

# Rules and Regulations

## Federal Register

Vol. 67, No. 217

Friday, November 8, 2002

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV02-948-2 FR]

#### Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee

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

**ACTION:** Final rule.

**SUMMARY:** This rule reduces the number of members on the Area No. 3 Colorado Potato Administrative Committee (Committee) established under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Committee. This rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. The number of producers and handlers in Area No. 3 has decreased significantly in recent years and the industry has been unable to fill several positions on the Committee. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

**EFFECTIVE DATE:** This final rule becomes effective November 9, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation 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@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 97 and 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.

This final 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 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 decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler

members, respectively. Each position will continue to have an alternate. The Committee has been unable to fill several positions on the Committee and has been unable to conduct business at some meetings because of the lack of a quorum. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Section 948.50 of the order establishes three areas within the State of Colorado and provides authority for the establishment of a committee to be the administrative agency for each area. This section further provides that each area committee shall be comprised of members and alternates as set forth in that section or as reestablished by § 948.53. Section 948.53 provides authority for the reestablishment of each area committee.

Section 948.150 of the order's administrative rules and regulations prescribes the membership on each area committee. Prior to this final rule, the Area No. 3 Committee consisted of five producers and four handlers. Three producers and two handlers were from Weld County, and two producers and two handlers were from all other counties in Area No. 3.

At its meeting on June 13, 2002, the Committee did not have enough members in attendance to constitute a quorum. Those members present recommended that a mail vote be held by the Committee to reduce the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. In addition, they recommended the removal of all requirements that positions be filled from nominees from certain counties. A subsequent mail vote to all Committee members and alternates was conducted. Seven Committee members voted in favor of this change and one member voted against it. The member who voted against the motion supported suspension of regulations because of the decline in the size of the industry. One handler member and alternate position was not voted as both positions were vacant.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing

production costs. With a total of only 13 producers and handlers (several producers are also handlers), the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. The Committee believed that the requirement that only producers and handlers from specific counties be nominated to certain positions did not serve any useful purpose. They believed that those requirements, in some instances, contributed to the difficulty the Committee had in filling positions. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

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

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural firms are defined as those whose annual receipts are less than \$5,000,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was \$7.63 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately \$491,533. Using Committee data

regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average F.O.B. price during the 2001–2002 marketing year of \$9.83 per hundredweight (\$7.63 per hundredweight plus estimated packing and handling costs of \$2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under \$5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This final rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position will continue to have an alternate.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing production costs. With a total of only 13 producers and handlers, the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate member positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

This rule is expected to slightly decrease the costs of administering the order. With a smaller Committee, meeting costs should decline slightly and the ability of the Committee to obtain a quorum and conduct business should increase. The benefits of this rule are not expected to be disproportionately greater or less for small producers or handlers than for larger entities.

The Committee discussed alternatives to this change, including not reducing the Committee membership. The Committee also considered suspension of all regulations and activities under Area No. 3. However, the Committee believes that the regulations issued under the order are beneficial to the Colorado Area No. 3 potato industry and the benefits of the program outweigh the costs.

This final rule decreases the number of positions on the Committee. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Area No. 3 Colorado 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado 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 June 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 11, 2002 (67 FR 57537). Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 26, 2002, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place as soon as possible so that the Colorado Area No. 3 potato industry can nominate members and alternates to the new Committee as soon as possible. Further, the Colorado Area No. 3 potato industry is aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

#### 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. Section 948.150 is amended by revising paragraph (b) to read as follows:

### § 948.150 Reestablishment of committee membership.

\* \* \* \* \*

(b) *Area No. 3:* Three producers and two handlers selected as follows: Three (3) producers and two (2) handlers from any county in Area No. 3.

Dated: November 4, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-28474 Filed 11-7-02; 8:45 am]

**BILLING CODE 3410-02-U**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 93 and 98

[Docket No. 02-064-1]

### Canadian Border Ports; Blaine and Lynden, WA

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

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the regulations by removing Blaine and Lynden, WA, from the lists of Canadian border ports designated as ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States. We are removing the ports of Blaine and Lynden, WA, from the lists of designated Canadian border ports for the importation of animals, birds, poultry, or germ plasm into the United States because neither port has been used for those purposes in approximately 4 years. This rule will update the regulations so that they accurately reflect the ports used for the importation of certain animals and animal semen into the United States.

**DATES:** This rule will be effective on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002. If we receive written adverse comments or written notice of intent to submit adverse comments, we will

publish a document in the **Federal Register** withdrawing this rule before the effective date.

**ADDRESSES:** You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 02-064-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-064-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-064-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrpor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR parts 93 and 98 (referred to below as the regulations) restrict the importation of specified animals, birds, poultry, and their products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations designate land border ports along the U.S.-Canadian border that have inspection facilities for the importation of certain animals, birds, poultry, and animal germ plasm requiring inspection.

The regulations in part 93 specify, among other things, the Canadian border ports through which certain animals may be imported into the

United States. The designated Canadian border ports for ratites are listed in § 93.107(b)(2); for poultry, in § 93.203(b); for horses, in § 93.303(b)(1); for ruminants, in § 93.403(b); for swine, in § 93.503(b); and for miscellaneous animals, in § 98.703(a)(2). In part 98, § 98.6 provides that animal embryos regulated under subpart A of part 98 may be imported at the ports of entry listed in § 93.303 for horses, § 93.403 for ruminants, or § 93.503 for swine, and § 98.33(b) lists the Canadian border ports through which certain animal semen from Canada may be imported.

Blaine, Lynden, and Sumas, WA, which are in geographical proximity to one another, are among the ports of entry currently listed in the regulations. Of those three ports, Sumas, WA, is now used exclusively for the importation of certain animals, ratites, poultry, and animal germ plasm into the United States because Blaine and Lynden, WA, have not been used as ports of entry for those purposes in approximately 4 years. Therefore, in accordance with the procedures explained below under "Dates," we are amending § 93.107(b)(2) by removing Blaine, WA, from the list of Canadian border ports for ratites from Canada, and by removing Blaine and Lynden, WA, from the lists of Canadian border ports in §§ 93.203(b), 93.303(b)(1), 93.403(b), 93.503(b), 93.703(a)(2), and 98.33(b).

Removing Blaine and Lynden, WA, from the lists of Canadian border ports will update the regulations so that they accurately reflect the ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States.

##### Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written