



## **Agricultural Marketing Service**

### **7 CFR Part 945**

**[Doc. No. AMS-SC-24-0042]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Idaho-Eastern Oregon Potato Committee (Committee) to increase the assessment rate established for the 2024-2025 fiscal period and subsequent fiscal periods from \$0.002 to \$0.003 per hundredweight of potatoes handled under the marketing order. 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:** Virginia Tjemsland, Marketing Specialist, or Barry M. Broadbent, Chief, Northwest Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (503) 326-2724, or e-mail: [Virginia.L.Tjemsland@usda.gov](mailto:Virginia.L.Tjemsland@usda.gov) or [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-8085, or e-mail: [Antoinette.Carter@usda.gov](mailto:Antoinette.Carter@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 final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as

amended (7 CFR part 945), regulating the handling of potatoes grown in certain counties in Idaho, and Malheur County, Oregon. Part 945 (referred to as the “Order”) is effective pursuant to 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 comprises producers and handlers of potatoes operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires Federal agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” Under the 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 will be applicable to all assessable Idaho-Eastern Oregon potatoes for the 2024-2025 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 8c(15)(A) of the Act (7 U.S.C. 608(c)(15)(A)), 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 final rule increases the assessment rate for Idaho-Eastern Oregon potatoes handled under the Order from \$0.002 per hundredweight, the rate that was established for the 2017-2018 fiscal period and subsequent fiscal periods (82 FR 28550), to \$0.003 per hundredweight for the 2024-2025 fiscal period and subsequent fiscal periods.

Sections 945.41 and 945.42 of the Order authorize the Committee, with AMS approval, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able 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.

For the 2017-2018 fiscal period and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.002 per hundredweight of Idaho-Eastern Oregon potatoes within the production area (82 FR 28550). That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 5, 2024, and unanimously recommended 2024-2025 fiscal period expenditures of \$99,522 and an assessment rate of \$0.003 per hundredweight of Idaho Eastern-Oregon potatoes handled for the 2024-2025 and subsequent fiscal periods. In comparison, the budgeted expenditures for fiscal period 2023-2024 were \$99,703. The assessment rate of \$0.003 per hundredweight is \$0.001 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better align assessment revenue with budgeted expenses and to replenish reserves which were depleted between August 2017 and June 2024. The Committee estimates shipments for the 2024-2025 season to be approximately 34,000,000 hundredweight, an increase from the 28,167,500 hundredweight handled for the 2023-2024 fiscal period.

The major expenditures recommended by the Committee for the 2024-2025 fiscal period include \$75,489 in administrative expenses; \$10,013 for operational expenses; \$4,670 for insurance/banking expenses; \$4,000 for annual audit/compliance expenses; \$2,950 for committee travel expenses and \$2,400 for IT support. For comparison, budgeted expenses for these items during the 2023-2024 fiscal period were \$74,960, \$10,013, \$4,880, \$4,500, \$2,950, and \$2,400, respectively.

The estimated 34,000,000 hundredweight of Idaho-Eastern Oregon potatoes from the 2024-2025 crop is expected to generate \$102,000 in assessment revenue at the new assessment rate (34,000,000 hundredweight of potatoes multiplied by \$0.003 assessment

rate). The assessment rate increase should be appropriate to ensure the Committee has sufficient revenue to fully fund its recommended 2024-2025 fiscal period budgeted expenditures and begin replenishing the Committee's reserve funds. The reserve shall be established at an amount not to exceed approximately one fiscal period's budgeted expenses.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, expected shipments of potatoes, and the amount of funds available in the financial reserve. Income derived from handler assessments (\$102,000) should be adequate to cover budgeted expenses (\$99,522). Funds available in the financial reserve (currently about \$80,000) will be kept within the maximum permitted by the Order (approximately one fiscal period's budgeted expenses as authorized in § 945.44).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2024-2025 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

## **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final 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 Idaho-Eastern Oregon potatoes in the production area and 32 handlers subject to regulation under the Order. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts equal to or less than \$34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of potatoes as those having annual receipts equal to or less than \$4,250,000 (NAICS code 111211, Potato Farming) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual producer price received for fresh market potatoes in Idaho, and Malheur County, Oregon, in 2022, the most recent full year for which there is NASS data, was \$12.50 per hundredweight. Total shipments of Idaho-Eastern Oregon potatoes for the 2021-2022 season were reported by the Committee to be 28,167,500 hundredweight. Using the average producer price from 2022, the total 2021-2022 crop value of Idaho-Eastern Oregon potatoes could therefore be estimated to be \$352,093,750 (28,167,500 hundredweight times \$12.50 per hundredweight). Dividing the crop value by the estimated number of producers (450) yields an estimated average receipt per producer of

\$782,431. This figure is well below the SBA small agricultural producer threshold of \$4,250,000 in annual receipts. Assuming a normal distribution, this provides evidence that a large majority of potato producers would likely be considered small agricultural producers according to the SBA definition.

