

subsequent" in the first sentence and adding in their place the words "through Fiscal Year 2002".

■ s. Newly redesignated paragraph (e)(9)(iii) is amended by removing the reference "(e)(11)(vi)" and adding in its place the reference "(e)(9)(vi)".

■ t. A new paragraph (e)(10) is added.

The additions read as follows:

**§ 275.23 Determination of State agency program performance.**

\* \* \* \* \*

(e) \* \* \*

(3) *Establishment of payment error rates and liability.* For Fiscal Year 2003 and subsequent years, FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. The national performance measure announced under this paragraph (e)(3) is not subject to administrative or judicial review. Liability for payment shall be established for Fiscal Year 2004 and beyond whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of:

(i) The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by

(ii) the difference between the State agency's payment error rate and 6 percent; multiplied by

(iii) 10 percent.

\* \* \* \* \*

(7) \* \* \* The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment error rate for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice to its respective chief executive officer and legislature. \* \* \*

\* \* \* \* \*

(10) *Resolution of liabilities for FY 2003 and beyond.* FNS may: waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as "at-risk" for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once FNS establishes its proposed liability resolution plan, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State shall settle any waiver amount or reinvestment amount before the end of the fiscal year in which the liability amount is determined unless an administrative appeal relating to the claim is pending. If a State agency appeals its liability determination, if the State agency began required reinvestment activities prior to an appeal determination, and if the liability amount is reduced to \$0 through the appeal, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal. If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for reinvestment during the appeal to be reinvested or to be repaid to the Federal government.

Dated: October 3, 2003.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 03-26176 Filed 10-15-03; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 945

[Docket No. FV03-945-1 FR]

#### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Idaho-Eastern Oregon Potato Committee

(Committee) for the 2003-04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period began August 1 and ends July 31. The increased assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 17, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724, Fax: (503) 326-7440 or E-mail: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov); or George Kelhart, Technical Advisor, 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.

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. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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, Idaho-Eastern Oregon 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 on August 1, 2003, 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 increases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. 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 USDA approved, an assessment rate

that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 16, 2003, and unanimously recommended 2003–04 expenditures of \$149,417 and an assessment rate of \$0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003–04 potato shipments at 36,500,000 hundredweight, which would generate \$94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

The Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of \$145,317 (down from \$149,417) and to raise the assessment rate to \$0.0045 per hundredweight of potatoes handled (up from \$0.0026). In comparison, last fiscal period's budgeted expenditures were \$137,094. The recommended assessment rate is \$0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

This major expenditures recommended by the Committee for the 2003–04 fiscal period include \$95,067 for salaries and benefits, \$16,500 for transportation, \$13,500 for travel, \$6,800 for rent and utilities, and \$4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were \$92,144, \$9,000, \$14,000, \$6,300, and \$6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003–04 fiscal period at 36,500,000 hundredweight, which should provide \$164,250 in assessment

income at the issued assessment rate. This income should be adequate to cover budgeted expenses. The Committee estimated monetary reserves to be approximately \$33,000 at the beginning of the 2003–04 fiscal period. The reserves could potentially increase to \$51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (\$945.44). Funds held in reserve will be kept within the maximum permitted by the order.

The assessment rate established 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 would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of potatoes in the production area and approximately 54 handlers subject to regulation under the marketing 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 \$5,000,000.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of \$6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately \$240,259. It can be concluded, therefore, that most of these producers may be classified as small entities.

In addition, based on Committee records and 2002–03 f.o.b. shipping point prices ranging from \$5.00 to \$35.00 per hundredweight reported by USDA's Market News Service, many Idaho-Eastern Oregon potato handlers may ship over \$5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from \$0.0026 to \$0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003–04 expenditures of \$145,317 and an assessment rate of \$0.0045 per hundredweight. The proposed assessment rate is \$0.0019 per hundredweight higher than the 2002–03 rate. The quantity of assessable potatoes for the 2003–04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately \$164,250) should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$95,067 for salaries and benefits, \$16,500 for transportation, \$13,500 for travel, \$6,800 for rent and utilities, and \$4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were \$92,144, \$9,000, \$14,000, \$6,300, and \$6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimated the reserve to be \$33,000 at the 2002–03 fiscal period end. At the current rate of \$0.0026 per hundredweight, and the estimated potato production of 36,500,000

hundredweight for the 2003–04 fiscal period, the projected income for the 2003–04 fiscal period would be \$94,900. This amount, along with the projected reserve of \$33,000, is approximately \$19,417 less than required to fund the proposed 2003–04 budget and \$9,194 less than the 2002–03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of \$0.0045 per hundredweight (assessment income of \$164,250) and expenditures of \$145,317, the Committee may increase its reserve by up to \$18,933. The projected reserve would be approximately \$51,933 on July 31, 2004, which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to \$0.0045 per hundredweight will allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between \$0.0026 per hundredweight and \$0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–04 fiscal period could range between \$4.50 and \$6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 percent.

