

duplication by industry and public sector agencies.

The Department 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 21, 1998 (63 FR 39037). The proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 20, 1998, was provided for interested persons to respond to the proposal. No comments were received.

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 1998-99 fiscal period began on July 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable winter pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (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) a 30-day comment period was provided and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 927.236 [Amended]

2. Section 927.236 is amended by removing the words "July 1, 1997," and adding in their place the words "July 1, 1998," and by removing "\$0.44" and adding in its place "\$0.49."

Dated: August 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-23512 Filed 9-1-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Docket No. FV98-953-1 FIR]

Irish Potatoes Grown in Southeastern States; Increased 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 increased the assessment rate established for the Southeastern Potato Committee (Committee) under Marketing Order No. 953 for the 1998-99 and subsequent fiscal periods from \$0.0075 to \$0.01 per hundredweight of potatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: 202-720-2491, Fax: 202-205-6632; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-720-2491, Fax: 202-205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, also at the above address, telephone, and Fax.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in

two southeastern States (Virginia and North Carolina), 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 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, Virginia-North Carolina 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 June 1, 1998, 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 continues to increase the assessment rate established for the Committee for the 1998-99 and subsequent fiscal periods from \$0.0075 to \$0.01 per hundredweight of potatoes handled.

The Southeastern 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 Southeastern 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 of \$0.0075 per hundredweight of potatoes handled that would continue in effect from fiscal period to fiscal period 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 April 16, 1998, and unanimously recommended 1998-99 expenditures of \$12,000, the same as last year. The major expenditures include \$7,700 for the manager's and secretarial salaries and \$1,000 for travel expenses. These and all other expense items are budgeted at last year's amounts.

Regarding the assessment rate, after considering several options, the Committee concluded that the former rate of \$0.0075 per hundredweight would not be adequate for the 1998-99 fiscal period for the following reasons. The Committee's operating reserve was only \$5,000 and was expected to be quickly exhausted. The reserve was the lowest ever for any of the Committee's fiscal periods except one. Also, wet fields caused delayed plantings and unfavorable growing conditions, resulting in potato plant stands estimated to be 20 percent below normal. As a result of this and other factors, the Committee projected that during the industry's brief, predominately June and July, shipping and assessing period, its total potato volume to be handled would be down at least 100,000 hundredweight. Therefore, the Committee unanimously recommended an assessment rate of \$0.01 per hundredweight, \$0.0025 higher than the rate formerly in effect.

The assessment rate recommended by the Committee was based on projected fresh market shipments of 1,200,000 hundredweight (cwt) of Southeastern potatoes, which should provide \$12,000 in assessment income. However, recent information indicates that these shipments will only be approximately 900,000 cwt, providing about \$9,000 in assessments. But this income, along with funds from the Committee's authorized operating reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1997-98 fiscal period were estimated at only \$5,000. Funds in the reserve are now expected to be about

\$2,000, well within the maximum permitted by the order of approximately one fiscal period's expenses (\$953.35).

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

Although this 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 modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1998-99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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.

There are approximately 85 producers of Southeastern 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 of 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 Southeastern potato producers and handlers may be classified as small entities.

This rule continues to increase the assessment rate established for the Southeastern Potato Committee and

collected from handlers for the 1998-99 and subsequent fiscal periods from \$0.0075 per hundredweight to \$0.01 per hundredweight of potatoes handled. Both the \$0.01 assessment rate and the 1998-89 budget of \$12,000 were unanimously recommended by the Committee at its April 16, 1998, meeting. The assessment rate continued in effect by this action is \$0.0025 higher than the 1997-98 rate. The Committee recommended an increased assessment rate to help offset the smaller projected crop of assessable Southeastern potatoes in 1998. Recent information indicates these shipments will only be approximately 900,000 hundredweight (cwt), about 400,000 cwt less than the 1997 crop, to provide about \$9,000 in assessments. But this income, along with funds from the Committee's authorized operating reserve, will be adequate to meet the 1998-99 fiscal period's budgeted expenses. Funds in the reserve at the beginning of the 1997-98 fiscal period were approximately \$5,000. Funds in the reserve are now expected to be only about \$2,000, well within the maximum permitted by the order of approximately one fiscal period's expenses (\$953.35). The Committee discussed leaving the assessment at the previous \$0.0075 rate but determined that the significantly smaller crop would not generate enough income to meet budgeted expenses without exhausting the \$5,000 operating reserve, and this was not acceptable.

