



**Billing code 3410-02**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 948**

**[Doc. No. AMS-FV-12-0044; FV12-948-2 FR]**

**Irish Potatoes Grown in Colorado; Reestablishment of  
Membership on the Colorado Potato Administrative Committee,  
Area No. 2**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule reestablishes the membership on the Colorado Potato Administrative Committee, Area No. 2 (Committee). The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. This action modifies the Committee membership structure by amending the position allocated to a producer from Conejos County. Beginning with the 2013-2014 term of office, the designated Committee position will be allocated to an eligible producer operating in either Conejos or Costilla County. This action is expected to improve Committee representation for producers from this sub-region of the production area.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman, 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: Sue.Coleman@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation 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 final 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.

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

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. A 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 final rule reestablishes the membership structure of the Committee. This action modifies the current Committee membership structure by amending the position currently allocated to a producer from Conejos County. Beginning with the 2013-2014 term of office, the designated

Committee position will be allocated to an eligible producer operating in either Conejos or Costilla County. This action is expected to improve Committee representation for producers from this sub-region of the production area. This change was unanimously recommended by the Committee at a meeting held on July 19, 2012.

Section 948.4 of the order divides the State of Colorado into three areas of regulation for marketing order purposes. These areas include: Area No. 1, commonly known as the Western Slope; Area No. 2, commonly known as San Luis Valley; and, Area No. 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area No. 1 or Area No. 2. Currently, the order only regulates the handling of potatoes produced in Area No. 2 and Area No. 3. Regulation for Area No. 1 has been suspended.

Section 948.50 of the order establishes committees as administrative agencies for each of the areas set forth under § 948.4. The reestablishment of areas, subdivisions of areas, the distribution of representation among the subdivision of areas, or among marketing organizations within the areas is authorized under § 948.53. Such reestablishment is made by the Secretary upon the

recommendation of the affected area committee. In recommending any such changes, the area committee shall consider, among other things, the relative production and the geographic locations of producing sections as they would affect the efficiency of administration of the order.

Section 948.150(a) of the order's administrative rules prescribes the Area No. 2 Committee membership, as reestablished under previous rulemaking actions, with nine producer members and five handler members. The nine producer positions are designated to represent various sub-regions of the production area. Currently, § 948.150(a)(3) specifically allocates one of those producer positions to a producer from Conejos County.

At its meeting on July 19, 2012, the Committee unanimously recommended modifying the Committee membership structure by amending the position allocated to a producer from Conejos County. The Committee acknowledged that the position has been increasingly hard to fill as the number of potato producers located in Conejos County eligible to serve on the Committee has declined. The Committee attributed the decrease in the number of producers to a number of issues in that area, including competition from alternative crops and industry consolidation.

The Committee believes that allocating the position specified in § 948.150(a)(3) to a producer from either Conejos or Costilla County, instead of just from Conejos County, will increase the pool of potential Committee participants from that general sub-region of the production area. Conejos County and Costilla County adjoin each other on the southern boundary of the production area and share similar climates, soils, production resources, and marketing opportunities. Producers from either of the two counties will be able to adequately represent this sub-region of the production area on the Committee. Currently, producers from Costilla County are represented on the Committee by the position allocated in § 948.150(a)(5), which represents all other counties in Area No. 2 that do not have representation specified in § 948.150(a)(1) through (4). This change is expected to increase the pool of potential participants eligible to serve on the Committee and to improve representation for producers from both Conejos and Costilla Counties. This action was unanimously recommended by the full Committee.

#### **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 final rule reestablishes the Area No. 2 Committee membership structure currently prescribed under § 948.150(a) of the order by amending the position allocated to a producer from Conejos County (§ 948.150(a)(3)). Beginning with the 2013-2014 term of office, the designated Committee position will be allocated to an eligible producer operating in either Conejos or Costilla County. Authority for this action is contained in §§ 948.50 and 948.53.



At the meeting, the Committee discussed the impact of this change on handlers and producers. This action is expected to improve Committee representation for producers from this general sub-region of the production area. Further, the modification is not anticipated to have any financial or regulatory impact on the area's potato producers or handlers. Lastly, the benefits resulting from this action are equally available to all handlers and producers regardless of their size.

The Committee discussed alternatives to this change including taking no immediate action, reviewing the issue in the future, and redesignating the Committee position to be an at-large position that could be filled by producers from across the entire production area.

The Committee believes that representation on the Committee by producers from each of the sub-regions of the production area is important for the efficient administration of the order. The Committee also feels that the declining trend in the number of producers in Conejos County is not likely to be self-reversing. As such, the Committee determined that there would not be any benefit to delaying corrective action to resolve this Committee representation issue and readdressing it in the future. In

addition, the Committee determined that changing the position designated to a producer from Conejos County into an at-large position could jeopardize the representation for producers from that southern sub-region. As such, the Committee concluded that neither of the above options would be sufficiently responsive to the current situation and that modifying the membership structure as recommended is the best course of action to take at this time.

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

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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.

A proposed rule concerning this action was published in the **Federal Register** on February 11, 2013 (78 FR 9629). An internet link to the proposed rule was published in a monthly industry newsletter distributed to growers, handlers, and other interested persons. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 12, 2013, was provided to allow

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:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2013-2014 term of office will begin on June 1, 2013. Further, handlers are aware of this action, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

**PART 948 - IRISH POTATOES GROWN IN COLORADO**

1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. In § 948.150, paragraph (a)(3) is revised to read as follows:

**§ 948.150 Reestablishment of committee membership.**

\* \* \* \* \*

(a) \* \* \*

(3) One (1) producer from either Conejos or Costilla County.

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Dated: May 17, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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