According to AMS Market News data, the reported average free on board (FOB) price for potatoes from Idaho-Eastern Oregon over the 2021-2022 fiscal period was \$15.68 per 50-pound carton, depending upon variety, size and grade, and shipping date. Multiplying this figure by 2 (to adjust to hundredweight) yields an average FOB price of \$31.36 per hundredweight for the 2021-2022 fiscal period. Multiplying the 2021-2022 Idaho-Eastern Oregon potato production of 28,167,500 hundredweight by the estimated average price per hundredweight of \$31.36 equals \$883,332,800. Dividing this figure by 32 regulated handlers yields estimated average annual handler receipts of \$27,604,150 (\$883,332,800 divided by 32 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, according to the above data and assuming a normal distribution, most of the producers, and many of the handlers, of Idaho-Eastern Oregon potatoes may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2024-2025 and subsequent fiscal periods from \$0.002 to \$0.003 per hundredweight of Idaho-Eastern Oregon potatoes. The Committee unanimously recommended 2024-2025 fiscal period expenditures of \$99,522 and an assessment rate of \$0.003 per hundredweight of Idaho-Eastern Oregon potatoes handled. The new assessment rate of \$0.003 per hundredweight is \$0.001 higher than the rate currently in effect. The Committee estimates the industry will handle 34,000,000 hundredweight of Idaho-Eastern Oregon potatoes during the 2024-2025 fiscal period. Thus, the \$0.003 per hundredweight rate should provide \$102,000 in assessment income (34,000,000 hundredweight multiplied by \$0.003). The

Committee expects that income generated from handler assessments will be sufficient to meet budgeted expenditures for the 2024-2025 fiscal period.

The major expenditures recommended by the Committee for the 2024-2025 fiscal period include \$75,489 in administrative expenses; \$10,013 for operational expenses; \$4,670 for insurance/banking expenses; \$4,000 for annual audit/compliance expenses; \$2,950 for committee travel expenses and \$2,400 for IT support. For comparison, budgeted expenses for these items during the 2023-2024 fiscal period were \$74,960, \$10,013, \$4,880, \$4,500, \$2,950, and \$2,400, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to fully fund 2024-2025 fiscal period budgeted expenditures and replenish the reserve funds. This action is expected to add an estimated \$2,478 to the Committee's financial reserve fund. The reserve shall be established at an amount not to exceed approximately one fiscal period's budgeted expenses.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.002 per hundredweight and increasing the assessment rate by different amounts. However, the Committee determined that the assessment rate as established herein will fully fund budgeted expenses and replenish reserves to appropriate levels. The assessment rate of \$0.003 per hundredweight of Idaho-Eastern Oregon potatoes was derived by considering anticipated expenses, the projected volume of assessable Idaho-Eastern Oregon potatoes, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021-2022 fiscal period was \$12.50 per hundredweight of potatoes in the production area. Therefore, utilizing the assessment rate of \$0.003 per hundredweight, assessment

revenue for the 2021-2022 fiscal period, as a percentage of total producer revenue, would have been approximately 0.024 percent of total producer revenue (\$0.003 divided by \$12.50 multiplied by 100).

This action increases the assessment obligation imposed on Idaho-Eastern Oregon potato handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Idaho-Eastern Oregon potato industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 5, 2024, 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 comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

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, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this final rule. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any 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.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action published in the *Federal Register* on September 27, 2024 (89 FR 79175). Copies of the proposed rule were provided to all Idaho-Eastern Oregon potato handlers. In addition, the proposal was made available through the internet by AMS and the Office of the *Federal Register* via <https://www.regulations.gov>. A 30-day comment period ending October 28, 2024, was provided for interested persons to respond to the proposal. AMS received one comment during the comment period that did not address the merits of the proposal. Accordingly, AMS made no changes to the rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rulesregulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends 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, the Agricultural Marketing Service amends 7 CFR part 945 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. Revise § 945.249 to read as follows:

**§ 945.249 Assessment rate.**

On and after August 1, 2024, an assessment rate of \$0.003 per hundredweight is established for Idaho-Eastern Oregon potatoes.

**Erin Morris,**

*Administrator,*

*Agricultural Marketing Service.*

[FR Doc. 2025-18340 Filed: 9/19/2025 8:45 am; Publication Date: 9/22/2025]