The major expenditures recommended by the Committee for the 1998-99 fiscal period include \$7,700 for the manager's and secretarial salaries and \$1,000 for travel expenses. These and all other expense items are budgeted at last year's amounts.

A review of historical information and recent preliminary information indicate that the grower price for the 1998-99 Southeastern potato crop could average approximately \$7.00 to \$8.00 per hundredweight. With fresh market shipments in 1998 of approximately 900,000 hundredweight, the estimated assessment revenue for the 1998-99 fiscal period (\$9,000) as a percentage of the projected fresh market crop value (\$7,200,000) could be 0.005 percent.

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 will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Southeastern 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 April 16, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Southeastern 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.

An interim final rule concerning this action was published in the **Federal Register** on June 17, 1998, (63 FR 32966). Copies of that rule were also mailed or sent via facsimile to all Southeastern potato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on July 17, 1998, and no comments were received.

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 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim final rule amending 7 CFR part 953 which was published at 63 FR 32966 on June 17, 1998, is adopted as a final rule without change.

Dated: August 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit & Vegetable Programs.

[FR Doc. 98-23516 Filed 9-1-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA-98-04]

Fluid Milk Promotion Order; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends certain provisions of the Fluid Milk Promotion Order (Order). The amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, modify the membership status and term of office of Board members. This rule also amends order language pertaining to committees and intellectual property rights (patents, copyrights, inventions, and publications). The amendments are necessary to maintain Board membership continuity and should allow the Board to operate in a more effective and efficient manner.

EFFECTIVE DATE: September 3, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250-0233, (202) 720-6909, e-mail address David_Jamison@usda.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 250 fluid milk processors subject to the provisions of the Order. Most of the parties subject to the Order are considered small entities.

The Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 USC 6401-6417). This rule will modify certain provisions of the Order concerning membership on the Board, the term of office for Board members, the establishment of working committees, and joint ownership of intellectual property rights. These amendments were requested by the Board. The Board believes that the amendments are necessary to maintain Board membership continuity and that the changes should allow the Board to operate in a more effective and efficient manner.

The amendments will allow a fluid milk processor to have two members on the Board. Currently, the Order provides that a fluid milk processor can be represented on the Board by not more than one member. This amendment should help maintain Board continuity and provide a consistent pool of processor representatives. The amendments also will allow Board members whose fluid milk processor company affiliation has changed to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. This amendment should help in the reduction of Board vacancies and foster continuity in Board activities and membership.

The rule also will allow Board members who fill vacancies with a term of 18 months or less to serve two consecutive full 3-year terms. Currently, the Order provides that except for the initial staggered appointments, Board members could only serve two consecutive terms. Greater continuity on the Board will result from this amendment.

The rule also will permit the Board to establish working committees of persons other than Board members; this change will assist the Board with activities through access to information, knowledge, and expertise that otherwise might not be available.

Finally, the amendments also will modify the intellectual property provisions of the Order to specifically provide for and allow joint ownership of intellectual property, i.e., patents, copyrights, inventions, and publications, that is developed using joint funds. This change recognizes that significant project funding may come from contracting parties other than the Board.

These amendments to Order provisions will not add any burden to regulated parties because they relate to provisions concerning membership on the Board, the establishment of working committees, and joint ownership for patents, copyrights, inventions, and publications. The amendments will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.