

(estimated at \$14,025 as of August 31, 2003) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; \$ 948.78).

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 will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will 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 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers of potatoes in the regulated production area. Small agricultural 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 \$750,000.

During the 2001–2002 fiscal period, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected

under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than \$5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 fiscal period was \$9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from \$0.0035 to \$0.0051 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of \$85,695 and an assessment rate of \$0.0051 per hundredweight. The assessment rate is \$0.0016 higher than the current rate. The quantity of assessable Area No. 2 Colorado potatoes for the 2003–2004 fiscal period is estimated at 17,000,000 hundredweight. Thus, the \$0.0051 rate should provide \$86,700 in assessment income and be adequate to meet this fiscal period's expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include \$54,520 for salaries, \$9,925 for office expenses, and \$7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were \$41,703, \$9,700, and \$7,650, respectively.

The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of \$0.0051 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 17,000,000 hundredweight for the 2003–2004 fiscal period. This is approximately \$1,005 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to

the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between \$2.95 and \$9.65 per hundredweight of Colorado fall potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.05 and 0.17 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 Area No. 2 Colorado 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 15, 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 Colorado Area No. 2 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 July 21, 2003 (68 FR 43031). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 20, 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,