



§ 202.2 Authority to affix seal.

(a) The following officials of the Board are authorized to affix the official seal (including reproductions) to appropriate documents, certifications, and other materials of the Board: The Chairman and all Members, the Executive Director, the General Counsel, and the Directors.

(b) The officials named in paragraph (a) of this section may delegate this authority as appropriate.

§ 202.3 Prohibitions against misuse of seal.

(a) Falsely making, forging, counterfeiting, mutilating, or altering the Board seal or reproduction, or knowingly using or possessing with fraudulent intent an altered Board seal or reproduction is punishable under 18 U.S.C. 506.

(b) Any person using the Board seal or reproduction in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an official seal, and other provisions of law as applicable.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9-18509 Filed 8-3-09; 8:45 am]

BILLING CODE 6820-GA-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS-FV-08-0094; FV09-948-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that modified the minimum size requirement under the Colorado potato marketing order, Area No. 2. For most long potato varieties, the interim final rule changed the minimum size requirement from 2 inches in diameter to 1⁷/₈ inches in diameter and removed the minimum weight requirement. The change is expected to improve the marketing of Colorado Area No. 2 potatoes while increasing returns to producers and potato supplies to consumers.

DATES: *Effective Date:* Effective August 5, 2009.

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@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or 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@ams.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."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

An interim final rule was published in the **Federal Register** on April 16, 2009, and was effective on April 17, 2009 (74 FR 17589, Doc. No AMS-FV-0094, FV09-948-1 IFR). The interim final rule amended § 948.386 by modifying the minimum size requirement for most long varieties of potatoes handled under the marketing order. The exceptions to these requirements are for potatoes handled under the size designations referred to in the U.S. Standards as "Size B" and "creamers." The revisions described in the interim final rule were made to the handling regulations for all regulated potatoes except those potatoes considered "Size B" or "creamers." The current size requirements for "Size B" and "creamers" remain unchanged.

Except as explained above, for long potato varieties, the interim final rule changed the minimum size requirement from 2 inches in diameter to 1⁷/₈ inches in diameter and removed the minimum weight requirement.

This action did not impact imported potatoes covered by section 608(e) of the Act.

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.

Industry Information

There are approximately 73 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. The order is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). 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 2007–2008 marketing year, approximately 14,225,568 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 \$12.05 per hundredweight, the Committee estimates that 62 Area No. 2 handlers, or about 85 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 (NASS), the average producer price for Colorado potatoes for 2007 was \$9.85 per hundredweight. The average annual fresh potato revenue for the Colorado Area No. 2 potato producers is therefore calculated to be approximately \$778,455. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

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 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.386 of the marketing order's rules and regulations establishes minimum sizes for various varieties of potatoes. This rule continues in effect the action that changed the minimum size requirement from 2 inches in diameter to 1 $\frac{7}{8}$ inches in diameter and removed the minimum weight requirement for long potatoes that are considered neither "Size B" nor "creamer" size potatoes.

In 2007, handlers were unable to adequately supply the fresh market because of low yields due to poor weather conditions and because of more restrictive regulations. Adverse weather conditions contributed to lower yields and short supplies of potatoes for the market again in the 2008–2009 season. The Committee believes that relaxing the minimum size and weight requirements on long potato varieties allows handlers to market a larger portion of the crop in fresh market outlets, and thus better meet demand. This action is expected to foster increased consumption and have a positive impact on the Colorado potato industry.

This change is expected to improve returns to producers. The interim final rule was a relaxation of the minimum size regulation and, as such, should have a positive impact on industry participants. The Committee believes that this change should not negatively impact either handlers or producers.

The Committee discussed alternatives to this change, including not taking any action. However, for the reasons discussed earlier, the Committee believes this action best meets the needs of buyers and is most beneficial to the industry.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 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 Area No. 2 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 August 21, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action also affirms information contained in the interim final rule concerning the authority for marketing orders under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674), as well as information regarding Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

Comments on the interim final rule were required to be received on or before June 15, 2009. No comments were received. Therefore, for reasons given in the interim final rule, USDA is adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0094>.

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 17589, April 16, 2009) 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 that amended 7 CFR part 948 and that was published at 74 FR 17589 on April 16, 2009, is adopted as a final rule, without change.

Dated: July 29, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18539 Filed 8–3–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–FV–09–0044; FV09–959–2 IFR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2009–10 and subsequent fiscal periods from \$0.03 to \$0.025 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The