

Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal rights under § 752.605 of this part. The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 662

RIN 0578-AA44

Regional Equity

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) is issuing a final rule on the procedures for implementing the Regional Equity provision of section 1241(d) of the Food Security Act of 1985, 16 U.S.C. 3841(d). The Regional Equity provision ensures that each State receives a \$15 million minimum annual aggregate level of conservation program funding. NRCS published an interim final rule for Regional Equity in the **Federal Register** on January 13, 2009, with request for public comment. This final rule responds to comments received on the January 13, 2009, interim final rule, and makes minor adjustments to the Regional Equity regulation at 7 CFR part 662 in response to these comments.

DATES: Effective December 4, 2009.

FOR FURTHER INFORMATION CONTACT:

Geno Bulzomi, Acting Team Leader, Program Allocations and Management Support Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5208 South Building, Washington, DC 20250; telephone (202) 690-0547; e-mail: PAMS@wdc.usda.gov, Attention: Regional Equity.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and will not be reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of final rulemaking with respect to the subject matter of this rule.

Civil Rights Assessment

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this final rule discloses no disproportionately adverse impact for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the historically underserved groups have participated in NRCS programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including Regional Equity, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in the Department of Agriculture (USDA) programs. Regional Equity funding applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the Regional Equity rule portends no adverse civil rights implications. Copies of the Civil Rights Impact Analysis may be obtained from Geno Bulzomi, Acting Team Leader, Program Allocations and Management Support Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5208 South Building, Washington, DC 20250.

Environmental Analysis

The Regional Equity final rule establishes procedures for implementing this provision at part 662 of this title and will not directly impact the environment. This rule falls within the categories of activities that have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of an environmental assessment or environmental impact statement as set forth in the USDA National Environmental Policy Act regulations in 7 CFR part 1b.3. Regional Equity is an administrative function that relates to the funding of programs and fund disbursements. These activities are categorically excluded based upon 7 CFR 1b.3(a)(1) and 7 CFR 1b.3(a)(2) of USDA regulations.

Paperwork Reduction Act

Section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Act) requires that implementation of programs authorized by Title II of the

2008 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA requires NRCS to prepare a written statement, including a cost benefit assessment, for proposed and final rules with “Federal mandates” that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with the rule.

Executive Order 13132

NRCS has considered this final rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the rule conforms to the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this rule does not have Federalism implications.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal governments. USDA has assessed the impact of this final rule on Indian Tribal

governments and has concluded that this final rule will not negatively affect communities of Indian Tribal governments. The rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104–354, USDA classified this final rule as “not major.”

Background

NRCS is issuing a final rule on the Regional Equity provision, implementing section 1241(d) of the Food Security Act of 1985, as amended, (16 U.S.C. 3841(d)) that requires minimum annual levels of conservation program funding to each State. Section 2703 of the 2008 Act amended the Regional Equity provision by: Increasing the minimum annual aggregate funding level from \$12 million to \$15 million; establishing new conservation programs that are subject to the Regional Equity provision (Agricultural Water Enhancement Program, Chesapeake Bay Watershed Initiative, Conservation Stewardship Program, and Voluntary Public Access and Habitat Incentive Program); and requiring consideration of the respective demand in each Regional Equity State.

On January 13, 2009, NRCS published an interim final rule setting forth how it intended to implement the Regional Equity provision. Under the Regional Equity regulation at 7 CFR part 662, NRCS identifies the States that will not receive through the normal program allocation process a minimum aggregate level of funding of \$15 million, known as “Regional Equity States,” and also identifies programs that will contribute funds to meeting this threshold known as “contribution programs.” NRCS then establishes program-specific drawing accounts for each contribution program sufficient to bring all Regional Equity States to an allocation of \$15 million. A Regional Equity State can request funds from the program-specific drawing accounts after the State has obligated at least 90 percent of its initial allocation for that program. The Chief, however, has the discretion to waive this requirement to meet the specific need of a particular program.

This process enables NRCS to monitor the use of drawing account funds and ensure that funds are used in the most effective and timely manner. NRCS used a similar funding allocation procedure

in fiscal year (FY) 2008, when some Regional Equity States were unable to use all of their Regional Equity funding. By holding Regional Equity funds in program-specific drawing accounts, NRCS reallocated these funds earlier in the fiscal year than the statutory April 1 deadline and identified States that could obligate the funds toward high-priority needs. NRCS believes this approach positions the agency to ensure that program funds are directed to the highest-ranked applications.

