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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV97–947–1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Define Fiscal Period and Decrease Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes, in the regulatory text, the fiscal period of the Oregon-California Potato Committee (Committee) to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established under Marketing Order No. 947 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1997. Comments received by June 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone 202–720–9918; FAX 202–720–5698, or Teresa L. Hutchinson, 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 2525-S, Washington, DC 20090-6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947) regulating the handling of Irish potatoes grown in Oregon-California, hereinafter referred to as the ''order.'' The marketing agreement and order are 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 (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, Oregon-California 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, 1997, 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 there from. 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.

This rule establishes, in regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight.

The Oregon-California potato marketing order provides authority for the Committee, with the approval of the Department, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 for many years. This rule adds to the order's rules and regulations a definition of the fiscal period of the Committee to be the 12 month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The Oregon-California potato marketing order also 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 Oregon-California 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 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 5, 1997, and unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $61,200. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. Budgeted expenses for these items in 1996–97 were $30,000, $4,200, $3,000, and $3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial 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 550 producers of Oregon-California potatoes in the production area and approximately 40 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 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 Oregon-California potato producers and handlers may be classified as small entities.

This rule establishes, in the regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight. The Committee unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action because continuation of the higher rate would not allow it to bring its operating reserve in line with the maximum amount authorized under the order. The reduced assessment rate will require the Committee to use more of its reserve for authorized expenses, and help bring the reserve within authorized levels.

Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, 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.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $4.00 and $7.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .100 and .057 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and 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. In addition, the Committee's meeting was widely publicized throughout the Oregon-California 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 March 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Oregon-California 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.

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

After consideration of all relevant matter 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) This action reduces the current assessment rate; (2) the 1997–98 fiscal period begins on July 1, 1997, 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) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

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

Authority: 7 U.S.C. 601–674.

2. A new § 947.114 is added to Subpart—Rules and Regulations to read as follows:

§ 947.114 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

§ 947.247 [Amended]

3. Section 947.247 is amended by removing the words ''July 1, 1996,'' and adding in its place the words ''July 1, 1997,'' and by removing ''$0.005'' and adding in its place ''$0.004.''

Dated: May 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–12999 Filed 5–16–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is preserving the current adjusted rate schedule for assessments paid to the Bank Insurance Fund (BIF) for the second semiannual period of 1997 (July–December), and for subsequent semiannual periods subject to review on a semiannual basis. Absent action by the FDIC, the BIF rates would revert to the base rates, which are 4 basis points higher. The resulting assessments would exceed the amount allowed by law.

The FDIC is issuing the final rule without prior notice and comment under the procedure established by the FDIC's regulations for making limited adjustments to base assessment rates.

The final rule removes obsolete provisions regarding the special assessment and pre-1997 rates, and clarifies other provisions without altering their substance.

EFFECTIVE DATE: Effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Carns, Assistant Director, Division of Insurance, (202) 898–3930; William Farrell, Chief, Assessment Management Section, Division of Finance, (202) 416–7156; Richard Osterman, Senior Counsel, (202) 898–3523, or Jules Bernard, Counsel, (202) 898–3731, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Final Rule

A. Background

In accordance with section 7(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b), the FDIC has adopted a risk-based assessment program for the BIF. The program has two main components. The first component is a set of base rates that are appropriate for the BIF over the long term. These rates, which are presented in the BIF Base Assessment Schedule, *see* 12 CFR 327.9(a)(2)(i), will be changed only after full notice-and-comment rulemaking. The second component is a mechanism for making limited and relatively short-term adjustments to the BIF base rates. The adjustments are made by rulemaking without prior notice and comment, *see id.* 327.9(c), but are revisited by the FDIC on a semiannual basis. The adjusted rates are presented in the BIF Adjusted Assessment Schedule. *See id.* 327.9(b)(2)(i). The adjusted rates are the effective ones—that is, the rates that BIF-assessable institutions currently pay to the BIF.[1]

The BIF base assessment rates are appropriate, over the long term, to generate assessments that maintain the BIF's capitalization at the level prescribed by statute. The base rates reflect a thorough historical analysis of FDIC experience, including consideration of recent statutory changes that may moderate future deposit insurance losses (*e.g.*, prompt corrective action authority and the least-cost resolution requirement). *See* 60 *FR* 42680 (Aug. 16, 1995). The BIF base rates range from 4 basis points (bp) for institutions in the best assessment risk classification (1A institutions) to 31 bp for institutions in the least favorable one. The final rule does not alter these rates.

Over the short term, however, the BIF base rates would produce a continued rise in the Bank Insurance Fund reserve ratio (BIF reserve ratio)—that is, in the ratio of the BIF's net worth to the aggregate estimated deposits that the BIF insures. *See* 12 U.S.C. 1817(l)(6). The BIF reserve ratio is currently above the target ratio prescribed by statute, and is rising. (See discussion at I.B., below). The FDIC's Board of Directors (Board) has therefore adopted a temporary adjustment to the BIF base rates. *See* 61 *FR* 64609 (Dec. 6, 1996). The adjustment has lowered the base rates by 4 bps. The resulting adjusted rates (which are now in effect) range from zero to 27 bp.

The adjustment only applies to the current semiannual period (January-June 1997), and expires at the end of it. *See* 12 CFR 327.9(b)(2)(ii). Absent this final rule, the effective BIF rates would revert to the long-term rates set forth in the BIF Base Assessment Schedule.

The final rule preserves the effective BIF rates at their current levels for the second semiannual period of 1997 (July–December) and indefinitely thereafter. The final rule does so by making an adjustment to the BIF Base Assessment Schedule in accordance with the procedure prescribed in *id.* 327.9(c). The adjustment lowers the rates in the BIF Base Assessment Schedule by four bp. The adjustment is of indefinite duration, but is reviewed semiannually.

B. Statutory and Regulatory Framework for Adjusting the Base Assessment Rates

1. Statutory Provisions

The touchstone for setting a fund's assessments is the fund's reserve ratio. When that ratio is below the ''designated reserve ratio'' (DRR),[2] the

[1] An institution that holds BIF-assessable deposits must also pay an assessment to the Financing Corporation (FICO) based on those deposits. 12 U.S.C. 1441(f)(2); *see* Deposit Insurance Funds Act of 1996 (Funds Act), Pub. L. 104–208, section 2703, 110 Stat. 3009, 3009–479 *et seq.* (Sept. 30, 1996). The FICO payment is separate from, and in addition to, the BIF assessment.

The FDIC will continue to collect the FICO assessments on the FICO's behalf. The FDIC's quarterly invoices will reflect the current amount of the FICO assessment.

[2] The DRR is a target ratio that has a fixed value for each year. The default value is 1.25 percent. The FDIC may set a higher value under certain

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