

Act (7 U.S.C. 499 *et seq.*), as amended. USDA is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. The PACA requires that wholesalers, processors, food service companies, grocery wholesalers, and truckers be considered dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds \$230,000 in a calendar year. Brokers negotiating the sale of frozen fruits and vegetables on behalf of the seller are also exempt from licensing when the invoice value of the transactions is below \$230,000 in any calendar year.

There are approximately 15,700 PACA licensees. Separating licensees by the nature of business, there are approximately 6,000 wholesalers, 4,750 retailers, 2,100 brokers, 1,200 processors, 550 commission merchants, 450 food service businesses, 150 grocery wholesalers, and 50 truckers licensed under PACA. The license is effective for 1 year unless suspended or revoked by USDA for valid reasons [7 CFR 46.9 (a)-(h)], and must be renewed annually by the licensee. Many of the licensees may be classified as small entities.

Approximately 650 to 700 retailers and grocery wholesalers who made an initial license application after November 15, 1995, and subsequently paid a fee to renew their license, will be affected by this rule. The renewal fees collected by USDA from each of the

affected retailers and grocery wholesalers (\$300, plus \$150 for each branch in excess of nine) will be refunded with interest.

Accordingly, based on the information and the above discussion, it is determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements covered by this proposed rule were approved by OMB on October 31, 1996, and expire on October 31, 1999.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. Section 46.6 is revised to read as follows:

§ 46.6 License fees.

(a) For retailers and grocery wholesalers making an initial application for license, the license fee is as follows:

(1) During the period November 15, 1995 through November 14, 1996, the license fee is \$400 plus \$200 dollars for each branch or additional business facility operated by the applicant in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed \$4,000.

(2) The license fee during the period November 15, 1996 through November 14, 1997, is \$300 plus \$150 for each branch or additional business facility operated by the retailer or grocery wholesaler in excess of nine. In no case shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed \$3,000.

(3) The license fee during the period November 15, 1997 through November 14, 1998, is \$200 plus \$100 for each branch or additional business facility operated by any retailer or grocery wholesaler in excess of nine. In no case

shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed \$2,000.

(4) Any retailer or grocery wholesaler making an initial license application during the 3-year phase-out period shall pay no fee for renewal of the license for subsequent years.

(5) A retailer or grocery wholesaler that holds a license as of November 15, 1995, shall pay the license fee required in paragraphs (a) (1), (2), and (3) of this section for the renewal of the license during the phase-out period.

(6) No license fee will be required after November 14, 1998 for making an initial application for, or for renewal of a license by a retailer or grocery wholesaler. However, a retailer or grocery wholesaler making an initial application for a license after November 14, 1998, shall pay a \$100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is \$550 plus \$200 dollars for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed \$4,000.

(c) The Director may require that fees be paid in the form of a money order, bank draft, cashier's check, or certified check made payable to "USDA-AMS". Authorized representatives of the Division may accept fees and issue receipts.

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-21523 Filed 8-13-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-023-2]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pink bollworm regulations by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in

Tennessee from the list of suppressive areas for pink bollworm. The interim rule also removed Missouri and Tennessee from the list of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated areas. The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas.

EFFECTIVE DATE: The interim rule was effective on May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Cunningham, Chief Operations Officer, Program Support Staff, PPQ, APHIS, suite 4C09, 4700 River Road Unit 138, Riverdale, MD 20737-1236, (301) 734-8676; or e-mail: gcunningham@hal.aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 2, 1997 (62 FR 23943-23945, Docket No. 97-023-1), we amended the pink bollworm regulations in 7 CFR 301.52 through 301.52-10 by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in Tennessee from the list of suppressive areas for pink bollworm in § 301.52-2a. The interim rule also removed Missouri and Tennessee from the list in § 301.52-2a of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from these previously regulated areas. The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm in § 301.52-2a. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was

necessary to prevent the interstate movement of pink bollworm into noninfested areas.