Under the interim final rule, NRCS identified that it considers the respective demand in each Regional Equity State in each program by having State Conservationists in Regional Equity States cooperatively determine the funding opportunity for each State’s program-specific drawing account. State Conservationists consult with their respective State Technical Committees in evaluating the demand in their State for funding from the drawing accounts. In evaluating the demand for Regional Equity funding opportunities, State Conservationists consider how applications address national program priorities, historic trends in program interest, and the State’s priority natural resource concerns. This process enables additional funds to be allocated in a way that meets the natural resource conservation needs of each State’s producers, meets the demand of each State’s program needs, and ensures that States do not receive additional funding when there is insufficient demand.

Public Comments and Agency Response

NRCS published the Regional Equity interim final rule on January 13, 2009, and invited public comment on the rule as well as on any economic or environmental impacts that might result from implementation of the regulation. The deadline for comments was March 16, 2009. NRCS received 7 responses containing more than 20 comments.

After consideration of those comments, as described herein, NRCS is issuing this final rule to establish consistency and certainty in implementation procedures for the Regional Equity provision.

The Allocation Process

Comment. Although most respondents were supportive of the general approach and most of the specific implementation measures, one respondent objected to the process of giving initial threshold allocations based on a formula allocating shares across States. The respondent argued that time is lost by insisting on an initial allocation of funds to States that cannot

spend the full amount, and recommended that States able to use larger allocations should get access to the money well before the end of the fiscal year.

Response. Regional Equity for all States is a statutory requirement. However, NRCS is taking measures, as detailed above, to ensure that funds are available in a timely manner to other States when a Regional Equity State does not use its available allocation. By establishing program-specific drawing accounts for each covered program, NRCS is able to monitor the use of drawing account funds, determine early whether a Regional Equity State is able to use all its Regional Equity funding, and reallocate funds in a timely manner to other States with high-priority needs.

Comment. One respondent submitted two comments recommending that NRCS establish a single conservation drawing account rather than program-specific accounts, thus allowing each State Conservationist, with input from the State Technical Committee, to choose the mix of program funding for itself as well as to indicate early how much of a particular program allocation it would not use. The amount of program funding “turned back” would then be credited to the State’s drawing account.

Response. Currently, NRCS receives a separate fund apportionment for each conservation program, which it tracks and reports separately. NRCS then allocates funding to the States for each program through a formula based upon natural resource and performance criteria. States work within the program-specific available funding. NRCS is working to simplify the apportionment process and allow for better management of the NRCS workforce.

Comment. Two respondents expressed explicit support for the allocation formula process identified above, but requested that the formulas include a monitoring and evaluation component to determine how well State projects or programs were meeting State and national priorities, goals, and objectives.

Response. This comment is not specific to the Regional Equity regulation, and thus no change is made in the Regional Equity final rule. The allocation formula is not a monitoring tool, but the formula includes performance factors including whether States are meeting national priorities.

Determination of Contribution Programs

Comment. NRCS received two responses regarding the discretion given to the Chief in § 662.2 of the interim

final rule to determine which potential conservation programs will be considered “contribution programs” in any given year. The respondents recommended that the Chief’s annual determination be made “on the basis of the respective demand for each program in Regional Equity States.”

Response. Since NRCS uses an allocation formula based upon natural resource and performance criteria, Regional Equity allocation determinations based solely on the demand for each program would disproportionately reduce access by non-Regional Equity States to funding they earn on the basis of the allocation formula. Regional Equity States have the opportunity to work with other Regional Equity States for the funding that best addresses their needs, thus increasing their flexibility in accessing funds. In exercising discretion with respect to determining the contribution programs, the Chief is limited by which programs have sufficient available funding in any given year and the fact that some programs are restricted by legislative intent (e.g., specific geographic area or specific resource concern). Moreover, not all Regional Equity programs are administered by NRCS. For example, the Voluntary Access and Habitat Incentive Program is administered by the Farm Service Agency.

Comment. In determining “respective demand,” State Conservationists should rely on more than the three criteria detailed in the interim final rule: program applications and how they address national program priorities, historic trends in program interest, and State priority natural resource concerns (see § 662.4(c)(2)(i)). In particular, the respondents identified additional criteria they believe should be added, including: (1) The need in each State to address gaps in participation in specific programs by Federally recognized Indian Tribes and socially disadvantaged and historically underserved producers; and (2) the degree to which a State has implemented initiatives and demonstrated results with respect to such populations. The respondents recommended that these criteria be applied both in the determination of respective demand and in the exercise of the Chief’s discretion in § 662.4(f) with respect to reallocation decisions.

Response. Regional Equity funds must be obligated in the same manner as normal allocations, and thus all policy and statutory requirements for ensuring equal access for historically underserved producers (limited resource farmers and ranchers, beginning farmers and ranchers, and

socially disadvantaged producers) remain in effect. There is no need for additional criteria for Regional Equity funds, and thus no change is made in this rule.

