

regulatory and informational impacts of this action on small businesses.

This rule will impose no additional reporting or recordkeeping requirements on either small or large tart cherry 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 AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services and for other purposes.

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

A proposed rule was published in the **Federal Register** on June 21, 2006 (71 FR 35562). Copies of the proposed rule were mailed or sent via facsimile to all Board members and cherry handlers. Finally, the proposed rule was made available through the Internet USDA and the Office of the Federal Register. A 20-day comment period ending July 11, 2006, was provided to allow interested persons to respond to the proposal. One comment was received.

The commenter opposed the proposal on the basis that the increased assessment rate is indefinite and that Congress should vote on it. The commenter also stated that the recommended assessment rate represents a large increase and that we are, in essence, raising taxes on people who have no representation that is directly accountable to those people. Finally, the commenter was of the view that federalism issues and Executive Order 13132 applies. In response to the commenter, and as previously stated in this action, the tart cherry marketing order, as issued in accordance with the Agriculture Marketing Act of 1937, provides the authority for the Board, with USDA approval, to formulate a budget and collect assessments from handlers to administer the program. The members of the Board are producers and handlers who are nominated and elected by their peers to represent their respective production areas/districts to address issues that come before the Board. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input. Finally, this rule does not have sufficient Federalism implications to warrant an assessment under Executive Order 13132.

Accordingly, no changes will be made to this rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board 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 the 2006–2007 fiscal period began on July 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 20-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

#### **§ 930.200 Assessment rate.**

On and after July 1, 2006, the assessment rate imposed on handlers shall be \$0.0066 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is \$0.005 per pound of cherries to cover the costs of the new research and promotion program and \$0.0016 per pound of cherries to cover administrative expenses.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–19460 Filed 11–16–06; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

[Docket No. FV06–948–1 FIR]

#### **Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which suspended the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2006–2007 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period begins July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

**DATES:** *Effective Date:* December 18, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (503) 326–2724; Fax: (503) 326–7440 or E-mail: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 2005–2006 fiscal period, an assessment rate of \$0.02 per hundredweight of potatoes handled was approved by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the assessment rate for the 2006–2007 fiscal period, which began July 1, 2006, and will continue in effect until reinstated. 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 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 rule continues in effect the action that suspended § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of \$0.02 per hundredweight of Colorado potatoes handled for 2005–2006 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule continues in effect the action that suspended the \$0.02 assessment rate for 2006–2007 and will remain in effect during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. In addition, the order authorizes the use of monetary reserve funds to cover program expenses (§ 948.78). The members of the Committee are producers and handlers of Colorado 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.

The Committee met on May 11, 2006, and unanimously recommended 2006–2007 expenditures of \$20,268 and suspension of the continuing assessment rate. In comparison, last year's budgeted expenditures were \$20,368. The suspension of the assessment rate will allow the Committee to draw from the reserve to cover 2006–2007 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses (§ 948.78).

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include \$8,610 for salary, \$3,000 for office rent, \$1,750 for office expenses, and \$1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

As of July 1, 2005, the Committee had \$49,237 in its reserve fund. With the 2006–2007 budget set at \$20,268, the current maximum reserve permitted by the order is approximately \$40,536 (approximately two fiscal periods' expenses (§ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately \$15,814 from its reserve, and may additionally earn approximately \$4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately \$33,423. This amount would be consistent with the order's requirements.

The assessment rate suspension will continue in effect indefinitely until reinstated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this suspension of the continuing 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 reinstatement of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

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. 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.

Based on Committee data, there are 8 producers and 8 handlers in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2004 fresh potato production of 557,826 hundredweight (Committee records), and the average 2004 producer price of \$6.30 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately \$439,288. In addition, based on Committee records and an estimated average 2004 f.o.b. price of \$8.40 per hundredweight (\$6.30 per hundredweight NASS producer price plus Committee estimated packing

and handling costs of \$2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under \$6,500,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule continues in effect the action that suspended the continuing assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods. Funds from the Committee's authorized reserve, along with interest and other income, will be adequate to cover budgeted expenses.

As of July 1, 2005, the Committee had \$49,237 in its reserve fund. With the 2006–2007 budget set at \$20,268, the current maximum reserve permitted by the order is approximately \$40,536 (approximately two fiscal periods' expenses (\$ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately \$15,814 from its reserve, and may additionally earn approximately \$4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately \$33,423. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include \$8,610 for salary, \$3,000 for office rent, \$1,750 for office expenses, and \$1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

For the 2005–2006 fiscal period, the Committee recommended a decrease in the assessment rate. However, the decreased assessment rate did not reduce the Committee's reserve as anticipated. Therefore, the Committee recommended suspending the continuing assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were considered, but not recommended because they would not reduce the reserve as quickly as suspension of the continuing assessment rate.

This action continues in effect the action that suspended the assessment obligation imposed on handlers.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, suspending the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 11, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado 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 to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

An interim final rule concerning this action was published in the **Federal Register** on July 18, 2006 (71 FR 40639). Copies of that rule were also mailed or sent via facsimile to all Area No. 3 Colorado potato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 18, 2006, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ama.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

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

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 71 FR 40639 on July 18, 2006, is adopted as a final rule without change.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV06–993–1 FR]

#### Dried Prunes Produced in California; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2006–07 and subsequent crop years from \$0.65 to \$0.40 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes produced in California. Assessments upon dried prune handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, Terry Vawter, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax (559) 487–5906, or E-mail: [Toni.Sasselli@usda.gov](mailto:Toni.Sasselli@usda.gov), [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov), or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber,