

commenter felt that the assessment rate increase was an excessive and unjustified expense.

In response to these comments, the \$10 per barrel increase is not specifically for export promotional activities but to provide the Committee with funds for its operational expenses. As previously stated, the assessment rate has not been increased since 2002. Since that time, there have been increases in the costs of goods and services, costs contributable to increasing Committee membership and to pay back funds taken from the reserve for the export market development program. The increase in the assessment rate is needed to generate larger revenue for the Committee to meet its expenses and keep its reserves at an acceptable level. Without the increase, the Committee will have to curtail its operational expenses including the export market development and promotion program that has [K1] been funded by assessments and MAP funds for the past several years.

With regard to the equitability of some handlers paying the increased assessment rate while others pay no assessments, all cranberry handlers regulated under the marketing order will have to pay the increased assessment rate. Certain organic handlers are exempt from paying assessments on market promotion activities. However, handlers not regulated under the marketing order (such as those handlers in Canada or Chile) are not subject to its provisions and thus, do not have to pay assessments.

Lastly, in regards to the commenter who already pays for branded advertising, we note that those advertisements promote a specific brand of cranberries and cranberry products. The Committee's domestic and export promotion programs are generic and were developed to promote the qualities of cranberries and cranberry products for the entire cranberry industry. Both the generic and branded promotion of cranberries and cranberry products reach new markets/customers and increase demand for cranberries. Under the marketing order, the assessment obligation is imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, we believe that these costs are offset by the benefits derived by the operation of the marketing order.

Accordingly, no changes will be made to this rule based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <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 material presented, including the 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–2007 fiscal period began September 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### **List of Subjects in 7 CFR Part 929**

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

- For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

#### **PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK**

- 1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

- 2. Section 929.236 is revised to read as follows:

##### **§ 929.236 Assessment rate.**

On and after September 1, 2006, an assessment rate of \$.28 per barrel is established for cranberries.

Dated: March 23, 2007.

**Lloyd C. Day,**  
Administrator, Agricultural Marketing Service.

[FR Doc. E7-5791 Filed 3-28-07; 8:45 am]

BILLING CODE 3410-02-P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

[Docket No. AMS-FV-06-0181; FV06-948-2 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule modifying the grade and maturity requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule continues in effect the action that relaxed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all Area No. 2 potato varieties, other than round, red-skinned varieties, measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1¾-inch maximum diameter. This rule also continues in effect the action that changed the date minimum maturity requirements are implemented from August 25 to August 1 of each year. These changes are intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

**DATES:** Effective Date: April 30, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

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](mailto:Jay.Guerber@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."

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 rule 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 rule adopts the interim rule that changed the minimum grade requirement for certain potatoes handled under the order and also changed the minimum maturity requirement implementation date. Specifically, this regulating action changed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for all varieties of Area No. 2 potatoes, other than round, red-skinned potatoes, measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. Furthermore, the implementation date for the minimum maturity requirement was changed from August 25 to August 1 of each year. These changes were recommended by the Committee at a meeting held on August 10, 2006.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 authorizes an area committee to

recommend to the Secretary modifications, suspension, or termination of regulations issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope and consisting of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata Counties, and all counties west thereof; Area 2, commonly known as San Luis Valley, consists of Saguache, Huerfano, Las Animas, Mineral, Archuleta Counties, and all counties south thereof; and, Area 3, which consists of the remaining counties in the State of Colorado not included in Area 1 or 2. The order currently regulates the handling of potatoes in Areas 2 and 3 only; regulation for Area 1 is currently not active. Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order.

For many years, consumer demand for small fresh market potatoes was relatively soft in comparison to demand for larger size potatoes. Size B and smaller potatoes were often discarded or fed to livestock. Grade and size regulations were developed to keep lower quality small potatoes out of the fresh market. At that time, the Committee believed that small potatoes, sold at a great discount, eroded the price for large potatoes. By requiring small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse affect on the market for larger potatoes.