Obligation Threshold

Comment. Two respondents proposed reducing the 90 percent obligation threshold in § 662.4(e) of the interim final rule to 75 percent and giving the Chief discretion to reduce further the obligation threshold. Under the interim final rule, once a Regional Equity State has obligated 90 percent of its original allocation, it may request access to its portion of the Regional Equity drawing account for that program. However, the funds are only available until April 1 of each fiscal year, after which they may be reallocated at the discretion of the Chief. The respondents argued that meeting this 90 percent threshold by April 1 will be difficult for all programs in years when the congressional budget process runs late, and will be difficult for some programs in any year because of the particular requirements that some programs must meet before they can obligate funds.

Response. The purpose of the high threshold requirement is for Regional Equity States to demonstrate their capacity to obligate their funding. However, NRCS agrees that for some programs, this may be a difficult level of obligation to attain in a timely manner because of a particular program’s internal requirements. Therefore, NRCS amended the language in § 662.4(e) of this final rule to give the Chief the ability to waive the threshold requirement with respect to specific programs.

April 1 Deadline

Comment. The April 1 deadline elicited two kinds of comments: (1) A request that NRCS commit to reallocating funds in response to State requests within 60 days after April 1, and (2) a request for clarification that the Chief has discretion to extend the April 1 deadline in order to provide States with access to the drawing account even after that date.

Response. The Chief has the discretion to extend the April 1 deadline, as indicated in the regulation in § 662.4(e). The Chief may reallocate funds not obligated, but does not require such reallocation. NRCS recognizes that the Federal appropriations process can be unpredictable and may leave NRCS unable to provide initial allocations early in the fiscal year. Thus, NRCS cannot commit to a firm timeline for the reallocation of Regional Equity funding. The Chief has the discretion to extend

the April 1 date to accommodate such delays in the appropriation process or other circumstances that might make it difficult for States to meet the date. In FY 2009, the Chief extended the deadline to August 15 when a continuing resolution left NRCS uncertain about what the funding levels would be for various programs. No further rule change is required.

List of Subjects in 7 CFR Part 662

Administrative practice and procedure, Agriculture, and Soil conservation.

■ For the reasons stated in the preamble, NRCS revises part 662 in chapter VI of Title 7 of the CFR to read as follows:

PART 662—REGIONAL EQUITY

Sec.

662.1 General.

662.2 Definitions.

662.3 Applicability.

662.4 Regional Equity implementation procedure.

Authority: 16 U.S.C. 3841(d).

§ 662.1 General.

This part sets forth the procedures that NRCS will use to implement the Regional Equity provision of the Food Security Act of 1985, 16 U.S.C. 3841(d).

§ 662.2 Definitions.

The following definitions are applicable to this part:

Chief means the Chief of NRCS or the person delegated authority to act on behalf of the Chief.

Contribution programs means Regional Equity programs that contribute funding to Regional Equity States, as determined by the Chief each fiscal year, consistent with the limitations established in 16 U.S.C. 3841(d).

Drawing account means the aggregated amount of contribution program funds required to bring all States to the Regional Equity threshold.

Funding opportunity means the amount of funding needed to bring a State to the \$15,000,000 Regional Equity threshold for the aggregate of Regional Equity programs.

Initial allocation means the amount of conservation program allocation funding provided to all States through a merit-based, natural resource focused process.

Obligated means a specific binding agreement, in writing, for the purpose authorized by law and executed while the funding is available.

Regional Equity programs mean conservation programs under Subtitle D (excluding the Conservation Reserve Program, Wetlands Reserve Program,

and the Conservation Security Program) of the Food Security Act of 1985. These programs include: Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habitat Incentive Program. Regional Equity programs will be aggregated to determine whether a State meets the \$15,000,000 Regional Equity threshold. However, not all Regional Equity programs will be considered contribution programs.

Regional Equity provision means the statutory requirement to give priority funding before April 1 for approved applications for specific programs within States that have not received a \$15,000,000 aggregate level of funding.

Regional Equity States means any State not meeting the Regional Equity threshold of \$15,000,000 through the initial allocation for Regional Equity programs.

Regional Equity threshold means the \$15,000,000 minimum aggregate amount of Regional Equity program funds.

Respective demand means the mix of contribution program funds that each State Conservationist in a Regional Equity State requests to fill that State's funding opportunity.

State means all 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

State Conservationist means the NRCS employee authorized to implement Regional Equity programs and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

§ 662.3 Applicability.

The regulation in this part sets forth the policies and procedures for the Regional Equity provision as administered by the NRCS. This regulation applies to the Regional Equity programs defined in this part. The Chief will implement the Regional Equity provision by identifying programs that contribute to the establishment of program-specific drawing accounts for priority funding in Regional Equity States.

§ 662.4 Regional Equity implementation procedure.

