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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

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

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule reinstates 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 began on July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* September 10, 2008.

**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 issued herein will be applicable to all assessable potatoes beginning 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 reinstates § 948.215 of the order's rules and regulations and establishes 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 assessment rate reinstated in this rule will 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 will be in effect 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 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–2009 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.

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 reinstates § 948.215 of the order's rules and regulations and establishes a continuing assessment rate for the Committee for the 2008–2009 and subsequent fiscal periods at \$0.02 per hundredweight of potatoes handled. The reinstatement of the \$0.02 assessment rate and the 2008–2009 expenditures of \$19,497 were unanimously recommended by the Committee. 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, which is estimated at 787,600 hundredweight for the 2008–2009 fiscal period. The result was rounded to \$0.02 per hundredweight. This assessment rate will 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 reinstates 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 are 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.

This rule imposes 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2008 (73 FR 43375). Copies of the proposed rule were also mailed or sent via facsimile to all handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending August 11, 2008, was provided for interested persons to respond to the proposal. 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.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.

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.

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) The 2008–2009 fiscal period began 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 began 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. Also, a 15-day comment period was provided for in the proposed rule.

#### 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 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: September 4, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–20853 Filed 9–8–08; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Parts 71, 83, and 93

[Docket No. APHIS–2007–0038]

RIN 0579–AC74

##### Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are establishing regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to viral hemorrhagic

septicemia, a highly contagious disease of certain fresh and saltwater fish. In 2005 and 2006, viral hemorrhagic septicemia was detected in freshwater fish in several of the Great Lakes and related tributaries. The disease has been responsible for several large-scale die-offs of wild fish in the Great Lakes region. This action is necessary to prevent further introductions into, and dissemination within, the United States of viral hemorrhagic septicemia.

**DATES:** *Effective date:* This interim rule is effective November 10, 2008.

*Comment dates:* Comments on the interim rule are due on or before November 10, 2008. Comments on the environmental assessment are due on or before October 9, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0038> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0038.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. P. Gary Egrie, Senior Staff Veterinary Medical Officer, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–0695; or Dr. Peter L. Merrill, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**