

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 948

[Docket No. FV98-948-2 FIR]

**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: Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which 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 continues in effect exemptions 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.

EFFECTIVE DATE: January 4, 1999.

**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, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order

small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**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 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 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 the date of the entry of the ruling.

This rule continues to exempt 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 required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege and furnish the Committee such information as the Committee may require to track such shipments and to verify proper disposition.

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. Formerly, potatoes for manufacture or conversion into products had to be inspected and certified as meeting specified quality requirements prior to preparation for market. This action continues to 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 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 of 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 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 continues to exempt 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 required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege 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 \$0.0015 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. However, the Committee expects the quantities to be small.

No viable alternatives to this action were identified that would ensure 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. O581-0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To date, three handlers have obtained Certificates of Privilege for these purposes.

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, as noted in the initial regulatory flexibility analysis, 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.

An interim final rule concerning this action was published in the **Federal Register** on August 11, 1998 (63 FR 42686). Copies of the rule were mailed by the Committee's staff to all Committee members and Area No. 2 potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 13, 1998. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 42686, August 11, 1998) 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 63 FR 42686 on August 11, 1998 is adopted as a final rule without change.

Dated: November 27, 1998

**Robert C. Keeney**

*Deputy Administrator, Fruit and Vegetable Programs.*

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## **DEPARTMENT OF AGRICULTURE**

### **Grain Inspection, Packers and Stockyards Administration**

#### **9 CFR Part 205**

**RIN 0580-AA63**

#### **Clear Title—Protection for Purchasers of Farm Products**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of "effective financing statements" for "farm products", as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631), to allow a continuation of an effective financing statement to be filed without the signature of the debtor provided State law authorizes such a filing. This rule responds to comments received when the regulations were previously amended by a final rule published on April 1, 1997 (62 FR 15363) that brought the regulations into conformity with statutory amendments found in Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

**EFFECTIVE DATE:** January 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Gerald E. Grinnell, Director, Economic/Statistical Support, Grain Inspection, Packers and Stockyards Administration, (202) 720-7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, (202) 720-8160.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) (the Act) provides that certain persons may be subject to a security interest in a farm product created by the seller under certain circumstances in which a lender files an "effective financing statement" with the "system operator" in a State that has a certified central filing system as defined by the Act. The Act requires the Secretary of Agriculture to prescribe regulations "to aid States in the implementation and management of a central filing system." Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification of the State central filing systems and to prescribing regulations to aid in the implementation and management of certified central filing systems. The Act does not give the

Secretary the authority or responsibility for such matters as direct notification by secured parties, sales of and payment for products, procedures for payment or procedures for personal liability protection. Those matters are governed by State law.

Prior to the 1996 amendment of the Act, lenders could not file effective financing statements or amendments to those statements electronically with State certified central filing systems because such statements were required to bear the signature of the debtor, which could not be transmitted electronically. Commercial lenders also expressed concern and confusion due to the vagueness of the provisions for effective financing and continuation statements contained in the Act and the inconsistency between the Act and the Uniform Commercial Code.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) (hereinafter the "FAIR Act") amended the Act to allow lenders to file "effective financing statements" by electronic transmission without the necessity of obtaining the signature of the debtor provided State law authorizes such a filing.

The Department published interim and final rules in the **Federal Register** to implement the FAIR Act amendments (61 FR 54727 and 62 FR 15363, respectively). The rule allows electronic filing of amendments to effective financing statements without the signature of the debtor. Comments received in response to the rule encouraged the Department to further amend the regulations to allow the filing of paper continuation statements without the signature of the debtor as well. Section 205.209(d) of the regulations (9 CFR 205.209(d)) currently provides that continuation statements are to be treated in the same manner as amendments to effective financing statements. Therefore, the rule implementing the 1996 FAIR Act amendments allows continuation statements to be filed electronically, without the signature of the debtor as well. However, because the purpose of that rule was to bring the regulations into conformity with the 1996 amendment (which addressed electronic filings), the final rule did not address the commentors' request to eliminate the signature requirement for paper continuation statements.

The Department published a proposed rule in the **Federal Register** on June 8, 1998 (63 FR 31130), which would remove the requirement from the regulations that a filing of a continuation to an effective financing