

may use any method of filing and service described in § 1201.134(f) that will ensure *receipt* by the due date. Section 1201.136(b) is further amended to require that any agency response to a Special Counsel request for extension of a stay be *received* by the Board no later than 8 days before the expiration date of the stay. The agency may use any method of filing described in § 1201.134(f) that will ensure *receipt* by the due date.

Subsequent to the issuance of the interim rule on September 16, 1997, the Board issued an interim rule at 62 FR 66813, December 22, 1997, that, among other things, amended §§ 1201.121 and 1201.131. This final rule, therefore, notes that those two sections continue to read as amended on December 22, 1997.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

Accordingly, the Board adopts as final its interim rule published at 62 FR 48449, September 16, 1997, with the following changes:

PART 1201—[AMENDED]

1. The authority citation for Part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

1a. Sections 1201.121 and 1201.131 continue to read as amended by 62 FR 66813, December 22, 1997.

§ 1201.125 [Amended]

2. Section 1201.125 is amended at paragraph (c)(2) by removing the period at the end of the second sentence and by adding in its place the following: “or, if the filing party shows that the recommended decision was received more than 5 days after the date of service, within 30 days after the date the filing party received the recommended decision.”

§ 1201.134 [Amended]

3. Section 1201.134 is amended at paragraph (b) by adding the following sentence at the end of the paragraph: “The Board may delegate to a member of the Board the authority to rule on any matter related to a stay that has been granted to the Special Counsel, including a motion for extension or termination of the stay.”

4. Section 1201.136 is amended by revising paragraph (b) to read as follows:

§ 1201.136 [Amended]

* * * * *

(b) *Extension of stay.* Upon the Special Counsel's request, a stay granted under 5 U.S.C. 1214(b)(1)(A) may be extended for an appropriate period of

time, but only after providing the agency with an opportunity to comment on the request. Any request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B) must be received by the Board and the agency no later than 15 days before the expiration date of the stay. A brief describing the facts and any relevant legal authority that should be considered must accompany the request for extension. Any response by the agency must be received by the Board no later than 8 days before the expiration date of the stay.

* * * * *

Dated: August 4, 1998.

Robert E. Taylor,

Clerk of the Board.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98-948-2 IFR]

Irish Potatoes Grown in Colorado; Exemption From Area No. 2 Handling Regulation for Potatoes Shipped for Experimentation and the Manufacture or Conversion Into Specified Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the handling regulations of the Colorado Potato Marketing Order for Area No. 2 (San Luis Valley). This rule was unanimously recommended by the Colorado Potato Administrative Committee for Area No. 2 (Committee), the agency responsible for local administration of the marketing order. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

DATES: Effective August 12, 1998; comments received by October 13, 1998 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, Fruit and

Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. All comments should reference the docket 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.

FOR FURTHER INFORMATION CONTACT:

Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is authorized by 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 (Department) 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule exempts shipments of potatoes handled for the purposes of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 (San Luis Valley).

Section 948.22 authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under § 948.22 or to facilitate the handling of potatoes for special purposes. Section 948.24 requires adequate safeguards to be prescribed to ensure that potatoes handled pursuant to § 948.23 enter authorized trade channels. Safeguard procedures for special purpose shipments are specified in §§ 948.120 through 948.125.

At its meeting on June 18, 1998, the Committee unanimously recommended that handlers of potatoes shipped for experimentation and for the manufacture or conversion into specified products be exempted from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As is currently required for all special purpose shipments, handlers would apply and obtain Certificates of Privilege for handling such potatoes and furnish the Committee such information as the Committee may require.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special

products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have irregular shapes or are small in size, and that prevents them from being shipped except under the minimum quantity exemption of 1,000 pounds specified in paragraph (f) of § 948.386. This has prevented handlers from shipping larger quantities. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have "similar" varietal characteristics.

For the purpose of this action, the term "manufacture or conversion into specified products" means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing. Under the current regulation, potatoes for manufacture or conversion into products must be inspected and certified as meeting specified quality requirements prior to preparation for market. This action will exempt shipments handled for experimentation or the manufacture or conversion into products from these requirements, thus, relieving handlers of this regulatory burden.

These changes to the Area No. 2 handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose shipments authorized by this action are fresh use markets so it is appropriate that the handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, in determining whether applicable requirements have been met, and in determining whether the potatoes ended up in the proper trade channel. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

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, the AMS has prepared this initial regulatory flexibility analysis.

There are approximately 100 handlers of Colorado Area No. 2 potatoes who are subject to regulation under the marketing order and approximately 285 producers of Colorado potatoes in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

This rule exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements that are prescribed under the order's handling regulations for Area No. 2 in § 948.386.

At its meeting on June 18, 1998, the Committee unanimously recommended that potatoes shipped for the purposes of experimentation and for the manufacture or conversion into specified products be considered special purpose shipments and be exempt from the grade, size, maturity, and inspection requirements prescribed in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As is currently required for all special purpose shipments, handlers would apply and obtain Certificates of Privilege for handling such potatoes and furnish the Committee such information as the Committee may require to track such shipments, determine whether applicable requirements have been met, and whether proper disposition has occurred.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the

development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have characteristics, such as small size or misshape, that prevent them from being shipped fresh except under the minimum quantity exemption of 1,000 pounds in paragraph (f) of § 948.386. This has placed a burden on handlers desiring to ship larger quantities of such potatoes. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have "similar" varietal characteristics.

For purpose of this action, the term "manufacture or conversion into specified products" means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing.

These changes to the handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose outlets authorized by this action are fresh use markets so it is appropriate that handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, determining whether applicable requirements have been met, and whether the potatoes end up in proper trade channels. Currently, the assessment rate is \$0.0030 per hundredweight of potatoes handled. Effective September 1, 1998, the rate will be \$0.0015 per hundredweight of potatoes handled. This rule is designed to expand markets for potatoes and to increase fresh utilization. The changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

There is no available information detailing how many potatoes this relaxation will allow to be marketed.

No viable alternatives to this action were identified that would ensure that innovations in marketing and product development. Furthermore, the goals expressed by the committee could not be solved absent this action.

The Committee estimates that three or four handlers may apply for and obtain Certificates of Privilege for the handling of potatoes for experimentation or for

the manufacture or conversion into specified products. It is estimated that the time taken by the handlers who apply will total less than ten hours and this time is currently approved under OMB No. O581-0111 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department 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 June 18, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulation prescribed for Area No. 2 under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

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 rule relaxes requirements on Area No. 2 handlers and provides additional marketing opportunities; (2) this action must be taken promptly so handlers can take advantage of the additional marketing opportunities as soon as possible; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to

provide input; 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 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 § 948.386, paragraph (d)(2) is revised, and in paragraph (g) a new sentence is added before the last sentence to read as follows:

§ 948.386 Handling regulation.

* * * * *

(d) * * *

(1) * * *

(2) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for experimentation, the manufacture or conversion into specified products, or for seed pursuant to section 948.6, but such shipments shall be subject to assessments.

* * * * *

(g) *Definitions.* * * * The term *manufacture or conversion into specified products* means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the committee, but not including other processing. * * *

Dated: August 5, 1998.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV98-989-2 FIR]

Raisins Produced From Grapes Grown In California; Increase in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.