



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 945**

**[Doc. No. AMS-SC-16-0111; SC17-945-1 FR]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Idaho-Eastern Oregon Potato Committee (Committee) to decrease the assessment rate established for the 2017-2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon.

Assessments upon potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Senior Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 98 and 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 final rule in conformance with Executive Orders 12866, 13771, 13563, and 13175.

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This final 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 established herein will be applicable to all assessable potatoes beginning August 1, 2017, and continue until amended, suspended, or terminated.

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 2017-2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes handled.

The Idaho-Eastern Oregon 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 cover the expenses of administering the program. The members of the Committee are producers and handlers of Idaho-Eastern Oregon 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 2014-2015 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.0025 per hundredweight of potatoes 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 November 9, 2016, to consider the Committee's projected 2017-2018 financial requirements, the size of the Committee's operating reserve, and the order's continuing assessment rate. The Committee unanimously recommended an assessment rate of \$0.002 per hundredweight of potatoes for the 2017-2018

fiscal period. The assessment rate of \$0.002 is \$0.0005 lower than the rate currently in effect. The assessment rate decrease is necessary to reduce the funds held in reserve to less than approximately one fiscal period's budgeted expenses, the maximum level allowed by the order.

The Committee adopted a budget of \$119,075 for the 2016-2017 fiscal period. It expects to recommend a similar level of budgeted expenditures for the 2017-2018 fiscal period at its next scheduled meeting in June 2017.

The Committee expects its budget for major expenditures for the 2017-2018 fiscal period to be close to the budgeted amounts for the 2016-2017 fiscal period. These expenditures include \$68,638 for administrative expenses, \$35,437 for travel/office expenses, and \$15,000 for marketing order contingency.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Potato shipments for 2017-2018 are estimated at 32 million hundredweight which should provide \$64,000 in assessment income at the proposed assessment rate. Income derived from handler assessments, along with other income,

interest earned, and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (projected to be \$158,275 on July 31, 2017) are expected to be reduced to comply with the maximum permitted by the order of approximately one fiscal period's expenses.

The assessment rate 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 2017-2018 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) (5 U.S.C. 601-612), 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 businesses 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.

There are approximately 450 producers of potatoes in the production area and approximately 32 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 less than \$750,000, and small agricultural

service firms are defined as those whose annual receipts are less than \$7,500,000.

During the 2015-2016 fiscal period, the most recent full year of statistics available, 33,606,000 hundredweight of Idaho-Eastern Oregon potatoes were inspected under the order and sold into the fresh market.

Based on information provided by the National Agricultural Statistics Service, the average producer price for the 2015 Idaho potato crop (the most recent full marketing year recorded) was \$7.00 per hundredweight. Multiplying \$7.00 by the shipment quantity of 33,606,000 hundredweight yields an annual crop revenue estimate of \$235,242,000. The average annual fresh potato revenue for each of the 450 producers is therefore calculated to be \$522,760 ( $\$235,242,000$  divided by 450), which is less than the Small Business Administration threshold of \$750,000. Consequently, on average, a majority of the Idaho-Eastern Oregon potato producers may be classified as small entities.

In addition, based on information reported by USDA's Market News Service, the average free-on-board (f.o.b.) shipping point price for the 2015 Idaho potato crop was \$7.47 per hundredweight. Multiplying \$7.47 by the

shipment quantity of 33,606,000 hundredweight yields an annual crop revenue estimate of \$251,036,820. The average annual fresh potato revenue for each of the 32 handlers is therefore calculated to be \$7,844,900 (\$251,036,820 divided by 32), which is slightly more than the Small Business Administration threshold of \$7,500,000. Given the likelihood that there may be several large handlers, some of the Idaho-Eastern Oregon potato handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2017-2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes handled. The Committee unanimously recommended an assessment rate of \$0.002 per hundredweight of potatoes for the 2017-2018 fiscal period. The assessment rate of \$0.002 per hundredweight is \$0.0005 lower than the rate for the 2016-2017 fiscal period. The quantity of assessable potatoes for the 2017-2018 fiscal period is estimated at 32 million hundredweight. Thus, the \$0.002 rate should provide \$64,000 in assessment income. Income derived from handler assessments, along with other income, interest earned, and funds from the Committee's

authorized reserve, will be adequate to cover budgeted expenses.

The Committee adopted a budget of \$119,075 for the 2016-2017 fiscal period and expects to recommend a similar amount in budgeted expenditures for the 2017-2018 fiscal period at its next scheduled meeting in June 2017.

The major budgeted expenditures for the 2016-2017 year include \$68,638 for administrative expenses, \$35,437 for travel/office expenses, and \$15,000 for marketing order contingency. Budgeted expenses for these items in 2015-2016 were \$64,901, \$37,340, and \$15,000, respectively.

The lower assessment rate is necessary to reduce the reserve balance to less than approximately one fiscal period's budgeted expenses. The reserve balance on July 31, 2017, is projected to be \$158,275. Assessment income for the 2017-2018 fiscal period is estimated at \$64,000, while expenses are estimated to be \$119,075. The Committee anticipates compensating for the reduced assessment revenue with \$5,100 from miscellaneous income, \$100 from interest income, and \$49,875 from its reserve fund. The reserve fund is projected to be under the maximum authorized level at the end of the 2017-2018 fiscal period.

The Committee discussed alternatives to this change, including suspending assessments for one year, recommending other assessment rate levels, and leaving the current rate in place. Prior to arriving at this assessment rate recommendation, the Committee considered information from the Board's Executive Committee on the cost savings resulting from recent administrative changes in the Committee office and the level of anticipated Committee expenses moving forward. The Committee debated between suspending assessments for one year and recommending the assessment rate be lowered to \$0.002 per hundredweight of potatoes. Based on the market and shipping quantities, the Committee recommended the rate of \$0.002 per hundredweight. The Committee believes this assessment rate, in combination with other income, interest earned, and funds utilized from the Committee's financial reserve, will provide sufficient funds to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2017 crop could range between \$6.00 and \$9.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for

the 2017-2018 fiscal period as a percentage of total producer revenue could range between 0.022 and 0.033 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 will reduce the burden on handlers, and may reduce the burden on producers. 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 November 9, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes

become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 21, 2017 (82 FR 14485).

Copies of the proposed rule were also mailed or sent via facsimile to all Idaho-E. Oregon potato handlers.

Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register.

A 30-day comment period ending April 20, 2017, was

provided for interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. Both comments were received from outside of the regulated production area. One comment supported the proposed assessment decrease. The other comment did not support the proposal, however, it did not address the merits of the proposed rule. Accordingly, no changes have been made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower 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.

**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 amended as follows:

**PART 945 - IRISH POTATOES GROWN IN CERTAIN 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, 2017, an assessment rate of \$0.002 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: June 20, 2017

Erin Morris  
Associate Administrator  
Agricultural Marketing Service

BILLING CODE 3410-02 P

[FR Doc. 2017-13174 Filed: 6/22/2017 8:45 am; Publication Date: 6/23/2017]