

20. Section 1410.13 is amended by adding paragraph (d) to read as follows:

**§ 1410.13 Miscellaneous.**

\* \* \* \* \*

(d) Cropland acreage established and maintained in vegetative cover under CRP, including approved volunteer cover, shall retain its cropland classification for the period of time that the cover is maintained or as otherwise established by the Deputy Administrator.

**§ 1410.102 [Amended]**

21. Section 1410.102 is amended in paragraphs (a) and (b) by removing "3 years" and adding in its place "1 year."

**§ 1410.103 [Amended]**

22. Section 1410.103 is amended: In paragraph (a)(1) by removing "1986 through 1990" and adding in its place "1992 through 1996";

In paragraph (b)(4) by removing the word "exceeded" and adding in its place the word "adjusted" and by removing "SCS" and adding in its place "NRCS";

In paragraph (c) by removing "SCS" wherever it appears and adding in its place "NRCS"; and

In paragraph (f)(2) by removing "part 703" and adding in its place "part 620".

**§ 1410.111 [Amended]**

23. Section 1410.111 is amended: In paragraph (a) by adding after the words "conservation district," the words "or another source as approved by the NRCS," and

In paragraph (a) removing "SCS" and adding in its place "NRCS".

24. Section 1410.116 is amended by revising paragraph (a)(5) to read as follows:

**§ 1410.116 Contract modifications.**

(a) \* \* \*

(5) Terminate contracts enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years. Contract acreage located within an average of 100 feet of a perennial stream or other permanent waterbody, on which a CRP easement is filed, that was enrolled under the wetland eligibility criteria established in signup periods 8 and 9, and contract acreage on which there exist the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the NRCS local Field Office Technical Guide, are not eligible for termination prior to the expiration date of the contract as provided in this paragraph: grass waterways; filter strips; shallow water areas for wildlife; bottomland timber established on wetlands; field windbreaks; and, shelterbelts. In addition, for any land for

which an early termination is sought, the land must have an EI of 15 or less. With respect to terminations under this paragraph:

(i) The termination shall become effective 60 days from the date the participant(s) submit notification to CCC of the participant's desire to terminate the contract;

(ii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods providing the acreage otherwise meets the eligibility criteria established for that signup; and,

(iii) Participants shall be required to meet conservation compliance requirements of 7 CFR part 12 to the extent applicable to other land.

\* \* \* \* \*

Signed at Washington, DC, on August 19, 1996.

Bruce R. Weber,

*Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.*

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BILLING CODE 3410-05-P

## Agricultural Marketing Service

### 7 CFR Part 948

[Docket No. FV96-948-1 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with a correction, the provisions of an interim final rule that established an assessment rate for the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) under Marketing Order No. 948 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. **EFFECTIVE DATE:** Effective on July 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or Dennis L. West, Marketing

Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724, FAX 503-326-7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Order No. 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."

The Department 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 as issued herein will be applicable to all assessable potatoes beginning July 1, 1996, and continuing 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.

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.

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 85 producers of Colorado Area III potatoes in the production area and approximately 15 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The Colorado potato marketing 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 members of the Committee are producers and handlers of Colorado Area III 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.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on April 11, 1996, and unanimously recommended 1996–97 expenditures of \$24,462.50 and an assessment rate of \$0.01 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$27,362.50. The assessment rate of \$0.01 is \$0.01 less than last year's established rate. Major expenditures recommended by the

Committee for the 1996–97 year include \$11,500 for the manager's salary, \$2,400 for rent, and \$1,500 for office supplies, the same as in 1995–96.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Potato shipments for the year are estimated at 1,450,750 hundredweight which should provide \$14,507.50 in assessment income. Income derived from handler assessments, interest, and rent from the sublease of office space to the State inspection service, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the June 12, 1996, issue of the Federal Register (61 FR 29635). That interim final rule added § 948.215 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 12, 1996. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective 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. Committee meetings are open to the public and interested persons may express their views at those 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. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as

appropriate, approved by the Department.

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.

This final rule also adds a new subpart heading—Handling Regulations to the Code of Federal Regulations immediately preceding § 948.386 Handling regulation.

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: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (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; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 61 FR 29635 on June 12, 1996, is adopted as a final rule with the following change:

#### **PART 948—IRISH POTATOES GROWN IN COLORADO**

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Part 948 is amended by adding a new subpart heading immediately preceding § 948.386 to read as follows:

#### **Subpart—Handling Regulations**

Dated: August 21, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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