

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV03-948-3 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 Area No. 2 Colorado Potato Administrative Committee (Committee) for the 2003-2004 and subsequent fiscal periods from \$0.0035 to \$0.0051 per hundredweight of potatoes handled. The Committee locally administers 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 September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 11, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; 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. 97 and 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 established herein would be applicable to all assessable potatoes beginning on September 1, 2003, 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 increases the assessment rate established for the Committee for

the 2003-2004 and subsequent fiscal periods from \$0.0035 to \$0.0051 per hundredweight of potatoes.

The Colorado potato marketing 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 2001-2002 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 May 15, 2003, and recommended 2003-2004 expenditures of \$85,695 and an assessment rate of \$0.0051 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$74,643. The assessment rate of \$0.0051 is \$0.0016 higher than the rate currently in effect. The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The major expenditures recommended by the Committee for the 2003-2004 fiscal period include \$54,520 for salaries, \$9,925 for office expenses, and \$7,300 for building maintenance. Budgeted expenses for these items in 2002-2003 were \$41,703, \$9,700, and \$7,650, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 17,000,000 hundredweight which should provide \$86,700 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve

(estimated at \$14,025 as of August 31, 2003) will be kept within the maximum permitted by the order (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 USDA upon 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 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 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### **Final 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 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 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers of potatoes in the regulated production area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

During the 2001–2002 fiscal period, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected

under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than \$5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 fiscal period was \$9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from \$0.0035 to \$0.0051 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of \$85,695 and an assessment rate of \$0.0051 per hundredweight. The assessment rate is \$0.0016 higher than the current rate. The quantity of assessable Area No. 2 Colorado potatoes for the 2003–2004 fiscal period is estimated at 17,000,000 hundredweight. Thus, the \$0.0051 rate should provide \$86,700 in assessment income and be adequate to meet this fiscal period's expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include \$54,520 for salaries, \$9,925 for office expenses, and \$7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were \$41,703, \$9,700, and \$7,650, respectively.

The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of \$0.0051 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 17,000,000 hundredweight for the 2003–2004 fiscal period. This is approximately \$1,005 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to

the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between \$2.95 and \$9.65 per hundredweight of Colorado fall potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.05 and 0.17 percent.

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 are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 2 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 15, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 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 proposed rule concerning this action was published in the **Federal Register** on July 21, 2003 (68 FR 43031). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 20, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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 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 2003–2004 fiscal period begins on September 1, 2003, and the marketing 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 was recommended by the Committee at a public meeting. 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

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 948.216 is revised to read as follows:

##### § 948.216 Assessment rate.

On and after September 1, 2003, an assessment rate of \$0.0051 per hundredweight is established for Colorado Area No. 2 potatoes.

Dated: September 4, 2003

**A.J. Yates**

*Administrator, Agricultural Marketing Service*

[FR Doc. 03–22951 Filed 9–9–03; 8:45 am]

**BILLING CODE 3410–02–P**

#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 206

[Regulation F; Docket No. R-1161]

##### Interbank Liabilities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) has adopted final, technical amendments to its Regulation F that remove an obsolete section of the rule and correct several typographical errors.

**DATES:** The amendments are effective September 10, 2003.

##### FOR FURTHER INFORMATION CONTACT:

Adrianne G. Threatt, Counsel (202/452–3554), Legal Division, or John Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

**SUPPLEMENTARY INFORMATION:** As required by the Regulatory Flexibility Act, the Board periodically reviews each of its regulations that has a significant economic impact on a substantial number of small entities to determine whether the regulation should continue without change or be amended or rescinded to minimize the economic impact on small entities (see 5 U.S.C. 610). In addition, it is the Board's policy to review each of its regulations at least once every five years (see the Board Policy Statements on the Board's Rules of Procedure, Federal Reserve Regulatory Service ¶ 8–040).

The Board has completed its review of Regulation F and determined that the substantive requirements of that rule should continue unchanged. However, the Board has adopted several technical amendments designed to update the regulation. Most notably, the Board has removed § 206.7, which contained transition provisions that have not applied since June 1995.

The final rule also corrects several typographical errors in the text of rule. The term “Basle Capital Accord” has been changed to “Basel Capital Accord” to be consistent with international practice. In several cases, the word “of” has been changed to the word “or.” The Board also has revised several references to federal statutes and redesignated three paragraphs of Regulation F so that citations and paragraph designations within the regulation will be internally consistent.

##### Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments. The Board for good cause determined that public participation is unnecessary because there is no substantive change on which the public could provide meaningful comment. For that same reason, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506;

5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

##### List of Subjects in 12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

##### Authority and Issuance

■ For the reasons set forth in the preamble, the Board is revising 12 CFR part 206 to read as follows:

#### PART 206—INTERBANK LIABILITIES (REGULATION F)

■ 1. The authority citation for part 206 is revised to read as follows:

**Authority:** 12 U.S.C. 371b–2.

##### § 206.1 [Amended]

■ 2. In § 206.1(a), remove the phrase “to implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Act), 12 U.S.C. 371b–2” in the first sentence and add the phrase “under authority of section 23 of the Federal Reserve Act (12 U.S.C. 371b–2)” in its place.

##### § 206.2 [Amended]

■ 3. In § 206.2(f), remove “(q)” each place it appears.

■ 4. In § 206.2(g), remove the word “Basle” wherever it appears and add the word “Basel” in its place.

##### § 206.3 [Amended]

■ 5. In § 206.3(c)(1), remove the word “of” between the words “form” and “maturity” in the first sentence and add the word “or” in its place, and remove the word “of” between the words “amount” and “flexible” in the third sentence and add the word “or” in its place.

##### § 206.4 [Amended]

■ 6. In § 206.4(b), remove the word “of” between the words “principal” and “other” in the last sentence and add the word “or” in its place.

##### § 206.5 [Amended]

■ 7. In § 206.5(a), footnote 1, remove the phrase “subpart B” and add the phrase “subpart D” in its place.

■ 8. In § 206.5(f), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively, and remove the word “Basle” wherever it appears and add the word “Basel” in its place.