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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03-948-1 FR]

Irish Potatoes Grown in Colorado; Increase in Membership on the Area No. 2 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the number of members on the Area No. 2 Colorado Potato Administrative Committee (Committee) from 12 to 14. The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. Specifically, this rule increases from seven to nine the number of producers serving on the Committee by adding a second representative from the district comprised of Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from Area No. 2. This rule does not change the number of handler representatives on the Committee, which remains at five. The addition of two new producer members provides the Committee with greater industry representation and therefore increased effectiveness.

EFFECTIVE DATE: This final rule becomes effective July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; 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.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 increases from 12 to 14 the number of members on the Committee by adding a second producer representative for Chaffee County and

Saguache County, and by creating a position for a producer representative for certified seed potato producers from Area No. 2. Consistent with § 948.52, each new member position has an alternate with the same qualifications as the member. This rule does not change the number of handler representatives on the Committee, which remains at five. This action was unanimously recommended by the Committee at a meeting on March 20, 2003.

Section 948.4 of the order establishes three subdivisions, or areas, within the State of Colorado, and § 948.50 provides authority for the establishment of a committee as an administrative agency for each area. Section 948.53 provides authority for the reestablishment of these areas or subdivisions of these areas, as well as the redistribution of representation within area subdivisions or among marketing organizations within the respective areas. Finally, § 948.6 provides a definition for seed potatoes.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee as reestablished pursuant to § 948.53. For Area No. 2, the Committee consists of seven producer members and five handler members with two producers from Rio Grande County, one producer from Chaffee County or Saguache County, one producer from Conejos County, two producers from Alamosa County, and one producer from all remaining counties in Area No. 2. In addition, two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

As indicated above, the order provides that one producer member on the Committee represents producers in both Chaffee County and Saguache County. Based on a Committee recommendation, on March 31, 1995 (62 FR 16565), the USDA reestablished Area No. 2 to include Chaffee County, which previously had been part of the Area No. 3 production area. This reestablishment was initiated largely due to Chaffee County's proximity to Area No. 2 and a request from a Chaffee County producer/handler. That action also reestablished Committee membership by combining Chaffee County and Saguache County as one district for the purpose of nominating a producer member to the Committee.

Although Chaffee County potato production has remained relatively static, potato production in Saguache County has in recent years increased significantly due to an increase in potato acreage. According to Committee records, Saguache County farmers harvested about 5,310,000 hundredweight of potatoes from nearly 17,000 acres during the 2001–2002 season. This is nearly double the 1985–1986 production of the 2,930,000 hundredweight of potatoes that were harvested from 8,900 acres in Saguache County. It is also noteworthy that Saguache County had about 16 percent of the total production in Area No. 2 during the 1985–1986 season compared to about 25 percent of the total during the 2001–2002 season. With two seats on the Committee, producers from Chaffee and Saguache Counties comprise about 22 percent of the producer members on the Committee.

Arable land in Chaffee County is generally limited to a relatively small production area around the city of Salida, and the Committee continues to believe that Chaffee and Saguache Counties should remain combined as a subdivision, or nominating district, in Area No. 2. The two members from this district, as well as their respective alternates, will be nominated for membership on the Committee from all eligible producers from either or both of these two counties.

According to the Committee, there are currently 38 producers with certified seed potato production on 14,760 Area No. 2 acres. Of the 6,273,000 hundredweight of certified seed potatoes harvested in 2001–2002, Committee records indicate that 977,866 hundredweight were marketed out-of-area, and 343,223 hundredweight were planted in the San Luis Valley. Most of the balance of the total seed production was replanted into the certified seed program for multigenerational seed development. Certified seed potato shipments are currently exempt from the grade, size, maturity, and inspection requirements of § 948.386, but are subject to the order's assessment rate as established under § 948.216.

The Committee, in conjunction with the Colorado Area No. 2 potato industry, recently held a strategic planning session and identified several key issues. One of the important issues looked at by the Committee was its membership as it relates to Area No. 2 potato industry representation.

Consensus among participants indicated that there would be a mutual benefit to the Committee and the industry with certified potato seed representation on the Committee. Seed potatoes are

typically produced in areas separate from the major commercial fresh and processed potato production areas. This isolation is necessary to maintain the strict State of Colorado certified seed tolerances established for plant diseases. The Committee believes that the infusion of fresh ideas from this facet of the industry will provide for a new perspective on the Committee, as well as providing better service to the entire Colorado Area No. 2 potato industry.

