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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 273**

**[FNS 2011–0008]**

**RIN 0584–AE54**

# Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the SNAP regulations to update procedures for accessing SNAP benefits in drug addiction or alcoholic treatment centers (DAA treatment centers) and group living arrangements (GLAs) through electronic benefit transfer (EBT). The final rule implements the changes indicated in the proposed rule, but never finalized, regarding accessing SNAP benefits in these centers, but does not incorporate any of the substantive changes in the interim final rule regarding how benefits are returned to clients departing these centers due to adverse comments received on the interim final rule. This final rule also implements provisions of the Food, Conservation and Energy Act of 2008 regarding nomenclature changes to reflect the electronic issuance of benefits through EBT at these centers. RIN 0584–AE54 is a continuation of the prior rulemakings published under RIN 0584–AD87.

**DATES:** This final rule is effective April 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Rose Conroy, Chief, Program Design Branch, Program Development Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2803; *MaryRose.Conroy@fns.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

On May 4, 2011, the Department published a proposed rule (76 FR 25414) that would revise 7 CFR part 273 to change the program name from the Food Stamp Program to SNAP and make other nomenclature changes in conformance with Section 4001 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246). As part of these nomenclature changes, the Department also proposed to revise § 273.11(e) and (f) to remove references to paper coupons and to update the procedures for providing benefits via EBT cards to residents of drug addiction or alcoholic treatment and rehabilitation programs (DAA treatment centers) and residents of group living arrangements (GLAs). Prior to the implementation of EBT, such centers were required to redeem residents' paper coupons through authorized food stores. Under EBT systems, both DAA treatment centers and GLAs may be authorized as retailers in order to redeem benefits directly through a financial institution. The institutions may also use an aggregate EBT card, or may use individual EBT cards at authorized stores if the center is the household's authorized representative. The Department proposed to update the regulatory description to conform with current EBT processes.

Commenters responding to the nomenclature changes in the proposed rule recommended additional substantive revisions to § 273.11(e) and (f) to better protect the rights of SNAP clients who are residents of DAA treatment centers and GLAs when these clients leave these establishments. Accordingly, in addition to finalizing the nomenclature updates for those particular provisions, the final rule Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008, published January 6, 2017 (82 FR 2010), included an interim final rule with amendments to 7 CFR 273.11(e) and (f) to revise the procedures for when SNAP clients leave DAA treatment centers or GLAs. Specifically, the interim final rule mandated that DAA treatment centers and GLAs return EBT cards to residents with benefits pro-rated based on the date of their departure, submit complete change report forms to the State agency when a resident leaves, and notify the State agency within 5 days if unable to provide the resident with their EBT card at departure.

The initial comment period for this interim final rule was 60 days. Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review'', the comment period for the interim final rule was extended from ending on March 7, 2017, to April 6, 2017. The effective date for the interim final rule was delayed to June 5, 2017.

### Comments on the Interim Final Rule

FNS received five comments in response to the interim final rule. Four of the comments were from State agencies and one comment was outside the scope of the interim final rule. All four germane comments were adverse.

Commenters indicated significant logistical and operational difficulties to comply with the provisions as written and, as a result, the Department has concluded that more research and stakeholder outreach must be done in this area before requirements for these centers are finalized.

The interim final rule required that when a household leaves a GLA or DAA treatment center, the GLA or DAA treatment center must return a prorated amount of the departing household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the center. Three commenters noted that GLAs and DAA treatment centers are not required by regulations to be authorized as SNAP retailers or to have EBT point-of-sale (POS) devices that would facilitate such action. As such, they expressed concern as to how centers without EBT POS devices would be able to return benefits once SNAP clients were no longer residents. One of these commenters, a State agency, indicated that while it supported the return of pro-rated benefits to households, the State had no DAA treatment centers or GLAs authorized as retailers in the State and thus there would be no functional way to implement the rule as written. Another commenter noted that proration is not an automatic function

for EBT systems and, therefore, proration would have to be manually completed by even those GLAs or DAA treatment centers with POS devices, which could potentially be error-prone.

The Department acknowledges that the interim final rule does not accurately reflect the operationalization of benefit redemptions in GLAs and DAA treatment centers that are not authorized retailers, and would cause undue hardship in requiring every GLA and DAA treatment center to become an authorized retailer. The Department acknowledges it was not its intent to require all GLAs and DAA treatment centers to become authorized SNAP retailers, but that the interim final rule as written would have required this of the centers in order for them to meet the requirements outlined in the rule in a practical manner. Due to the negative response, the Department is not finalizing the substantive amendments contained in the interim final rule.