The following procedures will implement the Regional Equity provision:

(a) *Determine initial allocations.* NRCS will determine initial conservation program funding levels for each State through a merit-based, natural resource focused allocation process as determined by the Chief.

(b) *Determine the funding opportunity.* The combined initial allocation funding level for Regional Equity programs, by State, will be compared to the Regional Equity threshold to determine each Regional Equity State's funding opportunity.

(c) *Establish contribution program fund levels.* Subject to availability of funds, contribution program fund levels are determined by:

(1) Identifying which programs contribute funds, as determined by the Chief, consistent with the limitations established in 16 U.S.C. 3841(d); and

(2) Each State's respective demand.

(i) State Conservationists in Regional Equity States, in consultation with State Technical Committees, will evaluate and determine their respective program demands based on the following criteria:

(A) Program applications and how they address national program priorities;

(B) Historic trends in program interest; and

(C) State priority natural resource concerns.

(ii) The State Conservationist's identified respective demand will assist the Chief in determining the composition of contribution program funds within the established drawing account.

(d) *Establish the drawing account.* NRCS will establish a drawing account for each contribution program, as determined in paragraphs (c)(1) and (c)(2) of this section, and will give priority before April 1 of each fiscal year for such funds to be used to fund applications in Regional Equity States sufficient to bring each of the Regional Equity States to the Regional Equity threshold of \$15,000,000.

(e) *Access the drawing account.* State Conservationists in Regional Equity States may request access to that State's assigned portion of the drawing account once that State has obligated at least 90 percent of its initial allocation for that same program. The Chief may waive the 90 percent threshold requirement for a specific program in response to specific program needs.

(f) *Re-allocation of funds.* The program-specific drawing accounts for

Regional Equity States will be available until April 1 of each fiscal year, after which date the remaining funds may be re-allocated at the discretion of the Chief.

Signed this 30th day of November, 2009, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Doc. No. AMS-FV-09-0024; FV-09-706FR]

Potato Research and Promotion Plan; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Potato Research and Promotion Plan (Plan) to increase the assessment rate on handlers and importers of potatoes from 2.5 cents to 3 cents per hundredweight. This increase is provided for under the Plan which is authorized by the Potato Research and Promotion Act (Act). The National Potato Promotion Board, which administers the Plan, recommended this action to sustain and expand their promotional, research, advertising and communications programs.

DATES: *Effective:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT:

Deborah Simmons, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; or fax: (202) 205-2800; or e-mail:

Deborah.simmons@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan [7 CFR part 1207]. The Plan is authorized under the Potato Research and Promotion Act [7 U.S.C. 2611-2627]. This rule increases the assessment rate on handlers and importers of potatoes from 2.5 cents to 3 cents per hundredweight.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act allows handlers and importers subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], 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 businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$7 million. According to the Board, there are approximately 1,600 potato growing operations, 1,143 handlers and 252 importers who are subject to the provisions of the Plan. According to the National Agricultural Statistics Service (NASS), data from the 2008 crop year shows that approximately 395 cwt. of potatoes were produced per acre. The 2008 grower price published by NASS was \$9.46 per cwt. Thus the value of potato production per acre in 2008 averaged \$3,736.70 (395 times \$9.36 cwt). At that average price, a producer would have to farm over 201 acres to receive an annual income from potatoes of \$750,000 (\$750,000 divided by \$3,736.70 per acre equals 201 acres). Thus, it can be concluded that most producers, handlers and importers

would not be classified as small businesses under the criteria established by the SBA.

Producers of less than 5 acres of potatoes are exempt from this program. Potato and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of section 1207.515 of the regulations.

Under the current Plan, potato handlers and importers are required to pay an assessment of 2.5 cents per hundredweight. Handlers may collect assessments from the producer or deduct assessments from proceeds paid to the producer on whose potatoes the assessments are made. No more than one assessment shall be made on any potatoes or potato products. Funds collected by the board shall be used for research, development, advertising or promotion of potatoes and potato products and such other expenses for the administration, maintenance and functioning of the Board as may be authorized by the Secretary. The assessment at the current 2.5 cents per hundredweight generates about \$10 million in annual revenues. The 2.5 cents per hundredweight assessment rate was established in August 2006 when the Plan was amended. The Plan is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is required in order to sustain and expand the promotional, research, advertising and communications programs. The Board approved the assessment rate increase at its March 13, 2009, meeting. This increase is consistent with section 1207.342(a) of the Plan which states that funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. Such assessments shall be levied at the rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture. Currently, section 1207.510 of the Plan states that an assessment of 2.5 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States and an assessment rate of 2.5 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes. An assessment rate of 2.5 cents per hundredweight shall be levied on the fresh weight equivalents of