In addition, based in part on the increase in production in Saguache County and on the significance of certified seed potato production in Area No. 2, the Committee received requests from the industry that producer representation on the Committee be increased. Finally, the Committee has recently formed several subcommittees for the purpose of providing better service to the Area No. 2 potato industry. Due to an inadequate candidate pool, the Committee has experienced problems in identifying enough committee members willing and able to serve on these subcommittees. Taking all of this into consideration, the Committee determined that the addition of two producer members and their respective alternates will not only provide better representation for Area No. 2 producers, but will also provide an increased pool of expertise on the Committee and its subcommittees.

Thus, the reestablished Committee consists of nine producer members and five handler members with two producers from Rio Grande County, two producers from Chaffee County or Saguache County, one producer from Conejos County, two producers from Alamosa County, one producer from all remaining counties in Area No. 2, and one producer representing certified seed producers in Area No. 2. In addition, two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Area No. 2 is also referred to as the San Luis Valley area by the industry.

During the 2001–2002 marketing year, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold in the fresh market. Based on an estimated average f.o.b. price of \$11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than \$5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 marketing year was \$9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule increases the number of members on the Committee from 12 members to 14 members. Specifically, this rule increases from seven to nine the number of producers on the Committee by adding a second producer representative from Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from all the counties in Area No. 2. This rule does not change the number of handler representatives on the Committee, which remains at five. Each position on the Committee continues to have an alternate with the same qualifications as the member.

Potato production in Saguache County has increased significantly in recent years. Increased potato acreage has been the primary reason for the production increase. Colorado's Saguache County and Chaffee County comprise a nominating district within Area No. 2 and have one member and alternate member serving on the Committee. The Committee believes that an additional member from this area will benefit both the Committee and the industry. With certified potato seed

production representing a significantly important segment of the Area No. 2 potato crop, the Committee also believes that the addition of a certified seed producer position will add a fresh perspective to its membership and will provide better representation for the San Luis Valley potato industry. Authority for this action is provided in § 948.53 of the order.

This rule will cause a small increase in the Committee's cost of administering the order. For example, overall costs associated with Committee members' travel to attend meetings will increase due to the additional members requiring compensation. The increased cost, however, should be offset by the non-economic benefits derived by providing a greater number of producers the chance to participate as members of the Committee, as well as the service the increased Committee expertise and diversity will provide to the San Luis Valley potato industry. Regardless, the costs associated with this rule are not expected to be disproportionately greater or less for small producers and handlers than for larger entities.

The Committee discussed alternatives to this change. In considering its goals of providing additional representation in response to the greater production in Saguache County and the significant certified seed potato production throughout the San Luis Valley, the Committee looked at various alternatives to the current method of representation. For example, the Committee considered combining the counties in Area No. 2 into fewer subdivisions, or districts, in order to keep the Committee the same size while providing for greater representation to certain districts. After considerable discussion, however, the Committee determined that the only equitable method of handling the representation problem was to add additional members and leave the current subdivisions unchanged.

This final rule increases the number of member and alternate member positions on the Committee. Since the two-year Committee terms are arranged so that approximately one-half terminate each year, this action will increase by four the number of background statements requiring completion in a two-year period. It is estimated that the time needed to complete the forms by producers who are nominated to serve in the two additional member and two additional alternate member positions will be less than two minutes per response, or a total of 8 minutes, which will not substantially impact the total burden hours. In accordance with the

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), these additional information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The Committee's meeting was widely publicized throughout the San Luis Valley and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 30, 2003 (68 FR 32432). Copies of the rule were mailed or sent via facsimile to all Committee members. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending June 16, 2003, 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: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, 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 rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place promptly so that the Committee can nominate members and alternate members for the two new producer positions as soon as possible. Further, handlers and producers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

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) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

- (1) Two (2) producers from Rio Grande County;
- (2) Two (2) producers from either Saguache County or Chaffee County;
- (3) One (1) producer from Conejos County;
- (4) Two (2) producers from Alamosa County;
- (5) One (1) producer from all other counties in Area No. 2;
- (6) One (1) producer representing certified seed producers in Area No. 2;
- (7) Two (2) handlers representing bulk handlers in Area No. 2;
- (8) Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

Dated: June 30, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03-17040 Filed 7-3-03; 8:45 am]

BILLING CODE 3410-02-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AF81

Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are amending our regulations to remove provisions