect until reinstated.

Without assessment income to offset its 2001–02 budget of \$18,200, the Committee plans on drawing approximately \$14,700 from its reserve, and may additionally earn approximately \$3,500 from interest and other income.

The major expenditures recommended by the Committee in the 2001–02 fiscal period budget include \$7,000 for salary, \$6,300 for office expenses, and \$3,000 for rent. Minor expenses total \$1,900. In comparison, the Committee's 2000–01 fiscal period budget of \$17,650 included major expenses of \$4,250, \$6,800, and \$3,000, respectively. Minor expenses totaled \$3,600.

The Committee recommended that assessment collection be suspended until such time as the monetary reserve reaches a level consistent with the order

requirement of less than approximately two fiscal periods' expenses. The Committee believes that by suspending the assessment rate for at least the next two fiscal periods, the operating reserve should be lowered to an amount consistent with the program. Based on Committee projections, the current reserve of \$59,579 will be reduced to about \$44,879 by the end of the 2001–02 fiscal period, and to about \$30,179 by the end of the 2002–03 fiscal period.

Prior to recommending the suspension of the continuing assessment rate, the Committee discussed alternatives, including its earlier recommended assessment rate of \$0.005 per hundredweight. However, the Committee concurred with the Department's position that a suspension of the assessment rate is viable since it could rely on its reserve and other income to meet budgeted expenses, and that such a suspension would expedite the reduction of the reserve. Another alternative considered by the Committee was to refund the portion of the reserve that is over that permitted by the order directly to handlers of record. Because many of the handlers assessed in prior years are no longer in business, the Committee concluded this would not be equitable.

This action will reduce handler costs by almost \$9,000 (448,750 hundredweight of assessable potatoes × the current rate of assessment of \$0.02) during the 2001–02 fiscal period, as no assessment will be collected. Suspension of the assessment rate will reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meetings were widely publicized throughout the Colorado Area III potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 10 and July 19, 2001, meetings were open to the public 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 action imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area III 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.

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 the continuing assessment rate established at 64 FR 48081 no longer tends to effectuate the declared policy of the Act. The suspension shall continue in effect until an assessment rate is reinstated by the Secretary, upon recommendation and information submitted by the Committee, or other available information.

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 rule until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by suspending the assessment rate beginning with the 2001–02 fiscal period; (2) the 2001–02 fiscal period began on July 1, 2001, and this action should be effective as soon as possible; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) this interim final rule provides a 60-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.

#### **§ 948.215 [Suspended]**

2. In Part 948, § 948.215 is suspended in its entirety.

Dated: September 17, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–23655 Filed 9–24–01; 8:45 am]

**BILLING CODE 3410–02–M**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

**[Airspace Docket No. 00–AEA–15]**

#### **Amendment to Class E Airspace, Seneca Falls, NY**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on April 13, 2001, Airspace Docket No. 00–AEA–15. The final rule established Class E airspace at Seneca Falls, NY.

**EFFECTIVE DATE:** September 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–4521.

#### **SUPPLEMENTARY INFORMATION:**

##### **History**

**Federal Register** Document 01–7420, Airspace Docket No. 00–AEA–15, published on April 13, 2001 (66 FR 19082), established Class E airspace at Seneca Falls, NY. An error was discovered in the geographic coordinates for the Finger Lakes Regional Airport. This action corrects those errors.

##### **Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Seneca Lake Regional Airport as published in the **Federal Register** on April 13, 2001 (66 FR 19082) are corrected as follows:

##### **§ 71.1 [Amended]**

On page 19083, column 2, in the airspace designation for Seneca Falls, NY, third line, correct “(lat. 42°52′38.58 N/long. 76°46.54′ W)” to read “(lat. 42°52′59″ N/long. 76°46′54″ W)”