**Changes to § 273.11 in the Final Rule**

This rule only finalizes the statutorily mandated nomenclature changes and procedures for § 273.11(e) and (f), as well as the paragraph removals, redesignations and technical revisions as outlined in the department's proposed rule issued on May 4, 2011. The Department received no comments that addressed these changes alone. The changes to procedures in § 273.11(e) and (f) are codifying existing policy. The Department is also making changes throughout § 273.11(e) to ensure consistent nomenclature in referring to DAA treatment centers, removing references to ''DAA centers'' or ''DAAs'' and replacing these with ''DAA treatment centers'', and clarifying that ''DAA treatment centers'' refers to publicly operated or private non-profit drug addict or alcoholic treatment and rehabilitation programs. The proposed rule's paragraph removals, redesignations and revisions that were substantially unchanged and codified by the interim final rule are not amended further here.

**Future Steps and Guidance on This Provision**

The Department still intends to further assess the operations of GLAs and DAA treatment centers and remains interested in enhancing protections when clients leave a GLA or DAA treatment center. However, the Department intends to consult with State agencies and other stakeholders in order to determine the most appropriate changes for future rulemaking on this topic. The Department will conduct a holistic review of GLAs and DAA treatment centers that are authorized retailers as well as those that are not authorized retailers to better understand current operational procedures, and work with all stakeholders to determine what appropriate changes should be made in rulemaking based on existing processes and technology. The Department appreciates the concerns for client access and GLA and DAA treatment center responsibility raised by commenters in both the proposed and interim final rules, and will take them into consideration while conducting its review of GLA and DAA treatment center procedures. During this time, GLA and DAA treatment centers will continue to follow the procedures as outlined in this final rule and residents who depart these facilities will continue to receive some benefits depending on the time of month of their departure.

**Procedural Matters**

*Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

*Executive Orders 13771*

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. FNS considers this rule to be an Executive Order 13771 deregulatory action.

*Regulatory Impact Analysis*

A Regulatory Impact Analysis must be prepared for rules with economically significant effects ($100 million or more in any one year). USDA does not anticipate that this final rule is likely to have an economic impact of $100 million or more in any one year, and therefore, does not meet the definition of ''economically significant'' under Executive Order 12866. Provisions of this rule do not affect the level of benefits paid to SNAP participants who reside in these facilities. The Department estimates that removing the substantive provisions of the interim final rule will result in a savings of $2.6 million annually and $13 million over five years in administrative costs to federal and State governments and DAA treatment centers and GLAs operating as authorized SNAP retailers.

The interim final rule provisions would have inadvertently required additional DAA treatment centers and GLAs to become SNAP-authorized retailers. Under provisions of the Food and Nutrition Act, operators of GLAs and DAAs that would have become newly-authorized SNAP retailers under the interim final rule provisions would be eligible for free EBT-only point-of-sale (POS) devices. Estimated cost of providing equipment to newly authorized DAA treatment centers and GLAs is $540 per year per retailer; this cost would be split evenly between federal and State governments. The Department estimates that an additional 1,900 DAA treatment centers or GLAs would have become newly-authorized under the interim final rule provisions, so the total cost of providing this equipment to newly-authorized GLAs and DAAs would have been approximately $1 million per year.

In addition, DAA treatment centers and GLAs will no longer incur costs related to prorating benefits and submitting reports to State agencies when residents leave facilities. The Department estimates that removing this requirement will save GLAs and DAAs approximately $1.6 million annually. There currently are approximately 1,500 DAA treatment centers and GLAs that are authorized SNAP retailers. As noted above, the Department estimates that an additional 1,900 DAA treatment centers and GLAs would have become authorized retailers under the interim final rule provisions, for a total of about 3,400 (2,100 DAAs and 1,300 GLAs).