This action increases 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 Idaho-Eastern Oregon 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 June 16, 2003, 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 Idaho-Eastern Oregon 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.

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 August 28, 2003 (68 FR 51713). Copies of the proposed rule were also mailed or sent via facsimile to all potato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 12, 2003, 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/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.

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 the 2003–2004 fiscal period began on August 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during such fiscal period. Further, handlers are aware of this rule which was unanimously recommended by the Committee. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

#### List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

**PART 945—POTATOS GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 945.249 is revised to read as follows:

**§ 945.249 Assessment rate.**

On and after August 1, 2003, an assessment rate of \$0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: October 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–26177 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 94**

[Docket No. 00–080–3]

**Change in Disease Status of East Anglia With Regard to Classical Swine Fever**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by restoring East Anglia, a region of England that includes the counties of Essex, Norfolk, and Suffolk, to the list of regions considered free of classical swine fever. This final rule follows an interim rule that removed East Anglia from that list due to the detection of classical swine fever in that region. Based on the results of an evaluation of the current classical swine fever situation in East Anglia, we have determined that East Anglia can be restored to the list of regions considered to be free of classical swine fever. This rule relieves certain classical swine fever-related prohibitions and restrictions on the importation of swine and swine products into the United States from East Anglia.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charisse Cleare, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. The regulations in §§ 94.9(a) and 94.10(a) provide that CSF exists in all regions of the world except for certain regions listed in those sections.

In an interim rule effective August 4, 2000, and published in the **Federal Register** on September 20, 2000 (65 FR 56774–56775, Docket No. 00–080–1), we amended the regulations by removing East Anglia (a region of England that includes Essex, Norfolk, and Suffolk counties) from the lists of regions considered to be free of CSF (which, at the time, we referred to as hog cholera). That action was necessary because CSF had been confirmed in East Anglia. The effect of the interim rule was to restrict the importation of pork and pork products and to prohibit the importation of swine into the United States from East Anglia.

Although we removed East Anglia from the list of regions considered to be free of CSF, we recognized that Great Britain's Ministry of Agriculture, Fisheries and Food (now part of the Department for Environment, Food, and Rural Affairs) immediately responded to the detection of CSF by initiating measures to eradicate the disease. In addition, disease spread was contained within East Anglia. Therefore, we limited the effect of our interim rule to East Anglia. We also stated that we intended to reassess the situation in the region at a future date in the context of Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rule.

Additionally, we stated in the interim rule that the future reassessment would enable us to determine whether it was necessary to continue to prohibit the

importation of swine and to restrict the importation of pork and pork products from East Anglia, or whether we could restore East Anglia to the list of regions in which CSF is not known to exist.

We solicited comments concerning the interim rule for 60 days ending November 20, 2000. We received one comment by that date, from a national pork industry association. This comment is addressed below.

On March 13, 2003, we published a notice in the **Federal Register** (68 FR 11998–11999, Docket No. 00–080–2) in which we advised the public of the availability of an evaluation that we had prepared concerning the CSF status of East Anglia. The evaluation, entitled “APHIS Evaluation of the Classical Swine Fever Status of East Anglia (counties of Norfolk, Suffolk, and Essex) November 2002,” assessed the CSF status of East Anglia and the related disease risks associated with importing animals and animal products into the United States from East Anglia.

We solicited comments concerning the evaluation for 60 days ending May 12, 2003, and received one comment by that date. The comment, which was submitted by a national pork industry association, was a resubmission of the comment sent by that organization in response to the September 2000 interim rule. The comment is discussed below.

**De Facto Regionalization**

**Comment:** The Animal and Plant Health Inspection Service (APHIS) should have followed its regulations in 9 CFR part 92 in the initial rulemaking to remove East Anglia from the list of regions recognized as free of CSF. In that rulemaking, APHIS established East Anglia, England, as a region affected with CSF, and continued to recognize the rest of Great Britain as free of that disease. There are several specific procedures set forth in part 92 that APHIS should be following. These are: (1) That APHIS will make information submitted in support of a request for regionalization available to the public prior to rulemaking; (2) that APHIS will publish a proposed rule for public comment; and (3) that during the comment period, the public will have access to the information upon which APHIS based its risk analysis, as well as to the methodology used to conduct the analysis.

**Response:** The regulations in 9 CFR part 92, “Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions,” were published in October 1997 in conjunction with APHIS’ policy on regionalization (see Docket No. 94–106–8, 62 FR 56027–56033, October 28,