



This document is scheduled to be published in the Federal Register on 01/22/2015 and available online at <http://federalregister.gov/a/2015-01014>, and on [FDsys.gov](http://FDsys.gov)

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 948**

[Doc. No. AMS-FV-14-0092; FV15-948-1 IR]

**Irish Potatoes Grown in Colorado; Relaxation of the Handling Regulation for Area No. 3**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule revises the minimum quantity exception for potatoes handled under the Colorado potato marketing order, Area No. 3 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 3 (Committee). This rule increases the quantity of potatoes that may be handled under the order without regard to the order's handling regulation requirements from 1,000 to 2,000 pounds. This action is expected to benefit producers and handlers.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; 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 comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman, Marketing Specialist, or Gary D. 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](mailto:Sue.Coleman@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto: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 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 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 revises the minimum quantity exception currently prescribed in the handling regulation for potatoes handled under the order. This rule will increase the quantity of potatoes that may be handled without regard to the order's handling requirements from 1,000 to 2,000 pounds. Relaxing the minimum quantity exception is expected to benefit producers and handlers. The rule was unanimously recommended by the Committee at a meeting on May 14, 2014.

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. Section 948.22(a) of the order authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the order's production area. Further, section 948.22(b)(2) of the order provides authority for each area committee to recommend modification of regulations to provide for minimum quantities that should be relieved of regulatory or administrative obligations.

Section 948.387 of the order's administrative rules prescribes grade, size, maturity, and inspection requirements for Colorado Area No. 3 potatoes. Paragraph (f) of that section prescribes the minimum quantity of potatoes that are exempt from regulation. Currently, each

person may handle up to 1,000 pounds of potatoes without regard to the order's handling requirements.

At its meeting on May 14, 2014, the Committee unanimously recommended increasing the order's minimum quantity exception from 1,000 to 2,000 pounds. The recommendation was made at the request of producers and handlers who wanted greater flexibility in distributing smaller quantities of potatoes. In its deliberations, the Committee commented that 2,000 pounds is consistent with the current weight of a pallet of potatoes. One pallet is typically the smallest lot of potatoes distributed, since most delivery vehicles are now capable of transporting at least 2,000 pounds.

Handlers also feel that the value of one pallet of potatoes does not warrant the cost of complying with the order's regulations. Based on an estimated average f.o.b. price of \$10.70, the value of one pallet of potatoes is approximately \$214.00. Increasing the minimum quantity exception from 1,000 to 2,000 pounds of potatoes will allow a handler to ship one pallet of potatoes without regard to the order's handling requirements. Relaxing the minimum quantity is expected to benefit producers and handlers.

#### **Initial 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 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 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 6 handlers of Colorado Area No. 3 potatoes subject to regulation under the order and approximately 6 producers in the regulated production 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).

During the 2013-2014 fiscal period, the most recent for which statistics are available, 663,025 hundredweight of Colorado Area No. 3 potatoes were inspected under the

order and sold into the fresh market. The USDA Market News Service reported a 2013-2014 average f.o.b. price of \$10.70 per hundredweight. Multiplying \$10.70 by the shipment quantity of 663,025 hundredweight yields a shipping point revenue estimate of \$7,094,368. The average annual fresh potato revenue for each of the 6 Colorado Area No. 3 potato handlers is therefore calculated to be approximately \$1,182,395 ( $\$7,094,368 \div 6$ ), which is less than the SBA threshold of \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 3 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 the 2013 Colorado fall potato crop was \$7.25 per hundredweight. Multiplying \$7.25 by the shipment quantity of 663,025 hundredweight yields an annual crop revenue estimate of \$4,806,931. The average annual fresh potato revenue for each of the 6 Colorado Area No. 3 potato producers is therefore calculated to be approximately \$801,155 ( $\$4,806,931 \div 6$ ), which is greater than the SBA threshold of \$750,000. Consequently, on average, most of the Colorado Area No. 3 potato producers may not be classified as small entities.

This rule revises the quantity of potatoes that may be handled without regard to the requirements of § 948.387(a) and (b) of the order from 1,000 to 2,000 pounds. At the May 14, 2014 meeting, the Committee unanimously recommended increasing the minimum quantity exception to be consistent with the approximate weight of one pallet of potatoes. Authority for the establishment and modification of a minimum quantity exception is provided in § 948.22(b)(2) of the order. This rule amends the provisions in § 948.387(f).

This action is not expected to increase the costs associated with the order's requirements. Rather, it is anticipated that this change will have a beneficial impact. The Committee believes it will provide greater flexibility in the distribution of small quantities of potatoes. Currently, the distribution of potatoes between 1,000 and 2,000 pounds requires an inspection and certification that the product conforms to the grade, size, and maturity requirements of the order. This translates into a cost for handlers of both time and inspection fees, which is high in relation to the small value (approximately \$214.00 per pallet) of these transactions. This action will allow shipments of up to 2,000 pounds of potatoes without regard

to the order's handling requirements and the related costs. The benefits for this rule are expected to be equally available to all fresh potato producers and handlers, regardless of their size.

As an alternative to this action, the Committee discussed leaving the handling regulation unchanged. The Committee rejected this idea because a pallet of potatoes weighs approximately 2,000 pounds and the 1,000 pound minimum quantity exception did not accommodate this size shipment. No other alternatives were discussed.

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 relaxes the minimum quantity exception under the order from 1,000 to 2,000 pounds. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 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.

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

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 3 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 14, 2014, meeting was a public meeting and all 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 impacts 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 an increase to the quantity of potatoes that may be handled under the order without regard to the handling requirements. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim rule, as hereinafter set forth, will 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) Any changes resulting from this rule should be effective as soon as practicable because the shipping season for Colorado potatoes began in

September of 2014; (2) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of this relaxation; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth above, 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. Amend § 948.387(f) to read as follows:

**§ 948.387 Handling regulation.**

\* \* \* \* \*

(f) Minimum quantity. For purpose of regulation under this part, each person may handle up to but not to exceed 2,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but

this exception shall not apply to any shipment of over  
2,000 pounds of potatoes.

\* \* \* \* \*

Dated: January 15, 2015.

Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.

[FR Doc. 2015-01014 Filed 01/21/2015 at 8:45 am; Publication  
Date: 01/22/2015]