Based on annual redemptions of approximately $120 million, the Department estimates the average currently-authorized DAA serves about 38 SNAP participants per month and the average authorized GLA serves about 99 SNAP participants per month.[1] Assuming the average length of stay for residential treatment facilities is 90 days and the average length of stay for GLAs is one year, each facility would have

[1] In 2016, there were 945 authorized DAAs (who redeemed an average of $4,185 monthly) and 577 authorized GLAs (who redeemed an average of $10,828 monthly). To estimate the number of residents per facility, the monthly redemptions were divided by the fiscal year 2016 average per-person benefit for a household receiving Supplemental Security Income ($109.49).

been required to prorate benefits and report to the State agency approximately 148 times per year (DAAs) or 99 times per year (GLAs) under the interim final rule provisions. The Department assumes each proration/report would take .25 hours at a mean wage of $14.65 for a health care support worker, or $3.66 per occurrence.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of the Food and Nutrition Service certifies that this final rule does not have a significant impact on a substantial number of small entities including DAA treatment centers and GLAs. State and local human service agencies will be the most affected to the extent that they administer SNAP. The provisions of this final rule are implemented through State agencies which are not small entities as defined by the Regulatory Flexibility Act.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*Executive Order 12372*

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.561. For the reasons set forth in the final rule, Department of Agriculture Programs and Activities Covered Under Executive Order 12372 (48 FR 29114), the Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

*Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in SNAP.

Further, FNS specifically prohibits the State and local government agencies that administer the program from engaging in discriminatory actions. Discrimination in any aspect of program administration is prohibited by SNAP regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964. State agencies must comply with these requirements and the regulations at 7 CFR 272.6.

*Executive Order 13175*

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to its knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Currently, FNS provides regularly scheduled quarterly information sessions as a venue for collaborative conversations with Tribal officials or their designees. Reports from these information sessions are put on the USDA annual reporting on Tribal consultation and collaboration. FNS received no comments with Indian Tribes on either the proposed rule or the interim final rule that related to these provisions.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

*E-Government Act Compliance*

The Department is committed to complying with the E-Government Act

of 2002, Public Law 107–347, 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.

**List of Subjects in 7 CFR Part 273**

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Income taxes, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 273 is amended as follows:

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for 7 CFR part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 273.11:
■ a. Revise paragraph (e)(1);
■ b. Amend paragraph (e)(2)(i) by removing the words ''DAA center'' and adding in their place the words ''DAA treatment center'';
■ c. Amend paragraph (e)(2)(ii) by removing the words ''DAA centers'' and adding in their place the words ''DAA treatment centers'';
■ d. Amend paragraph (e)(2)(iii) by removing the words ''treatment center'' and adding in their place the words ''DAA treatment center'';
■ e. Amend paragraph (e)(3) by removing the words ''DAA center'' and adding in their place the words ''DAA treatment center'';
■ f. Amend paragraph (e)(4) by removing the words ''DAA centers'' and adding in their place the words ''DAA treatment centers'';
■ g. Revise paragraphs (e)(5) and (6);
■ h. Remove the last sentence of paragraph (f)(4);
■ i. Revise paragraph (f)(5);
■ j. Redesignate paragraphs (f)(6) and (7) as paragraphs (f)(7) and (8);
■ k. Add a new paragraph (f)(6);
■ l. Amend newly redesignated paragraph (f)(7) by removing the words ''drug and alcoholic treatment centers in paragraphs (e)(7) and (e)(8)'' and adding in their place the words ''DAA treatment centers in paragraphs (e)(7) and (8)''; and
■ m. Revise the first sentence of newly redesignated paragraph (f)(8).

The revisions and additions read as follows:

**§ 273.11 Action on households with special circumstances.**

* * * * *

(e) * * * (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic treatment and rehabilitation programs (DAA treatment centers) on a resident basis may voluntarily apply for SNAP. Applications must be made through an authorized representative who is employed by the DAA treatment center and designated by the center for that purpose. The State agency may require the household to designate the DAA treatment center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

* * * * *

(5) DAA treatment centers may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA treatment center use of individual household EBT cards at authorized stores, authorization of DAA treatment centers as retailers with EBT access via POS at the center, DAA treatment center use of a center EBT card that is an aggregate of individual household benefits, and other designs. Regardless of the process elected, the State must ensure that the EBT design or DAA treatment center procedures prohibit the DAA treatment center from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of benefits to the household's EBT account through a refund, transfer, or other means. Guidelines for approval of EBT systems are contained in part 274 of this chapter.

(6) When a household leaves the DAA treatment center, the center must perform the following:

(i) Notify the State agency. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the DAA treatment center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(ii) Provide the household with its EBT card if it was in the possession of the DAA treatment center. The DAA treatment center must return to the State agency any EBT card not provided to departing residents by the end of each month.

