

incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 1, 1995, through August 31, 1996. Comments received by July 21, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone number 202-720-9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone number 503-326-2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. 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 interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995-96 fiscal period which begins September 1, 1995, and ends August 31, 1996. This interim final 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 8c(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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. 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 Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II 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. The budget was formulated and discussed in a public meeting. Thus, all

directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met May 18, 1995, and unanimously recommended a 1995-96 budget of \$62,328, which is \$3,596 less than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Audit fee, \$975, (\$900), other office, \$625 (\$500), and utilities, \$3,000 (\$2,000). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Assistant's salary, \$8,256 (\$10,320), part-time salary, \$3,640 (\$3,822), major purchase, \$2,125 (\$2,250), and (\$2,425) for property tax, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of \$0.0030 per hundredweight, \$0.0006 less than last season. This rate, when applied to anticipated potato shipments of 16,500,000 hundredweight, will yield \$49,500 in assessment income. This, along with \$12,828 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of \$101,064 in the Committee's authorized reserve at the beginning of the 1994-95 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments 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 marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the