

pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam), and to improve the quality of apricots available to consumers because of decreased fruit damage during transit. The removal of the requirement requiring mandatory use of a top pad for apricots packed loose in closed containers weighing not less than 24 pounds will save producers and handlers the cost of a top pad when the pad is not needed.

An editorial change which removes, for clarity, reference in § 922.306(a)(4) to containers being row-faced or tray-packed does not eliminate the current requirement in § 922.306(a)(2) which applies to all containers with a net weight of apricots greater than 14 pounds.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this final 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 75 handlers of Washington apricots who are subject to regulation under the order and approximately 400 apricot producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of Washington apricot handlers and producers may be classified as small entities.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. The requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, were often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit

from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad in these closed containers depending on apricot variety or container dimensions.

Previously, the container regulations required the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule continues to provide handlers greater flexibility by allowing them to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. This rule also provides handlers greater flexibility by permitting them to use containers with different dimensions because some containers may not have sufficient space for a top pad. Continuing the removal of the top pad requirement, is expected to increase returns to producers and handlers by eliminating the cost of a top pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam) when the pad is not necessary, and to improve the quality of apricots available to consumers because of decreased fruit damage during transit.

The only alternative identified by the Committee was to continue the mandatory use of a top pad. However, this alternative was not adopted because use of the top pad in some containers damaged certain varieties of apricots during shipment.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 14, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which four are handlers and eight are growers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on June 16, 1998 (63 FR 32717). Copies of the rule were mailed by the Committee's staff to all Committee

members and apricot handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 17, 1998. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 32717, June 16, 1998) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 922 which was published at 63 FR 32717 on June 16, 1998, is adopted as a final rule without change.

Dated: October 5, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-27181 Filed 10-8-98; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 948

[Docket No. FV98-948-1 FIR]

##### Irish Potatoes Grown in Colorado; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate, from \$0.0030 to \$0.0015 per hundredweight of potatoes handled, established for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1998-99 and subsequent fiscal periods. The Committee is responsible for local administration of 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 began on September 1 and ends August 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** November 9, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440, or George J. Kelhart, 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) 205-6632. Small businesses may request information on compliance 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) 205-6632.

**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 marketing agreement and order are 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, 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 issued herein will be applicable to all assessable potatoes beginning September 1, 1998, 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 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 continues to decrease the assessment rate established for the Committee for the 1998-99 and subsequent fiscal periods from \$0.0030 to \$0.0015 per hundredweight of potatoes handled.

The Colorado 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 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.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

For the 1996-97 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 indefinitely 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 21, 1998, and recommended, by a nine to one vote, 1998-99 expenditures of \$66,895 and an assessment rate of \$0.0015 per hundredweight of potatoes. The Committee member voting no objected to the amount being budgeted for the executive director's salary, but had no problem with the total amount budgeted

or the reduction in the assessment rate. In comparison, last year's budgeted expenditures were \$63,329. The assessment rate of \$0.0015 is \$0.0015 less than the rate previously in effect. The Committee voted to lower the assessment rate and use some of the funds in its operating reserve to bring the reserve closer to the amount it believes necessary to administer the program. The decrease will reduce the financial burden on handlers as prices for San Luis Valley potatoes have been extremely low the past two seasons. Overproduction of the 1996 fall crop and unusually cold weather during the 1997 fall crop growing season resulted in major financial disasters within the San Luis Valley potato industry. The Committee discussed various assessment rates, but decided that an assessment rate of less than \$0.0015 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998-99 fiscal period include \$37,210 for salaries, \$10,850 for office expenses, which include telephone, supplies, and postage, and \$5,250 for building maintenance, which includes insurance and utilities. Budgeted expenses for these items in 1997-98 were \$35,579, \$9,500, and \$5,250, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Potato shipments for the year are estimated at 16,500,000 hundredweight which should provide \$24,750 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 (\$124,903 as of September 1, 1997) will be kept within the maximum permitted by the order (less than approximately two fiscal periods' expenses; \$948.78).

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 1998-99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final 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 285 producers of Colorado Area II potatoes in the production area and approximately 100 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 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 Colorado Area II potato producers and handlers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 1998-99 and subsequent fiscal periods from \$0.0030 to \$0.0015 per hundredweight of potatoes handled. The Committee by a nine to one vote recommended 1998-99 expenditures of \$66,895 and an assessment rate of \$0.0015 per hundredweight of potatoes handled. The Committee member voting no objected to the amount being budgeted for the executive director's salary but had no problem with the total amount budgeted or the reduction in the assessment rate. In comparison, last year's budgeted expenditures were \$63,329. The assessment rate of \$0.0015 is \$0.0015 lower than the 1997-98 rate. The Committee voted to lower the assessment rate and use some of the funds in its operating reserve to bring the reserve closer to the amount it

believes necessary to administer the program. The decrease will reduce the financial burden on handlers as prices for San Luis Valley potatoes have been extremely low the past two seasons. Overproduction of the 1996 fall crop and unusually cold weather during the 1997 fall crop growing season resulted in major financial disasters within the San Luis Valley potato industry. The Committee discussed various assessment rates but decided that an assessment rate of less than \$0.0015 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998-99 fiscal period include \$37,210 for salaries, \$10,850 for office expenses, which include telephone, supplies, and postage, and \$5,250 for building maintenance which includes insurance and utilities. Budgeted expenses for these items in 1997-98 were \$35,579, \$9,500, and \$5,250, respectively.

With Colorado Area II potato shipments for 1998-99 estimated at 16,500,000 hundredweight, the \$0.0015 rate of assessment should provide \$24,750 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 (\$124,903 as of September 1, 1997) will be kept within the maximum permitted by the order (less than approximately two fiscal periods' expenses; § 948.78).

Recent price information indicates that the grower price for the 1998-99 marketing season will range between \$1.60 and \$6.15 per hundredweight of Colorado potatoes. Therefore, the estimated assessment revenue for the 1998-99 fiscal period as a percentage of total grower revenue will range between 0.0900 and 0.0243 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. 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 21, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area II 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.

An interim final rule concerning this action was published in the **Federal Register** on July 16, 1998 (63 FR 38282). Copies of that rule were also mailed or sent via facsimile to all Area II potato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 14, 1998, and no comments were received.

After consideration of all relevant matter 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.

#### **List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### **PART 948—IRISH POTATOES GROWN IN COLORADO**

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 63 FR 38282 on July 16, 1998, is adopted as a final rule without change.

Dated: October 5, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 987**

[Docket No. FV98-987-1 FR]

##### **Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate**

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