(iii) If no benefits have been spent on behalf of the individual household, the center must return the full value of any benefits already debited from the household's current monthly allotment back into the household's EBT account at the time the household leaves the center.

(iv) If the benefits have already been debited from the EBT account and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th day of the month, the center must ensure that the household has one-half of its monthly benefit allotment remaining in its EBT account unless the State agency issues semi-monthly allotments and the second half has not been posted yet.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. If the center is authorized as a retailer, the State agency may require the center to provide a refund for that amount back to the household's EBT account at the time that the household leaves the center. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to, transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. In either case, the household, not the center, must be allowed to have sole access to any benefits remaining in the household's EBT account at the time the household leaves the center.

(v) If the household has already left the DAA treatment center, and as a result, the DAA treatment center is unable to return the benefits in accordance with this paragraph (e)(6), the DAA treatment center must advise the State agency, and the State agency must effect the return instead. These procedures are applicable at any time during the month.

* * * * *

(f) * * *

(5) When the household leaves the facility, the GLA, either acting as an authorized representative or retaining use of the EBT card and benefits on behalf of the residents (regardless of the method of application), shall return the EBT card (if applicable) to the household. The household, not the GLA, shall have sole access to any benefits remaining in the household's EBT account at the time the household leaves the facility. The State agency must ensure that the EBT design or procedures for GLAs permit the GLA to

return unused benefits to the household through a refund, transfer, or other means.

(6) If, at the time the household leaves, no benefits have been spent on behalf of that individual household, the facility must return the full value of any benefits already debited from the household's current monthly allotment back into the household's EBT account. These procedures are applicable at any time during the month. However, if the facility has already debited benefits and spent any portion of them on behalf of the individual, the facility shall do the following:

(i) If the household leaves the GLA prior to the 16th day of the month, the facility shall provide the household with its EBT card (if applicable) and one-half of its monthly benefit allotment. Where a group of residents has been certified as one household and a member of the household leaves the center:

(A) The facility shall return a pro rata share of one-half of the household's benefit allotment to the EBT account and advise the State agency that the individual is entitled to that pro rata share; and

(B) The State agency shall create a new EBT account for the individual, issue a new EBT card and transfer the pro rata share from the original household's EBT account to the departing individual's EBT account. The facility will instruct the individual on how to obtain the new EBT card based on the State agency's card issuance procedures.

(ii) If the household or an individual member of the group household leaves on or after the 16th day of the month and the benefits have already been debited and used, the household or individual does not receive any benefits.

(iii) The GLA shall return to the State agency any EBT cards not provided to departing residents at the end of each month. Also, if the household has already left the facility and as a result, the facility is unable to perform the refund or transfer in accordance with this paragraph (f)(5), the facility must advise the State agency, and the State agency must effect the return or transfer instead.

(iv) Once the resident leaves, the GLA no longer acts as his/her authorized representative. The GLA, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the GLA and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

* * * * *

(8) If the residents are certified on their own behalf, the benefits may either be debited by the GLA to be used to purchase meals served either communally or individually to eligible residents or retained by the residents and used to purchase and prepare food for their own consumption. * * *

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Dated: February 12, 2019.

**Brandon Lipps,**

*Acting Deputy Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2019–02551 Filed 2–15–19; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 953

**[Doc. No. AMS–SC–18–0037; SC18–953–1 FR]**

## Irish Potatoes Grown in Southeastern States; Termination of Marketing Order 953

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

**ACTION:** Final rule; termination of order.

**SUMMARY:** This final rule terminates the Federal marketing order regulating the handling of Irish potatoes grown in Southeastern states (Order). The Order has been suspended, at the industry's recommendation, since 2011. Because the industry has not petitioned to have the Order reactivated in accordance with the terms of the suspension, the Agricultural Marketing Service (AMS) is terminating the Order.

**DATES:** Effective March 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Patty Bennett, Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@usda.gov* or *Patty.Bennett@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action is governed by section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and Marketing Agreement 104 and Marketing Order 953 (7 CFR part 953), referred to as the ''Order,'' effective under the Act.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final 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 final rule terminates the Order that authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order has been suspended for approximately seven years, at the industry's recommendation, and the industry has not expressed interest in reactivating the Order.

Section 953.66 provides, in pertinent part, that USDA terminate or suspend any or all provisions of the Order when