

expenditures of \$73,618. This compares to last year's approved budget of \$71,132. Prior to arriving at a budget, alternative expenditures and assessment levels were discussed by the Committee, including higher and lower rates of assessment. When considering the relatively poor economic returns the industry has faced during the past six seasons and the resultant instability within the potato industry, as well as the 2001-02 budget and the current size of the monetary reserve (\$32,000), the Committee concluded that an increase in the rate of assessment to \$0.0035 per hundredweight of potatoes would allow it to properly administer the program.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001-02 season could range between \$2.06 and \$7.35 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2001-02 fiscal period as a percentage of total producer revenue could range between 0.170 and 0.048 percent.

This action would increase 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 order. In addition, the Committee's meeting was widely publicized throughout the Colorado Area II 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 17, 2001, 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 information on 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 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.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001-02 fiscal period begins on September 1, 2001, and the order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (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.

#### 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. Section 948.216 is revised to read as follows:

#### § 948.216 Assessment rate.

On and after September 1, 2001, an assessment rate of \$0.0035 per hundredweight is established for Colorado Area II potatoes.

Dated: July 27, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-19265 Filed 8-1-01; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV01-948-1 PR]

#### Irish Potatoes Grown in Colorado; Modification of Area No. 3 Handling Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed exemptions to the handling regulation prescribed under the marketing order (order) for Colorado Area No. 3 potatoes. These relaxations were unanimously recommended by the Colorado Potato Administrative Committee for Area No. 3 (Committee), the agency responsible for local administration of the order. This rule would exempt potatoes shipped for the purpose of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, inspection and assessment requirements of the order. Relaxing handling requirements is expected to provide handlers with greater marketing flexibility, producers with increased returns, and consumers with more choices in buying fresh potatoes. This rule also clarifies the regulatory text by specifying that potatoes shipped for livestock feed, charity, and certified seed are exempt from assessment requirements.

**DATES:** Comments must be received by August 22, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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) 720-8938.

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

720-8938, or E-mail:  
Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is authorized by 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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. A 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 invites comments on proposed exemptions to the handling regulation prescribed under the order. This rule would exempt potatoes shipped for the purpose of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, inspection and assessment requirements of the order. These proposed exemptions were unanimously recommended by the Committee. This rule also clarifies the regulatory text by specifying that potatoes shipped for livestock feed, charity, and certified seed are exempt from assessment requirements.

Section 948.22 authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any

variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under § 948.22 or to facilitate the handling of potatoes for special purposes. Section 948.24 requires adequate safeguards be prescribed to ensure that potatoes handled pursuant to § 948.23 enter authorized trade channels. Safeguard procedures for special purpose shipments are specified in §§ 948.120 through 948.125. Section 948.387 of the order's handling regulations establishes the grade, size, maturity, and inspection requirements. The Committee's assessment rate is established under § 948.215.

At its meeting on December 14, 2000, the Committee unanimously recommended that potatoes shipped for the purpose of experimentation and the manufacture or conversion into specified products be exempt from the grade, size, maturity, and inspection requirements provided under the order's regulations for Area No. 3. The Committee recommended that experimentation and the manufacture or conversion into specified products be added under § 948.387(d) as special purpose shipments.

As is currently required for all special purpose shipments, handlers would apply for and obtain a Certificate of Privilege for handling such potatoes and furnish the Committee such information as it may require to track shipments, determine whether applicable requirements have been met, and verify whether proper disposition has occurred.

At a subsequent meeting on March 8, 2001, the Committee reconfirmed its earlier action and, in addition, unanimously recommended that shipments for livestock feed, charity, certified seed, and for the purpose of experimentation and the manufacture or conversion into specified products be exempt from assessment requirements. Shipments of potatoes for livestock feed, charity, and certified seed are specified as special purpose shipments are currently exempt from grade, size, maturity, and inspection requirements.

Some producers and handlers within the production area are interested in developing new uses for fresh potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship traditional varieties, or experimental varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers

are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum-sealed bags. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes has "similar" varietal characteristics.

The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for the expanded use of fresh forms of potato products, such as fresh cut potatoes in vacuum-sealed bags, that would benefit the Colorado potato industry. Some of the new varieties have irregular shapes or are small in size, and will not meet minimum order requirements. This prevents them from being shipped except under the minimum quantity exemption of 1,000 pounds specified in paragraph (f) of § 948.387. Thus, handlers are prevented from shipping larger quantities.

For the purpose of this rule, the term "manufacture or conversion into specified products" means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing. Under the current regulation, potatoes for manufacture or conversion into specified products are required to be inspected and certified as meeting the specified quality requirements prior to preparation for market.

The current regulation requires that all potatoes shipped to fresh market, with the exception of those meeting minimum quantity and special purpose exemptions, be inspected and assessed. These regulations do not provide adequate relief for commercially viable shipments of non-traditional varieties, potatoes for experimentation, or the shipment of potatoes for the manufacture or conversion into products. This rule would exempt such shipments and relieve handlers of this regulatory burden.

This proposed relaxation of the Area No. 3 handling regulation is expected to encourage new product development that could lead to market expansion, which would benefit producers, handlers, buyers, and consumers. By relaxing the handling requirements on traditional and experimental varieties and on new and innovative fresh potato products, additional opportunities should be available to increase the fresh utilization of Colorado potatoes.

