

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ama.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 this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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) The 2005–2006 fiscal period began on April 1, 2005, and the order requires that the rate of assessment apply to all assessable Washington apricots handled during such fiscal period; (2) this action reduces the assessment rate; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past years; 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 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

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

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

#### § 922.235 Assessment rate.

On or after April 1, 2005, an assessment rate of \$1.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12620 Filed 6–24–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV05–948–2 IFR]

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

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

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

**SUMMARY:** This rule decreases the assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2005–2006 and subsequent fiscal periods from \$0.03 to \$0.02 per hundredweight of potatoes. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess Colorado potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective June 28, 2005. Comments received by August 26, 2005, 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.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:

Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 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, 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. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of 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 (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, 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 Colorado potatoes beginning July 1, 2005, 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 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 decreases the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from \$0.03 to \$0.02 per hundredweight of Colorado potatoes.

The order provides authority for the Committee, with the approval of USDA, 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 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 2003–2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.03 per hundredweight of potatoes handled. This assessment rate continues 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 May 12, 2005, and unanimously recommended 2005–2006 expenditures of \$20,368 and an assessment rate of \$0.02 per hundredweight of assessable potatoes handled. In comparison, last year's budgeted expenditures were \$20,668. The assessment rate of \$0.02 is \$0.01 lower than the rate in effect since the 2003–2004 fiscal period. Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. The decreased assessment rate will allow the Committee to draw from the reserve to help cover 2005–2006 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses.

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include \$8,610 for salary, \$3,000 for office rent, \$1,750 for office expenses, and \$1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Applying the \$0.02 per hundredweight rate of assessment to the Committee's 585,475 hundredweight crop estimate should provide \$11,709 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (\$42,792 as of July 1, 2004) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78). The assessment rate established in this rule will 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 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2005–2006 budget and those for subsequent fiscal periods will 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.

Based on Committee data, there are 8 producers and 8 handlers in the

production area subject to regulation under the 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 \$6,000,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2003 fresh potato production of 1,041,958 hundredweight (Committee records), and the average 2003 producer price of \$5.05 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately \$657,736. In addition, based on Committee records and an estimated average 2003 f.o.b. price of \$7.15 per hundredweight (\$5.05 per hundredweight NASS producer price plus Committee estimated packing and handling costs of \$2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under \$6,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from \$0.03 to \$0.02 per hundredweight of potatoes. The assessment rate of \$0.02 is \$0.01 less than the 2004–2005 rate. The quantity of assessable potatoes for the 2005–2006 fiscal period is estimated at 585,475 hundredweight. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (\$42,792 as of July 1, 2004) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include \$8,610 for salary, \$3,000 for office rent, \$1,750 for office expenses, and \$1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. Therefore, the Committee recommended a decreased assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range between \$5.05 and \$7.75 per hundredweight. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.40 and 0.26 percent.

This action decreases 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 potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 12, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. 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 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.

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.ama.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 this rule, as hereinafter set forth,

will tend to effectuate the declared policy of the Act.

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) The 2005–2006 fiscal period begins on July 1, 2005, and the order requires that the rate of assessment apply to all assessable Colorado potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2005–2006 fiscal period; (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; 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.

■ 2. Section 948.215 is revised to read as follows:

##### § 948.215 Assessment rate.

On or after July 1, 2005, an assessment rate of \$0.02 per hundredweight is established for Colorado Area No. 3 potatoes.

Dated: June 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12619 Filed 6–24–05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV05–981–1 IFR]

#### Almonds Grown in California; Revision to Requirements Regarding Credit for Promotion and Advertising

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

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

**SUMMARY:** This rule revises the requirements regarding credit for promotion and advertising activities under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. The changes will expand the credit allowed for certain promotional activities, and help to clarify and simplify the current regulations.

**DATES:** Effective August 1, 2005; comments received by August 26, 2005 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.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:

Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street,