



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS-FV-14-0011; FV14-953-1 IR]

Irish Potatoes Grown in Southeastern States; Suspension of Marketing Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule continues the previous suspension of the marketing order regulating the handling of Irish potatoes grown in Southeastern states (order). Representatives of the Virginia/North Carolina Irish potato industry met and requested that the suspension of all provisions of the order, and the rules and regulations implemented thereunder be continued through March 1, 2017. The request was based on the belief that the industry needs more time to study changes in the industry, and any new developments which could affect the need for, or status of the order. If the industry does not petition to have the order reactivated by the end of the suspension period, the Agricultural Marketing Service (AMS) will propose to terminate the order.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 1, 2017; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional

Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Corey.Elliott@ams.usda.gov or Christian.Nissen@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 rule is issued under Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern states, 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 Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 rule continues the previous suspension of the marketing order regulating the handling of Irish potatoes grown in Southeastern states. Even though the Committee does not function under the suspended order and regulations, representatives of the Virginia/North Carolina

Irish potato industry met on December 18, 2013, and requested that the suspension of all provisions of the order, and the rules and regulations implemented thereunder be continued through March 1, 2017. The request was based on the belief that the industry needs more time to study changes in the industry, and any new developments which could affect the need for, or status of, the order.

Marketing Order 953 has been in effect since 1948. The order provides for the establishment of grade, size, quality, maturity, and inspection requirements for Irish potatoes grown in Southeastern states. The order also authorizes reporting and recordkeeping functions required for the operation of the order. The order, when functioning, is funded by assessments imposed on handlers.

The Southeastern Potato Committee (Committee) members met on February 17, 2011, and unanimously recommended suspension of the marketing order for a three year period ending on March 1, 2014. They recommended the suspension to eliminate the expense of administering the marketing order, while determining the effects of not having regulations in place. The Committee members wanted the industry to have the alternative of reactivating the order, if deemed appropriate. The rule completing that action was

published in the **Federal Register** on October 21, 2011 (76 FR 65360).

Prior to the December 18, 2013, meeting, USDA sent letters to members of the industry, most of whom were former Committee members. The letter informed them that the suspension of the order would be ending, and of the need to review the state of the industry and determine what action the industry wanted to take in regards to the order. The letter also asked that they make others in the industry aware of the upcoming decision and the opportunity to express their position on what to do with the order. USDA also sent out several follow-up e-mails, and made several telephone calls to industry representatives in an effort to increase participation in the meeting.

On December 18, 2013, industry representatives of the Virginia/North Carolina Irish potato industry met and unanimously recommended extending the suspension of the order for an additional three years. During their discussion, several industry members expressed concerns that the quality problems experienced prior to promulgation of the order could resurface and additional time was necessary to evaluate if the order is needed. The representatives believe extending the suspension for three

more years would provide the industry with further opportunity to study changes in the industry and any new developments, which could affect the need for the order. The representatives also supported suspension rather than termination as they agreed it would be less complicated to reactivate the existing program if it is needed than to promulgate a new marketing order. Several of the industry representatives also indicated that they had spoken with other industry members who could not attend the meeting, and they too were in support of suspension. Therefore, this rule will suspend the order through March 1, 2017.

If the industry does not petition to have the order reactivated by the end of the suspension period, AMS will publish a proposal to terminate the order.

It is hereby determined that Federal Marketing Order No. 953, and the rules and regulations issued thereunder, do not tend effectuate the declared policy of the Act. This action suspends, through March 1, 2017, the provisions of Federal Marketing Order No. 953, and the rules and regulations issued thereunder, including but not limited to: provisions of the order dealing with the establishment and the responsibilities of the Committee; provisions of the order dealing with expenses and the collection of

assessments; all rules and regulations; and, all information collection and reporting requirements.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses 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 10 handlers of Irish potatoes grown in Southeastern states who are subject to regulation under the order and approximately 20 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

Using prices reported by AMS' Market News Service, the average f.o.b. price for Southeastern potatoes for the 2012-13 marketing season was around \$25 per hundredweight. USDA has estimated production for the 2012-13 season at approximately 600,000 hundredweight of potatoes. Based on this information, average annual receipts for handlers would be less than \$7,000,000. Information provided by the National Agricultural Statistics Service indicates that the average producer price for Irish potatoes grown in North Carolina and Virginia in 2012 was approximately \$12.16 per hundredweight. Considering estimated production, average producer revenue would be about \$400,000 for the 2012-13 season. Therefore, the majority of Southeastern potato handlers and producers may be classified as small entities.

This rule continues the previous suspension of the order and the associated rules and regulations through March 1, 2017. At a meeting on February 17, 2011, the Committee recommended that the order and all of its provisions be suspended through March 1, 2014. The Committee made this decision based on questions regarding the continued need for the order and its associated costs. Industry representatives met on December 18, 2013, and unanimously recommended extending the suspension of the

order for three additional years. The continued suspension was recommended to give the industry more time to study changes in the industry, and any new developments which could affect the need for, or the status of, the order. If the industry does not petition to have the order reactivated by the end of the suspension period, AMS will publish a proposal to terminate the order. Authority for this action is provided in section 8c(16)(A) of the Act.

Suspension of the order and its corresponding regulations relieves handlers of quality, inspection, and assessment burdens during the suspension period. Also, handler reports will not be required. Suspension of the order is therefore expected to reduce the regulatory burden on handlers and growers of all sizes.

Even though the Committee does not function under the suspended order and regulations, industry members met and considered two alternatives to this action at the December meeting. The first alternative was to reactivate the order. This alternative received little support as most believe the administrative costs of the order still outweighed the benefits. Industry members also considered terminating the order. However, some members indicated that quality concerns that the order had resolved could

return and more time was needed to study changes within the industry. Therefore, both alternatives were rejected.

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 Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action.

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

Further, the industry's meeting was widely publicized throughout the Southeastern Irish potato industry and interested persons were invited to attend the meeting and participate in industry deliberations. The December 18, 2013, meeting was an open meeting and entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational aspects of this action on small businesses.

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/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.

This rule invites comments on the continuation of the previous suspension of the marketing order regulating Irish potatoes grown in Southeastern states. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the industry's request, and other

information, it is determined that Federal Marketing Order No. 953 suspended by this interim rule, as herein set forth, does not tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends restrictions on handlers by continuing the previous suspension of Marketing Order No. 953; (2) this rule provides a 60-day comment period and any comments received will be considered prior to the finalization of this rule; (3) no useful purpose would be served by delaying the continued suspension of the order.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601-674, 7 CFR Part 953 is suspended effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], through March 1, 2017.

Dated: March 26, 2015.

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service
[FR Doc. 2015-07320 Filed: 3/31/2015 08:45 am; Publication
Date: 4/1/2015]