Comments on the interim rule were required to be received on or before July 1, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the pink bollworm regulations by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in Tennessee from the list of suppressive areas for pink bollworm. The interim rule also removed Missouri and Tennessee from the list of States quarantined because of pink bollworm. We took this action because trapping surveys show that the pink bollworm no longer exists in these areas. The action was necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from these previously regulated areas.

In 1995, the total U.S. cotton production was approximately 17.97 million bales of cotton and 8.12 million tons of cotton seed. Cotton plays an important role in the international trade of the United States. The United States is a net exporter of cotton. In 1995, the United States exported approximately 9.4 million bales of cotton, while it imported only 6,004 bales of cotton.

In order to move regulated articles from an area regulated for pink bollworm, the articles must either be treated to destroy infestation; have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; upon examination, have been found to be free of infestation; or, have been grown, produced, manufactured, stored, or handled in such manner that no infestation would be transmitted. Cotton products produced in the portions of Arkansas, Missouri, and Tennessee that have been removed from the list of regulated areas will no longer be subject to these requirements. The treatment costs range approximately between \$1.64 and \$2.47

per bale of cotton or between \$0.11 and \$0.16 per bushel of cottonseed. These costs are minor compared to the crop losses and increased production costs that would result from the establishment of pink bollworm in the United States. For example, in 1996 the cotton pest control costs attributable to pink bollworm infestation were far larger than quarantine treatment costs, ranging between \$28 and \$74 per bale. In addition, the costs of treatment compared to the value of cotton and cotton products is insignificant. During 1993, 1994, and 1995, the average price per bale of cotton received by farmers was about \$315. Thus, quarantine treatment costs, as a percentage of the value of cotton, range between 0.5 percent and 0.8 percent.

The interim rule also amended the regulations by adding a previously nonregulated portion of Poinsett County in Arkansas to the list of suppressive areas for pink bollworm. The action imposed restrictions on the interstate movement of regulated articles from the regulated area in Poinsett County in Arkansas, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas. In 1995, the affected counties in Arkansas, Missouri, and Tennessee, including all of Poinsett County, Arkansas, together produced 1,042,120 bales of cotton and 472,210 tons of cotton seed. The portion of Poinsett County, Arkansas, added to the list of suppressive areas by the interim rule produced only about 1,880 bales of cotton and 750 tons of cotton seed in 1995. There are 4 cotton growers in the portion of Poinsett County, Arkansas, that was added to the list of suppressive areas. There are 43,046 cotton producing farms in the United States. All 4 of the cotton producing farms in the suppressive area of Poinsett County, Arkansas, and 97 percent of those in the United States are considered to be small entities by the Small Business Administration's (SBA) standards (annual gross revenues of less than \$0.5 million). The average gross income of these farms is much smaller than the SBA's standard of \$0.5 million. There are also 6 cotton related commercial activities in the portion of Poinsett County, Arkansas, that is listed as a suppressive area (1 cotton gin, 2 equipment companies, 2 transport companies, and 1 oil mill). All of these are also small entities. The exact sizes and number of entities outside the suppressive area in Poinsett County that could be impacted by the rule cannot be determined at this time. We expect the impact of this rule on affected entities in Poinsett County to be minimal.

Additionally, as stated previously, the costs that would result from the establishment of pink bollworm in the United States are far grater than the regulatory burden and quarantine treatment costs imposed on affected entities in regulated areas.

The United States plays an important role in international trade of cotton. Losses in cotton produced, or any loss of trade, that would result from a widespread pink bollworm infestation, would be very costly and harmful to the U.S. gross national income. The risk of potential disease spread is of great concern to U.S. exporters of cotton. Maintaining high quality standards is essential not only to the cotton industry but to the U.S. economy as a whole. Continued regulation ensures that importers of U.S. cotton and other raw cotton products will maintain their confidence in the safety of U.S. produced cotton products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 62 FR 23943–23945 on May 2, 1997.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 8th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21522 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV97–947–1 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department), is adopting as a final rule, without change, the provisions of an interim final rule which established, 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 decreased 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. The 1997–98 fiscal period covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 15, 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 *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 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 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 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