



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS-SC-18-0022; SC18-948-1 FR]

Irish Potatoes Grown in Colorado; Increased Assessment Rate for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Colorado Potato Administrative Committee (Committee) to increase the assessment rate established for Area No. 2 for the 2018-2019 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary 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 email: 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 email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 97 and Order No. 948, as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. Part 948, (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order, Colorado Area No. 2 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 in Area No. 2 for the 2018-2019 fiscal period, 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.

The Order provides authority for each area Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate for Area No. 2 from \$0.0033 to \$0.006 per hundredweight of potatoes handled for the 2018-2019 and subsequent fiscal periods. The Committee established the current rate in 2013-2014

fiscal period to reduce the Committee's monetary reserve to a level that it determined to be appropriate under the Order. Since that action, the reserve fund has been drawn down to approximately 15 percent of annual budgeted expenditures. The \$0.006 per hundredweight assessment rate realigns annual assessment revenue with expected administrative expenses moving forward and will no longer require the utilization of the monetary reserve to fund a portion of the Committee's budgeted expenditures.

The Committee met on March 15, 2018 to consider the Committee's projected 2018-2019 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 \$0.006 per hundredweight of potatoes for the 2018-2019 fiscal period. The \$0.006 assessment rate is \$0.0027 higher than the rate previously in effect. Without the increase, anticipated assessment revenue would not have been sufficient to fund the Committee's ongoing administrative function, and the balance in the Committee's monetary reserve would not have been enough to cover the deficit. The assessment rate increase is necessary to maintain the Committee's oversight

activities at current levels and avoid a reduction in the program's effectiveness.

For the 2017-2018 fiscal period, the Committee adopted a budget of \$79,623. The Committee recommended a similar level of budgeted expenditures for the 2018-2019 fiscal period at its meeting in May 2018. The Committee anticipates its expenditures for the 2018-2019 fiscal period to be close to the amounts for the 2017-2018 fiscal period. Budgeted expenditures for the 2017-2018 fiscal period included \$66,110 for administrative expenses, \$6,138 for office expenses, and \$7,375 for facilities/utilities. The Committee's annual budget has been relatively stable over the past five years, with average growth of approximately 2.7 percent. The Committee's budget five years ago for the 2013-2014 fiscal period was \$71,227, compared to the 2017-2018 fiscal period budget of \$79,623.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments, and the amount of funds available in the authorized reserve. Expected income derived from handler assessments of \$84,000 (estimated 14,000,000 hundredweight times \$0.006 per hundredweight) should be adequate to cover

budgeted expenses of between \$81,000 and \$83,000 and put a small amount back into the Committee's monetary reserve fund. Funds in the reserve (currently expected to be \$11,848 at the end of the 2017-2018 fiscal period) would be kept within the maximum permitted by § 948.78.

The assessment rate established by 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 budget 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 160 producers of Colorado Area No. 2 potatoes in the production area and approximately 60 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

According to data from USDA's Market News, the 2016-2017 season weighted average f.o.b. price for Colorado potatoes was approximately \$12.06 per hundredweight. The Committee reported that shipments for the 2016-2017 fiscal period were 13.9 million hundredweight. Using the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of less than \$7,500,000 ($\$12.06 \times 13.9 \text{ million} = \$167,634,000$ divided by 60 handlers equals \$2,793,900 per handler).

In addition, based on data from USDA's National Agricultural Statistics Service, the season average producer price for Colorado potatoes for the 2016-2017 crop year was approximately \$9.60 per hundredweight. Based on producer price, shipment data, and the total number of Colorado Area No. 2 potato producers, and assuming a normal distribution, the average annual producer revenue is above \$750,000 ($\$9.60 \times 13.9 \text{ million} = \$133,440,000$ divided by 160 producers equals \$834,000 per producer). Thus, the majority of Colorado Area No. 2

potato handlers may be classified as small entities, while many of the Colorado Area No. 2 potato producers may be classified as large entities.

This rule increases the assessment rate collected from handlers for the 2018-2019 and subsequent fiscal periods from \$0.0033 to \$0.006 per hundredweight of Colorado Area No. 2 potatoes. The Committee unanimously recommended the increase. The \$0.006 per hundredweight assessment rate established by this rule is \$0.0027 higher than the 2017-2018 rate. The quantity of assessable potatoes for the 2018-2019 fiscal period is estimated at 14 million hundredweight. Thus, the \$0.006 rate is expected to provide \$84,000 in assessment income. Income derived from handler assessments is expected to be adequate to cover budgeted expenses.

The Committee adopted a budget of \$79,623 for the 2017-2018 fiscal period and recommended a similar amount of budgeted expenditures for the 2018-2019 fiscal period at its scheduled May 2018 meeting. The major budgeted expenditures for the 2017-2018 year included \$66,110 for administrative expenses, \$6,138 for office expenses, and \$7,375 for facilities/utilities. Budgeted expenses for

these items in 2016-2017 were \$65,894, \$6,587, and \$6,313, respectively.

Prior to arriving at the recommended assessment rate, the Committee considered the benefits and costs related to establishing other assessment rates. However, the Committee determined that any assessment rate other than the \$0.006 per hundredweight rate would either generate insufficient revenue to meet the Committee's expected expenses for the 2018-2019 fiscal period or would result in a larger than desired addition to the Committee's reserve. Based on estimated shipments, the established assessment rate of \$0.006 should provide \$84,000 in assessment income. The Committee determined that this level of assessment revenue would be adequate to cover budgeted expenses for the 2018-2019 fiscal period without unduly increasing reserve funds.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average producer price for the 2018-2019 season should be approximately \$9.26 per hundredweight of potatoes. Therefore, the estimated assessment revenue for

the 2018-2019 fiscal period as a percentage of total producer revenue would be about 0.06 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs, such 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 Order.

In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the March 15, 2018, 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 the OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. 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 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. As mentioned 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 May 24, 2018 (83 FR 24045). A copy of the proposed rule was provided to the handlers by the Committee. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 25, 2018, 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/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 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.

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, 2018, an assessment rate of \$0.006 per hundredweight is established for Colorado Area No. 2 potatoes.

August 22, 2018

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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