

# 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

### Animal and Plant Health Inspection Service

#### 7 CFR Part 373

#### 9 CFR Part 60

[Docket No. 02-062-2]

RIN 0579-AB50

### Cost-Sharing for Animal and Plant Health Emergency Programs

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** We are extending the comment period for our proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before November 7, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-062-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-062-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-062-1" on the subject line.

You may read any comments that we receive on Docket No. 02-062-1 in our reading room. The reading room is

located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Shea, Deputy Administrator, Policy and Program Development, APHIS, 1400 Independence Avenue, SW., Jamie L. Whitten Building, Room 316-E, Washington, DC 20250-3432; (202) 720-3668.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 8, 2003, we published in the **Federal Register** (68 FR 40541-40553, Docket No. 02-062-1) a proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States.

Comments on the proposed rule were required to be received on or before September 8, 2003. We are extending the comment period for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

**Authority:** 7 U.S.C. 7701-7772 and 8301-8317; 7 CFR 2.22, 2.80, 371.3, and 371.4.

Done in Washington, DC, this 21st day of August 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-21991 Filed 8-27-03; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 945

[Docket No. FV03-945-1 PR]

### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Idaho-Eastern Oregon Potato Committee (Committee) for the 2003-04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period begins August 1 and ends July 31. The increased assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 12, 2003.

**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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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 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:** Barry Broadbent, 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 E-mail: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov); or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; 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. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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 (USDA) 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, Idaho-Eastern Oregon 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 August 1, 2003, and continue until amended, suspended, or terminated. This rule would 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 USDA 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 USDA 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 USDA'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 2003-04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. Thus, all directly affected persons had an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 16, 2003, and unanimously recommended 2003-04 expenditures of \$149,417 and an assessment rate of \$0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003-04 potato shipments at 36,500,000 hundredweight, which would generate \$94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal

period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

As a consequence, the Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of \$145,317 (down from \$149,417) and to raise the assessment rate to \$0.0045 per hundredweight of potatoes handled (up from \$0.0026). In comparison, last fiscal period's budgeted expenditures were \$137,094. The recommended assessment rate is \$0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

The major expenditures recommended by the Committee for the 2003-04 fiscal period include \$95,067 for salaries and benefits, \$16,500 for transportation, \$13,500 for travel, \$6,800 for rent and utilities, and \$4,800 for office expenses. Budgeted expenses for these items in 2002-2003 were \$92,144, \$9,000, \$14,000, \$6,300, and \$6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003-04 fiscal period at 36,500,000 hundredweight, which should provide \$164,250 in assessment income at the proposed assessment rate. This income would be adequate to cover budgeted expenses. The Committee estimates that monetary reserves will be approximately \$33,000 at the beginning of the 2003-04 fiscal period and will potentially increase to \$51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (\$ 945.44). Funds held in reserve would be kept within the maximum permitted by the order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2003-04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

### 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 900 producers of potatoes in the production area and approximately 54 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.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of \$6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately \$240,259. It can be concluded, therefore, that most of these producers would be classified as small entities.

In addition, based on Committee records and 2002-03 f.o.b. shipping point prices ranging from \$5.00 to

\$35.00 per hundredweight reported by USDA's Market News Service, many of the Idaho-Eastern Oregon potato handlers may ship over \$5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003-04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003-04 expenditures of \$145,317 and an assessment rate of \$0.0045 per hundredweight. The proposed assessment rate is \$0.0019 per hundredweight higher than the rate currently in effect. The quantity of assessable potatoes for the 2003-04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately \$164,250) would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003-04 fiscal period include \$95,067 for salaries and benefits, \$16,500 for transportation, \$13,500 for travel, \$6,800 for rent and utilities, and \$4,800 for office expenses. Budgeted expenses for these items in 2002-2003 were \$92,144, \$9,000, \$14,000, \$6,300, and \$6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimates the reserve to be \$33,000 at the 2002-03 fiscal period end. At the current rate of \$0.0026 per hundredweight, on the estimated potato production of 36,500,000 hundredweight for the 2003-04 fiscal period, the projected income for the 2003-04 fiscal period would be \$94,900. This amount, along with the projected reserve of \$33,000, would be approximately \$19,417 less than required to fund the proposed 2003-04 budget and \$9,194 less than the 2002-03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of \$0.0045 per hundredweight (assessment income of \$164,250) and expenditures of \$145,317, the Committee may increase its reserve by up to \$18,933. The projected reserve would be approximately \$51,933 on July 31, 2004,

which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to \$0.0045 per hundredweight would allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between \$0.0026 per hundredweight and \$0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003-04 fiscal period could range between \$4.50 and \$6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 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, this cost would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon 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 June 16, 2003, 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 production area commodity 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.

USDA 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 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The fiscal period is August 1 to July 31 and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) handlers usually begin shipping Idaho-Eastern Oregon potatoes on or about August 1; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was unanimously recommended by the Committee and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is proposed to be amended as follows:

#### **PART 945—POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for 7 CFR part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 945.249 is revised to read as follows:

#### **§ 945.249 Assessment rate.**

On and after August 1, 2003, an assessment rate of \$0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: August 22, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–21990 Filed 8–27–03; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 93**

[Docket No. 00–022–1]

#### **Standards for Privately Owned Quarantine Facilities for Ruminants**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for the importation of ruminants into the United States to establish standards for privately owned quarantine facilities. The regulations authorize the establishment of privately operated quarantine facilities for ruminants, which are subject to approval and oversight by the Animal and Plant Health Inspection Service. However, the regulations do not provide specific standards for the approval, operation, and oversight of such facilities, with the exception of privately operated quarantine facilities for sheep or goats. Based on recent interest in establishing such facilities for cattle, we are proposing standards for privately owned quarantine facilities covering all ruminants to ensure public participation in their development and to ensure that any facilities that may be approved for this purpose operate in a manner that protects the health of the U.S. livestock population.

**DATES:** We will consider all comments that we receive on or before October 27, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–022–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 00–022–1” on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m.,

Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture operates animal quarantine facilities. We also authorize the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations at subpart D of part 93 (9 CFR 93.400 through 93.435, and referred to below as the regulations) pertain to the importation of ruminants. Ruminants include all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes. Section 93.411 requires that ruminants imported into the United States be quarantined upon arrival for at least 30 days, with certain exceptions. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

In § 93.412, paragraph (a) authorizes the establishment of privately operated quarantine facilities, subject to APHIS approval and oversight. Paragraph (a) provides, in part, that the “quarantine facility must be suitable for the quarantine of such ruminants and must be approved by the Administrator prior to the issuance of any import permit.” This paragraph also provides that APHIS will “supervise the quarantine” at such facilities.

Section 93.434 of the regulations contains standards for approval, operation, and APHIS oversight of privately operated quarantine facilities