

## Regulatory Requirements

### A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

#### 1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

#### 2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

#### 3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

#### 4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or

new information collection requirements associated with this rule.

### C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

### D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

### E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

### List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

## PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

**Authority:** Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add new paragraph 6 to read as follows:

### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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6. DHS/CBP-007, Border Crossing Information. This system may contain records or information pertaining to the accounting of disclosures made from BCI to other law enforcement and counterterrorism agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses. For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person's travel documents or

submitted from a government computer system to support or to validate those travel documents. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. *Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:*

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 18, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8-17122 Filed 7-24-08; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. AMS-FV-08-0048; FV08-948-2 PR]

### Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would reinstate the continuing assessment rate established for the Area No. 3 Colorado Potato

Administrative Committee (Committee) for the 2008–2009 and subsequent fiscal periods at \$0.02 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2006–2007 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Assessments upon potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 11, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary 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 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.”

The Department of Agriculture (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 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 proposed herein would be applicable to all assessable potatoes beginning on July 1, 2008, and continue 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 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 would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee for the 2008–2009 and subsequent fiscal periods at \$0.02 per hundredweight of potatoes handled.

The Colorado potato marketing 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. The members of the Committee are producers and handlers of Colorado potatoes in Area No. 3. 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 2006–2007 and subsequent fiscal periods, the Committee recommended, and USDA approved, a

suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2008, and unanimously recommended 2008–2009 expenditures of \$19,497 and an assessment rate of \$0.02 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$18,697. For the 2006–2007 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (\$ 948.78). At that time, the reserve fund contained about \$49,237. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about \$16,175. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at \$0.02 per hundredweight is needed.

The major expenditures recommended by the Committee for the 2008–2009 fiscal period include \$7,800 for salaries, \$3,000 for rent expense, and \$1,750 for office expenses. Budgeted expenses for these items in 2007–2008 were also \$7,800, \$3,000, and \$1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area No. 3 potatoes. Colorado Area No. 3 potato shipments for the year are estimated at 787,600 hundredweight, which should provide \$15,752 in assessment income. Income derived from handler assessments, rent, and interest along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (estimated at \$16,175 as of June 30, 2008) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 948.78).

The reinstated assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2008–2009 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

### Initial 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 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.

Based on Committee data, there are 8 producers (7 of whom are also handlers) in the regulated area and 9 handlers (7 of whom are also producers) who are 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 Committee data, the production of Colorado Area No. 3 potatoes for the 2007–2008 fiscal period was 550,026 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for 2007 was \$7.55 per hundredweight. The average annual producer revenue for the 8 Colorado Area No. 3 potato producers is therefore calculated to be approximately \$519,000. Using Committee data regarding each individual handler's total shipments during the 2007–2008 fiscal period and a Committee estimated average f.o.b. price for 2007 of \$9.75 per hundredweight (\$7.55 per hundredweight plus estimated packing

and handling costs of \$2.20 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under \$6,500,000 worth of potatoes. Thus, the majority of handlers and producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee, to be collected from handlers for the 2008–2009 and subsequent fiscal periods, at \$0.02 per hundredweight of potatoes. The Committee unanimously recommended 2008–2009 expenditures of \$19,497 and an assessment rate of \$0.02 per hundredweight. The quantity of Colorado Area No. 3 potatoes for the 2008–2009 fiscal period is estimated at 787,600 hundredweight. Thus, the \$0.02 rate should provide \$15,752 in assessment income. Income derived from handler assessments, rent, and interest along with funds from the Committee's authorized reserves should be adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2008–2009 fiscal period include \$7,800 for salaries, \$3,000 for rent expense, and \$1,750 for office expenses. Budgeted expenses for these items in 2007–2008 were also \$7,800, \$3,000, and \$1,750, respectively.

For the 2006–2007 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (\$ 948.78). At that time, the reserve fund contained about \$49,237. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about \$16,175. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves. Higher assessment rates were also considered, but not recommended because they would add funds to the reserve.

To calculate the assessment rate, the Committee deducted estimated income received from rent and interest from the

total recommended budget (\$19,497 – \$2,000 = \$17,497). The assessment rate was then determined by dividing \$17,497 by the quantity of assessable potatoes, estimated at 787,600 hundredweight for the 2008–2009 fiscal period. The result was rounded to \$0.02 per hundredweight. This assessment rate would generate approximately \$1,745 less than anticipated expenses when combined with interest and rent income, which the Committee has determined to be acceptable. Funds from the Committee's authorized reserve should be adequate to cover budgeted expenses not covered by income from assessments, interest, and rent.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2008–2009 fiscal period could range between \$7.55 and \$8.45 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2008–2009 fiscal period as a percentage of total producer revenue could range between 0.24 and 0.26 percent.

This action would reinstate the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 3 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 May 8, 2008, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 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.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2008–2009 fiscal period begins on July 1, 2008, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the northern Colorado potato shipping season begins in July; (3) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In part 948, the suspension of § 948.215 is lifted.

Dated: July 22, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–17089 Filed 7–24–08; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS–FV–08–0054; FV08–984–1 PR]

#### Walnuts Grown in California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the California Walnut Board (Board) for the 2008–09 marketing year from \$0.0122 to \$0.0158 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2008–09 marketing year begins August 1, 2008. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 11, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Engeler, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@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, 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 Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, 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 of Agriculture (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 marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on August 1, 2008, and continue 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 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 would increase the assessment rate established for the Board for the 2008–09 and subsequent marketing years from \$0.0122 to \$0.0158 per kernelweight pound of assessable walnuts. The 2008–09 marketing year begins on August 1, 2008, and ends on August 31, 2009. Due to a recent amendment to the order changing the definition of marketing year, the 2008–09 marketing year will cover a 13-month period (73 FR 11328, March 3, 2008). Subsequent marketing years will cover a