

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 950

[Docket No. FV95-950-1PR]

#### Irish Potatoes Grown in Maine; Proposed Termination of Marketing Order No. 950

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to terminate the Federal marketing order regulating the handling of Irish potatoes grown in Maine (order) and the rules and regulations issued thereunder. The Maine potato industry has not operated under the order for almost three decades and the current order does not reflect current industry structure and operating procedures. Thus, there is no need for the Department of Agriculture to continue this order.

**DATES:** Comments must be received by December 18, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; FAX (202) 720-5698. 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:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 690-0464, FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposed rule is governed by the provisions of 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 § 950.84 of the order.

This regulatory action is being taken as a part of the National Performance Review to eliminate unnecessary regulations and to improve those that remain in force.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would 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 a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 750 producers. Some of them are also

handlers who would be subject to seasonal handling regulations under the order, but no such regulations have been implemented since the 1967-68 season, and there is no indication that such regulations will again be needed. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than \$5,000,000. The majority of the Maine potato producers and handlers may be classified as small entities.

The order was initially established on August 24, 1954, to help the industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Maine Potato Marketing Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Maine potatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Maine potatoes through the establishment of minimum size and quality requirements. When regulated, fresh potato shipments consisted only of those grades and sizes desired by consumers.

Although the Department has not conducted interviews of current industry members with respect to the need for a marketing order, neither has it received recent inquiries from the industry asking for reactivation. The Maine potato industry has not operated under the marketing order for almost three decades. Regulations have not been applied to Maine potato handlers since the late 1960's and a committee to locally administer the marketing order has not been appointed since the early 1970's. In August 1954, when the marketing order was issued, there were almost 4,500 producers of Maine potatoes. Currently, there are about 750 producers.

While a sizeable potato industry remains active in Maine, there seems to be virtually no interest in a marketing order. Most of the members appointed to the last committee have retired from commercial potato production or handling.

Over the years, there have been periodic inquiries about reviving the marketing order, but no formal requests for reactivation have ever materialized. In any case, with the passage of time and changes in industry structure and operating practices since the order was formulated, a much revised marketing order would have to be established. The need for a new marketing order would have to be justified and supported by a large majority of current Maine potato producers. This would require a public hearing and a producer referendum. Thus, there is little justification to continue the current marketing order.

We believe that conducting a termination referendum would merely reaffirm the Maine potato industry's continued lack of interest in a marketing order and that conducting such a referendum would be wasteful of Departmental and public resources.

Therefore, pursuant to section 608c(16)(A) of the Act and § 950.84 of the order, the Department is considering the termination of Marketing Order No. 950, covering Irish potatoes grown in Maine. If the Secretary decides to terminate the order, trustees would not need to be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee, since no funds or property remain to be distributed or liquidated.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress will be so notified upon publication of this proposed rule.

Based on the foregoing, the Administrator of the AMS has determined that this action would not have a significant impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 950

Marketing agreements, Reporting and recordkeeping requirements, Potatoes.

#### **PART 950—[REMOVED]**

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601-674, 7 CFR part 950 is proposed to be removed.

Dated: November 9, 1995.

Kenneth C. Clayton,  
Acting Administrator.

[FR Doc. 95-28324 Filed 11-15-95; 8:45 am]

BILLING CODE 3410-02-P

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 113**

[Docket No. 95-012-1]

#### **Viruses, Serums, Toxins, and Analogous Products; Rabies Vaccine, Killed Virus and Rabies Vaccine, Live Virus**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the standard requirements for establishing the immunogenicity of Rabies Vaccine, Killed Virus and Rabies Vaccine, Live Virus. The amendment would change and clarify alternate test procedures which may be used in animals other than carnivores. Under the proposed rule, when a reduced number of challenge animals is used in a rabies immunogenicity test, all vaccinates must survive challenge. If one or more of the challenged vaccinates die of rabies, all of the remainder of the vaccinates would have to be challenged or the test would be deemed unsatisfactory and terminated.

This proposed action would correct a problem associated with rabies immunogenicity tests in the regulations and make other changes deemed necessary for clarity and consistency.

**DATES:** Consideration will be given only to comments received on or before January 16, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-012-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-012-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737-1237, (301) 734-8245.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The regulations in 9 CFR part 113 pertain to standard requirements for the

preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

The standard requirements for Rabies Vaccine, Killed Virus, and for Rabies Vaccine, Live Virus, appear in §§ 113.209 and 113.312, respectively. Sections 113.209(b)(4) and 113.312(b)(4) provide for an alternative immunogenicity test, for domestic species other than dogs and cats, that reduces the number of animals that must be challenged to a minimum of five vaccinates and five unvaccinated control animals. The regulations require that a minimum of 25 animals be vaccinated and blood be taken for serology at prescribed intervals postvaccination. All surviving test animals must be challenged 1 year after vaccination unless the alternative test is used. In the case of the alternative test for domestic species other than dogs or cats, the five vaccinates with the lowest rabies antibody titers at each of the last two bleedings, and all vaccinates with titers below 1:10, as determined by the mouse serum neutralization (SN) test or below 1:16 by the rapid-fluorescent-focus-inhibition test at any bleeding, must be challenged at 1 year after vaccination.

The following example illustrates how the current regulations can lead to different interpretations for the rabies immunogenicity test for species other than dogs and cats. The regulations in §§ 113.209(b)(3)(v) and 113.312(b)(3)(v) (applicable to all animal species) require that the statistical equivalent of 22 out of 25 or 26 out of 30 vaccinates remain well for 90 days after challenge. If only five vaccinates are challenged and three die of rabies, the test would be deemed unsatisfactory under §§ 113.209(b)(3)(v) and 113.312(b)(3)(v). The results would be considered unsatisfactory because survival of 2 of 5 animals is not statistically equivalent to survival of 22 of 25 or 26 of 30 animals.

Sections 113.209(b)(4) and 113.312(b)(4) (which apply to animals other than dogs and cats), however, state that all unchallenged vaccinates shall be considered protected for purposes of the test when evaluated for acceptance. The previous test would be considered satisfactory under §§ 113.209(b)(4) and 113.312(b)(4), since the unchallenged vaccinates would be deemed protected, meeting the requirement that 22 of the 25 vaccinates be protected for a satisfactory test. For this reason, the