

Rules and Regulations

Federal Register

Vol. 62, No. 129

Monday, July 7, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV97-946-1 FIR]

Irish Potatoes Grown in Washington: Amended Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the State of Washington Potato Committee (Committee) under Marketing Order No. 946 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 Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: July 1, 1997.

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 202-720-2491, FAX 202-720-5698, or Dennis L. West, 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. 113 and Order No. 946, both as amended (7 CFR part 946) regulating the handling of Irish potatoes grown in Washington, 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 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, Washington 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 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.

This rule decreases the assessment rate established for the Committee for the 1997-98 and subsequent fiscal periods from \$0.003 to \$0.002 per hundredweight.

The Washington 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 Washington 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 February 7, 1997, and unanimously recommended 1997-98 expenditures of \$44,400 and an assessment rate of \$0.002 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$42,500. The assessment rate of \$0.002 is \$0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of two fiscal periods' 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 \$18,800 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and \$6,000 for compliance audits. Budgeted expenses for these items in 1996-97 were \$17,400 and \$6,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Potato shipments for the year are estimated at 10,000,000 hundredweight, which should provide \$20,000 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.

An interim final rule regarding this action was published in the April 14, 1997, issue of the **Federal Register** (62 FR 18021). That rule provided a 30-day comment period. No comments were received.

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 final 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 450 producers of Washington 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 Washington potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent fiscal periods from \$0.003 to \$0.002 per hundredweight. The Committee unanimously recommended 1997-98 expenditures of \$44,400 and an assessment rate of \$0.002 per hundredweight of potatoes. The assessment rate of \$0.002 is \$0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of two fiscal periods' 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

\$18,800 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and \$6,000 for compliance audits. The Committee also discussed alternative assessment rate levels. An assessment rate of \$0.01 was considered but not recommended because it would not generate the income necessary to administer the program and allow the Committee to maintain an adequate reserve. The Committee also discussed keeping the assessment rate at the current \$0.003 level. 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 Committee determined that a reduced assessment rate of \$0.002 will require it 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 10,000,000 hundredweight, which should provide \$20,000 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 \$5.00 and \$8.00 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 .025 and .04 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 Washington 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 February 7, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

In the interim final rule published in the **Federal Register** (62 FR 18021) on April 14, 1997, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. The comment period ended May 14, 1997, and no comments were received concerning the impacts of this action on small businesses.

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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** 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) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 946 which was published at 62 FR 18021 on April 14, 1997, is adopted as a final rule without change.

Dated: June 30, 1997.

Eric M. Forman,
Acting Director Fruit and Vegetable Division.
[FR Doc. 97-17608 Filed 7-3-97; 8:45 am]

BILLING CODE 3410-02-P