

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 also found and determined 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 1999–2000 fiscal period began on April 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (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. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### List of Subjects in 7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

#### PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

##### § 924.236 Assessment rate.

On and after April 1, 1999, an assessment rate of \$1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: August 26, 1999.

**Bernadine M. Baker,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–22906 Filed 9–1–99; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 948

[Docket No. FV99–948–1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) under Marketing Order No. 948 for the 1999–2000 and subsequent fiscal periods from \$0.01 per hundredweight to \$0.02 per hundredweight of potatoes handled. The Committee is responsible for local administration of 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 1999–2000 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 3, 1999.

##### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, 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) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 [7 CFR Part 948], both as amended, 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.”

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 issued herein will be applicable to all assessable potatoes beginning on July 1, 1999, 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 increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from \$0.01 per hundredweight to \$0.02 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 Committee consists of five producer members and four handler members, each of whom is 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.

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 unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

A meeting of the Committee was scheduled for May 13, 1999, to review the assessment rate and budget needs of the program for the 1999–2000 fiscal

period. However, a quorum was not present. Based upon discussion among those Committee members who showed up for the meeting, the manager of the Committee prepared information and voting material that was sent by facsimile copy (fax) to Committee members and alternates. Voting by telegraph, telephone, or other means of communication is provided for in § 948.61(c) of the marketing order. Seven members subsequently faxed completed votes back to the manager during the voting period May 14 through May 19, 1999. Thus, a fax vote was used to determine the Committee's level of support for an increased rate of assessment and to recommend an operating budget for the 1999–2000 fiscal period. All seven members approved the \$0.02 assessment rate. The 1999–2000 budget of \$24,450 was approved by a vote of 6 to 1. Those voting confirmed their votes at the Committee meeting held on June 20, 1999.

Based on the fax vote, the Committee approved an assessment rate of \$0.02 per hundredweight of potatoes handled during the 1999–2000 and subsequent fiscal periods. This is a \$0.01 increase over the rate previously in effect. The increased assessment rate was recommended because the \$0.01 rate would not generate enough income to adequately administer the program, given the projected short crop for 1999. The assessment rate increase is based on the 1999–2000 crop estimate, the 1999–2000 fiscal period expenditures estimate, and the current and projected balance of the operating reserve.

The estimated Area III assessable potato crop for 1999–2000 is approximately 792,000 hundredweight. This is about 380,000 hundredweight less than the assessed crop of 1998–99 due to a reduction in the acreage planted this season. The increased assessment ensures that the operating reserve is not depleted at the end of the 1999–2000 fiscal period because of the projected short crop.

The increased assessment rate of \$0.02 per hundredweight should provide \$15,840 in assessment income. This amount, when supplemented with an estimated \$3,000 interest income, \$1,500 rental income from the sublease of office space to the State Inspection Service, and \$4,110 from the operating reserve, should be adequate to cover the budgeted expenses of \$24,450. The recommended budget is \$1,603 less than the 1998–99 budget of \$26,053.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$10,500 for the manager's salary, \$3,000 for rent,

and \$2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were \$11,500, \$3,000, and \$2,000, respectively.

The Committee estimates it has approximately \$38,245 in its operating reserve, which should be adequate to cover any income shortages for the current fiscal period. This amount is within the maximum permitted by the order of approximately two fiscal periods' expenditures (\$948.78).

The assessment rate of \$0.02 will continue in effect for the 2000–2001 and subsequent fiscal periods unless modified, suspended, or terminated by the Secretary, based on recommendation and information submitted by the Committee, or other available information.

Although this assessment rate will be in effect 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 and are locally published. 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.

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, the 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 17 handlers of Colorado Area III potatoes who are subject to regulation under the order and approximately 60 potato producers in the regulated production 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 Colorado Area III potato handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from \$0.01 per hundredweight to \$0.02 per hundredweight of potatoes handled. The \$0.02 assessment rate was approved by all seven of the Committee members who cast votes during a fax vote held between May 14 and May 19, 1999. The assessment rate is \$0.01 greater than the rate previously in effect. The Committee recommended the increased assessment rate because the previous rate would not have generated enough income to adequately administer the program. The anticipated fresh potato crop of 792,000 hundredweight is approximately 380,000 hundredweight less than the 1998–99 crop. The \$0.02 rate should provide \$15,840 in assessment income, which, when combined with interest income of \$3,000, rental income of \$1,500 from the sublease of office space to the State Inspection Service, and \$4,110 from the operating reserve, should be adequate to meet the 1999–2000 fiscal period's budgeted expenses. The 1999–2000 budget of \$24,450 was approved by a vote of 6 to 1.

The Committee's 1999–2000 budget of \$24,450 is \$1,603 less than last year's budgeted expenses. Prior to recommending this budget, the Committee considered historical income and expenses, current income and expense levels, the 1999–2000 estimated crop production, current and projected operating reserve levels, and input from the Committee officers. The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$10,500 for the manager's salary, \$3,000 for rent, and \$2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were \$11,500, \$3,000, and \$2,000, respectively.

A review of historical data and preliminary information pertaining to the upcoming season indicates that the price to producers for the 1999–2000 Colorado Area III potato season could average \$5.30 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period ( $\$0.02 \times 792,000 \text{ cwt} = \$15,840$ ) as a percentage of the projected total revenue at the farm gate ( $\$5.30 \times 792,000 \text{ cwt} = \$4,197,600$ ) would be 0.37 percent. This figure indicates that the \$0.02 assessment rate will have an insignificant impact on the Colorado potato industry.

This action increases 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, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Colorado 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 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large 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 proposed rule concerning this action was published in the **Federal Register** on July 14, 1999 (64 FR 37890). A copy of the proposed rule was mailed to the Committee's administrative office for distribution to producers and handlers. The proposed rule was also made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 13, 1999, was provided for interested persons to respond to the proposal. No comments were received.

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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, the 1999–2000 fiscal period began on July 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable

potatoes handled during such fiscal period. Further, handlers are aware of this action which is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

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

Potatoes, Marketing agreements, 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 and after July 1, 1999, an assessment rate of \$0.02 per hundredweight is established for Colorado Area III potatoes.

Dated: August 26, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–22907 Filed 9–1–99; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1106

[DA–99–06]

#### Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

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

**ACTION:** Final Rule; Suspension of rule.

**SUMMARY:** This document suspends certain provisions of the Southwest Plains Federal milk marketing order (Order 106) from September 1, 1999, through August 31, 2000, or until implementation of Federal order reform. The suspension removes a portion of the supply plant shipping standard and the producer delivery requirement. The action was requested by Kraft Foods, Inc. (Kraft), and is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

**EFFECTIVE DATE:** September 1, 1999, through August 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 3, 1999; published August 6, 1999 (64 FR 42860).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. For the purposes of determining which dairy farms are