The Committee also unanimously recommended that shipments of potatoes for livestock feed, charity, and certified seed potatoes be exempt from assessment requirements. This Committee recommendation was made with the intent of treating all special purpose shipments in the same manner. As explained previously, shipments to these fresh outlets are currently exempt from the grade, size, maturity, and inspection requirements. The order only regulates, however, the shipment of potatoes outside the State of Colorado. It is very uncommon for Area No. 3 potatoes to be shipped for livestock feed, charity, or certified seed outside of the State of Colorado. It is not expected that exempting such shipments from assessments would have any effect of increasing shipments. Thus, this recommendation is expected to have little impact on handlers or the Committee's assessment income. And finally, this rule would clarify the current handling regulation to indicate that special purpose shipments for canning, freezing, and "other processing" are exempt from assessments. Such shipments are exempt from regulation under federal marketing orders in conformity with an amendment to the Act (Public Law No. 92-233, Feb. 15, 1972).

#### 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 action on small entities. Accordingly, the 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 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 13 handlers of Colorado Area No. 3 potatoes who are subject to regulation under the marketing order and approximately 31 producers of Colorado potatoes in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000.

Based upon information provided by the Committee, all handlers of Area No. 3 potatoes have shipped under \$5,000,000 worth of potatoes during the most recent season for which numbers are available. In addition, information reported by the National Agricultural Statistics Service was considered in determining the number of large and small producers by acreage, production, and producer prices. According to the information provided, the average yield per acre was 340 hundredweight, and the season average producer price was \$5.95 per hundredweight for 1999 crop. This equates to average gross receipts to producers of approximately \$107,200. Based on the foregoing, it can be concluded that all handlers and the majority of producers of Area 3 potatoes may be classified as small entities, excluding receipts from other sources.

This proposed rule would exempt special purpose shipments of potatoes from the grade, size, maturity, inspection and assessment requirements prescribed under the order's handling regulations for Colorado Area No. 3 potatoes. Based on authority in §§ 948.22, 948.23, and 948.24 of the order, the Committee at its meeting on December 14, 2000, unanimously recommended that potatoes shipped for the purpose of experimentation and the manufacture or conversion into specified products be exempt from the grade, size, maturity, and inspection requirements of the order. The Committee at its meeting on March 8, 2001, recommended that potatoes for experimentation and the manufacture or conversion into specified products be exempt from assessment requirements. It also recommended that the regulatory text of the applicable provisions be clarified by specifying that potatoes shipped for livestock feed, charity, and certified seed are exempt from assessment requirements.

Producers and handlers within the production area are interested in developing innovative uses for fresh potatoes. The Committee anticipates that some handlers may want to ship traditional or experimental varieties for the manufacture or conversion of potatoes into fresh forms such as fresh cut french fries using experimental packaging and preservation methods. The Committee strongly encourages innovation that could result in the development of new varieties and market opportunities for the expanded use of fresh forms of potato products, such as those packaged in vacuum-sealed bags. The relaxation of Area No. 3 handling and assessment requirements is expected to encourage new product development which would benefit

producers, handlers, buyers, and consumers and increase the fresh utilization of Colorado potatoes. The proposed changes are expected to have a positive economic impact on the Colorado potato industry.

As with all special purpose shipments, handlers are currently required to apply and obtain a Certificate of Privilege for handling such potatoes and furnish the Committee such information as they may require to track shipments, determine whether applicable requirements have been met, and verify whether proper disposition has occurred. It is the intent of the Committee to keep reporting requirements to a minimum level necessary to monitor compliance while determining the viability and extent of any changes in the marketing of the area potatoes. There is no available information detailing how many potatoes this relaxation will allow to be marketed. During the previous growing season, one producer planted less than 20 acres of the non-traditional, experimental type varieties on a trial basis. No viable alternatives to this action were identified that would ensure innovations in marketing and product development. Furthermore, the goals expressed by the committee could not be solved absent this action.

The Committee estimates that two or three handlers may apply for and obtain a Certificate of Privilege for the handling of potatoes for experimentation or for the manufacture or conversion into specified products. It is estimated that the time taken by the handlers who apply will total less than ten hours and this time is currently approved under OMB No. 0581-0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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.

In addition, the Committee's meetings were widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, those held on December 14, 2000, and March 8, 2001, were open to the public and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to

submit information on the regulatory and informational impacts of this action on small businesses.

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.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because handlers should be able to take advantage of the relaxed requirements as soon as possible. The shipping season began on July 1, 2001. All written comments timely received will be considered before a final determination is made on this matter.

**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 § 948.387, paragraph (d)(1) is revised, a new paragraph (d)(1)(v) is added, and in paragraph (g) a new sentence is added before the last sentence to read as follows:

**§ 948.387 Handling regulation.**

\* \* \* \* \*

(d) \* \* \*

(1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section and the assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) \* \* \*

(v) Experimentation and the manufacture or conversion into specified products.

\* \* \* \* \*

(g) *Definitions.* \* \* \* The term *manufacture or conversion into specified products* means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the committee, but not including other processing. \* \* \*

\* \* \* \* \*

Dated: July 27, 2001.

**Kenneth C. Clayton,**  
*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–19264 Filed 8–1–01; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 966**

[Docket No. FV01–966–1 PR]

**Tomatoes Grown in Florida; Changes to the Handling Regulation for Producer Field-Packed Tomatoes**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on changes to the requirements currently prescribed for producer field-packed tomatoes under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This rule would remove the net weight and weight labeling exemptions for producer field-packed tomatoes. Producer field-packed tomatoes compete directly with packinghouse tomatoes that must meet the net weight requirement. This change would require all tomatoes, regardless of where they are packed, to meet the same net weight requirements so that these requirements are the same for producer field-packed tomatoes and packinghouse tomatoes.

**DATES:** Comments must be received by August 22, 2001.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kellhart, 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) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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. A 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.