

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Virginia-North Carolina potatoes are subject to 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 began June 1, 1995, and ends May 31, 1996. This 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 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 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 the 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 150 producers of Southeastern potatoes under this marketing order, and approximately 60 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 Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Southeastern Potato Committee, 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 Southeastern potatoes. They are familiar with the Committee's needs and with the costs of 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 Southeastern potatoes, based on last season's assessable shipments of approximately 1,124,736 hundredweight. 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.

The Committee met April 20, 1995, and unanimously recommended a 1995-96 budget of \$12,000, \$1,000 more than the previous year. The budget item for 1995-96 which has increased compared to that budgeted for 1994-95 (in parentheses) is: Manager's salary, \$5,800 (\$4,800). All other items are budgeted at last year's amounts.

The Committee also recommended an assessment rate of \$0.0050 per hundredweight, \$0.0025 less than last season's rate. When the Committee met, planting for the 1995 crop had not been completed. Current indications are that assessable shipments may be slightly higher than last season and that about \$6,000 in assessment income will be generated. This, along with funds from the Committee's reserve, will be adequate to cover the expenses incurred. Funds remaining at the end of the 1995-96 fiscal period should be within the maximum permitted by the order of approximately one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on June 2, 1995 (60 FR 28701). That interim final rule added § 953.252 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 3, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs

are in the form of uniform assessments on 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 information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on June 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable Irish potatoes handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

#### 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:

**Note:** This section will not appear in the Code of Federal Regulations.

#### PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim final rule adding § 953.252 which was published at 60 FR 28701, is adopted as a final rule without change.

Dated: July 20, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-18245 Filed 7-24-95; 8:45 am]

BILLING CODE 3410-02-P