

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