Recently, however, demand has increased for small potatoes, which often command premium prices compared to larger size A potatoes (1⅞-inch and larger). With the growing demand for small potatoes, producers and handlers are concerned that they will not be able to supply this market if only U.S. No. 1 or better grade can be shipped under the order. The Colorado Area No. 2 potato industry has received requests from customers for additional small potatoes that grade U.S. Commercial or better. This action assists Area No. 2 handlers in meeting their buyers' needs.

Committee statistics show that approximately 62 percent of the entire potato crop in Area No. 2 grades U.S.

No. 1 or better. However, the percentage of Size B and smaller potatoes meeting U.S. No. 1 grade is only about 50 percent. The reason for the lower percentage of smaller potatoes is that potato defects are scored based on the percentage of surface area affected on the individual potato. Because Size B and smaller potatoes have less surface area, any defect inspected comprises a larger part of the total surface being scored relative to larger sized potatoes. For example, a cut on a large potato may not affect a large enough surface area to be a scorable defect, but the same size cut would be scorable on a smaller potato. Under such circumstances, it would be much harder for a small potato to meet the U.S. No. 1 grade than it would for a large potato. The U.S. Commercial grade allows a slightly higher percentage of total defects than the U.S. No. 1 grade.

By changing the grade requirement to allow size B potatoes and potatoes measuring from 1-inch minimum diameter to 1¾-inch maximum diameter (commonly referred to as "creamers" by the potato industry) to meet U.S. Commercial grade or better, the Committee believes more small potatoes would be available to meet increasing demand, and thus help increase returns to producers. Not only would more small potatoes enter the market, small potatoes typically sell for a premium price in today's marketplace. This change does not affect round, red-skinned potato varieties in the size B and 1-inch minimum diameter to 1¾-inch maximum diameter size, which would continue to meet U.S. No. 1 grade or better. The majority of round, red-skinned potato varieties produced in Area No. 2 supply the food service or restaurant market. This market demands high quality (U.S. No. 1 or better) round, red-skinned potatoes. Therefore, the Committee recommended that the grade requirement for varieties of round, red-skinned potatoes in these size categories remain U.S. No. 1 grade or better.

The Committee believes that by allowing small potatoes to meet the more relaxed U.S. Commercial grade instead of U.S. No. 1 grade, available volume for sale into the fresh market could increase by about 23 percent.

Although facing an increasing demand, the market for small potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that the smaller potatoes do not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

This final rule also adopts from the interim rule the change in the minimum maturity requirement implementation date from August 25 to August 1. The specified ending date of October 31 for the minimum maturity requirement remains unchanged, as do the actual minimum maturity requirements that U.S. No. 2 grade potatoes are not more than "moderately skinned" and that all other grades are not more than "slightly skinned" (as defined in the U.S. Standards for Grades of Potatoes).

The Committee recommended that the implementation date be moved to August 1 due to the increased use of early maturing potato varieties in this area of Colorado and earlier harvest requirements. Since the skin on most potato varieties has not substantially "set", or toughened, early in the season, potato skins have a tendency to more easily scrape off during harvest and the subsequent handling and packing process. By having the maturity requirements in place at the beginning of harvest, there is added assurance that a quality product will reach the consumer.

#### 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 the 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 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 200 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 \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2005–2006 marketing year, 17,213,202 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 \$11.45 per hundredweight, the Committee

estimates that 73 Area No. 2 handlers, or about 91 percent, had annual receipts of less than \$6,500,000. 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 2005 was \$9.25 per hundredweight. The average annual fresh potato revenue for each of the 200 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$796,112. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

Excluding round, red-skinned potato varieties, this rule continues in effect the action that relaxed the minimum grade requirement from U.S. No. 1 grade to U.S. Commercial grade for Area No. 2 potatoes measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and 1-inch minimum diameter to 1¾-inch maximum diameter. This rule also continues in effect the action that changed the date minimum maturity requirements are implemented from August 25 to August 1 of each year. Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

Since the grade relaxation is expected to benefit producers, handlers and consumers, any potential impact from this action would be positive. By allowing these small potatoes to meet U.S. Commercial grade or better, a potentially greater quantity of potatoes will meet the order's handling regulation. This is expected to translate into an increased market for small potatoes and thus greater returns for handlers and producers and more product choice for consumers. Further, small potatoes are a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that small potatoes do not compete directly with most of the potatoes produced in this area and that the grade requirement relaxation will not adversely effect the overall Area No. 2 potato market.

