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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS-FV-12-0043; FV12-948-1 FIR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that modified the grade requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. The interim rule relaxed the minimum grade requirement for size B and 1-inch to 1¼-inch diameter round, red-skinned potatoes handled under the marketing order from U.S. No. 1 to U.S. Commercial. This change is expected to facilitate the handling and marketing of the Area No. 2 potato crop, provide producers and handlers with increased returns, and supply consumers with increased potato purchasing options.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director,

Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, 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.

The handling of Irish potatoes grown in Colorado is regulated by 7 CFR part 948. Prior to this action, the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the Colorado potato marketing order was U.S. No. 1. Under such grade requirements, industry participants were not able to pursue the emerging market for smaller diameter round, red-skinned U.S. Commercial grade potatoes sold in consumer packs and included in certain value added potato products. Relaxing the minimum grade requirement for such potatoes allows area handlers to pursue this new market category. Therefore, this rule continues in effect the rule that relaxed the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the order from U.S. No. 1 to U.S. Commercial.

In an interim rule published in the **Federal Register** on January 2, 2013, and effective on January 3, 2013 (78 FR 3, Doc. No. AMS-FV-12-0043, FV12-948-1 IR), § 948.386 was amended by relaxing the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the marketing order from U.S. No. 1 to U.S. Commercial.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2010-2011 marketing year, the most recent full marketing year for which statistics are available, 15,583,512 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 \$12.75 per hundredweight, the Committee estimates that 71 Area No. 2 handlers, or about 89 percent, had annual receipts of less than \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2010-2011 was \$9.37 per hundredweight. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$811,208. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule continues in effect the action that relaxed the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potato varieties from U.S. No. 1 grade to U.S. Commercial. This change provides greater flexibility to handlers in the marketing of the Colorado potato crop. Authority for this action is contained in §§ 948.21 and 948.22.

This relaxation is expected to benefit the producers, handlers, and consumers of Colorado potatoes by allowing a greater quantity of fresh potatoes from the production area to enter the market. This anticipated increase in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

This action is not expected to increase costs associated with the order requirements. Rather, this action makes additional product available to the market and has the potential to increase industry returns. The opportunities and benefits that may result from this rule are equally available to all Colorado potato handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large

grapefruit 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 19, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before March 4, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0043-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988,

the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 3, January 2, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that amended 7 CFR part 948 and was published at 78 FR 3 on January 2, 2013, is adopted as a final rule, without change.

Dated: April 17, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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