Based on Committee records, roughly half of Area No. 2 handlers ship size B and smaller potatoes. Committee records also indicate that during the 2004–2005 fiscal period approximately 165,000 hundredweight (less than 1 percent of the total shipments) of size B and smaller were inspected and shipped. As a result of this rule, the Committee estimates that the marketable supply of size B and smaller potatoes will increase by 23 percent and add

37,950 hundredweight to the marketable supply of Area No. 2 potatoes.

As previously noted, this relaxation does not affect round, red-skinned potatoes in the same size categories. These potatoes will continue to pack-out as U.S. No. 1 grade or better to satisfy the quality conscious food service and restaurant markets.

The action that changed the minimum maturity requirement implementation date to August 1 merely updated the regulations so that they are in-line with current cultural practices. Thus, any impact from this change on the producers, handlers, and consumers of Colorado potatoes is expected to be positive since assurance is being added that quality product—a product without undue skinning—will be packed and shipped into the market. The Committee supports the concept that a quality product promotes consumer confidence, thereby helping to protect producer returns.

After discussing possible alternatives to this rule, the Committee determined that a relaxation in the grade requirement to U.S. Commercial grade or better for certain small potatoes would sufficiently meet the industry's current needs. The relaxation in the grade requirement for the affected small potatoes is expected to provide the greatest benefit to the industry by augmenting the developing market for these potatoes and thereby increasing producer returns. During its deliberations, the Committee also considered relaxing the grade requirement for small, round, red-skinned potato varieties. However, food service and restaurant market segments have a preference for round, red-skinned potatoes and demand high quality potatoes (U.S. No. 1 grade or better). The Committee, therefore, found that there were no other viable alternatives for the grade change except as recommended. Lastly, the maturity requirement implementation date change merely brings the regulations in-line with current cultural practices, and therefore, the Committee did not consider further alternatives to this recommended change.

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.

This 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. In addition, as noted in the initial regulatory flexibility analysis, 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 August 10, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 27, 2006 (71 FR 77583). Committee staff sent copies of the rule to all Committee members and Area No. 2 handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 26, 2007.

One comment was received. The commenter stated that regulations were necessary, but believed that all potatoes should have the same requirements. However, the Committee believes that there are specific markets for certain varieties of potatoes, so requirements should be specific to the variety of potato. For example, some varieties of potatoes are better suited for the fresh market than the French fry or processed potato market. Furthermore, marketing order 948, Area No. 2, only regulates the handling of potatoes grown in Area No. 2 of Colorado, and not other U.S. potato producing areas.

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 material presented, including the Committee's recommendation, and other information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 77583, December 27, 2006), 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.

#### **PART 948—IRISH POTATOES GROWN IN COLORADO**

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 71 FR 77583 on December 27, 2006, is adopted as a final rule without change.

Dated: March 23, 2007.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. E7-5817 Filed 3-28-07; 8:45 am]

**BILLING CODE 3410-02-P**

#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 985**

**[Docket Nos. AMS-FV-06-0188; FV07-985-1 FR]**

#### **Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2007-2008 Marketing Year**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which begins on June 1, 2007. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 886,667 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 1,062,336 pounds and 48 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

**DATES:** Effective Date: This final rule becomes effective June 1, 2007.

##### **FOR FURTHER INFORMATION CONTACT:**

Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724; Fax: (503) 326-7440; or E-mail: [Susan.Hiller@usda.gov](mailto:Susan.Hiller@usda.gov) or [Gary.D.Olson@usda.gov](mailto:Gary.D.Olson@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the “order.” This 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. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2007–2008 marketing year, which begins on June 1, 2007. This rule 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.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with all eight members