

# 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 953

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

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on the termination of 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 proposing termination of the Order.

**DATES:** Comments must be received by September 24, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made

public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wray, Marketing Specialist, or Julie H. Santoboni, Rulemaking Branch Chief, 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: [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@ams.usda.gov) or [Julie.Santoboni@ams.usda.gov](mailto:Julie.Santoboni@ams.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@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal 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 rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposal 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 proposal to terminate the Order has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 proposal invites comments on the termination of the Order. The Order 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 a finding is made that the Order or any provision thereof does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order or any provision thereof whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Additionally, USDA is required to notify Congress not later than 60 days before the date an order would be terminated.

The Order has been in effect since 1948 and provides for the establishment of grade, size, quality, maturity, and inspection requirements for Irish potatoes grown in Southeastern states. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order, when in effect, is locally administered by the Southeastern Potato Committee (Committee) and is funded by assessments imposed on handlers.

Based on the Committee's unanimous recommendation in 2011, USDA suspended the Order for a three-year period ending March 1, 2014. The Committee recommended the suspension to eliminate the expense of administering the Order while determining the effects of not having the Order in place. When the Committee

made the recommendation to suspend the Order, it wanted the industry to have the option of reactivating the Order, if deemed appropriate. The final rule adopting an interim rule that implemented that action was published in the **Federal Register** on October 21, 2011 (76 FR 65360). Upon suspension of the Order in 2011, the Committee ceased to function.

In anticipation of the expiration of the suspension on March 1, 2014, in late 2013 USDA sent a letter to members of the industry, most of whom were former Committee members. The letter stated that suspension of the Order would soon be ending and that members of the industry would need to recommend an action to USDA. On December 18, 2013, representatives of the Virginia and North Carolina Irish potato industry met and requested that the suspension of all provisions of the Order be continued through March 1, 2017. The extension of the suspension would allow the industry further opportunity to study changes and evaluate new developments in the industry that could affect the need for the Order. The final rule adopting the interim rule that implemented that action was published in the **Federal Register** on August 19, 2015 (80 FR 50191).

Under the terms of the suspension, if the industry did not petition USDA to have the Order reactivated by the end of the suspension period, March 1, 2017, AMS would propose termination of the Order. To date, the industry has not filed a petition to have the Order reactivated.

This proposed termination of the Order is intended to solicit input and any additional information available from interested parties regarding whether the Order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter. Termination of the Order would become effective only after a 60-day notification to Congress, as required by law.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial 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 are unique in that they are brought about through group action of

essentially small entities acting on their own behalf.

There are approximately ten handlers of Irish potatoes grown in Southeastern states who are subject to regulation under the Order and approximately 20 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

Using prices reported by AMS' Market News Service, the average free on board (f.o.b.) price for Southeastern potatoes for the 2017 marketing season was about \$50 per hundredweight. Based on information from the National Agricultural Statistics Service (NASS), estimated total production in Virginia and North Carolina for the 2017 season was 4,666,000 hundredweight of potatoes. Multiplying the f.o.b. price by the estimated production results in an estimated handler value of \$233,300,000. Dividing this figure by the number of handlers (ten) yields an estimated average annual handler receipt of \$23,330,000. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than \$7,500,000.

Based on information from NASS, during the 2017 season, there were 19,600 total acres harvested in Virginia and North Carolina with a total value of production at \$59,038,000 for the season. The average producer prices for Virginia and North Carolina Irish potatoes in 2017 were \$16.30 and \$11.40 per hundredweight, respectively, for an average price of \$13.85. Dividing the 2017 total production value by the average of the two states' producer prices and using a normal distribution, the average gross annual revenue for each of the 20 producers would be about \$213,134.

Therefore, based on the above handler and producer revenue estimates, the majority of Southeastern potato handlers may be classified as large entities, while a majority of producers may be classified as small entities.

This proposed rule would terminate the Order for Irish potatoes grown in Southeastern states and the rules and regulations issued thereunder. The Order authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order was initially suspended in 2011, at the recommendation of the Committee, to eliminate the expense of administering

the Order while the industry determined the effects of not having regulations in place. In 2013, at the request of the industry, the suspension was extended through March 1, 2017, to provide the industry with more time to consider changes and evaluate new developments in the industry that could affect the future need for the Order. The final rule that extended the suspension through March 1, 2017, stated that AMS would proceed with a notice to propose termination absent an industry recommendation to reactivate the Order. The results of the suspension and the industry's failure to petition USDA to have the Order reactivated by the end of the suspension period support the proposal to terminate the Order.

Section 953.66 provides that USDA terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. Furthermore, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified not later than 60 days before the date an order would be terminated.

The proposed termination of the Order would reduce costs to both handlers and producers (while marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers). Furthermore, following a period of over seven years of regulatory suspension, it has been determined that termination of the Order would not adversely impact the Virginia and North Carolina Irish potato industry.

As an alternative to this proposed rule, AMS considered not terminating the Order. In that case, the industry could have recommended further refinements to the Order and the handling regulations to better meet current marketing needs. However, the industry did not petition to have the Order reactivated by the end of the suspension period. Therefore, this alternative was rejected, and AMS proposes that the Order be terminated.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements that would be terminated

were previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. Termination of the reporting requirements under the Order would reduce the reporting and recordkeeping burden on Irish potato handlers in Southeastern states and should further reduce industry expenses.

Because handlers would no longer be required to file forms with the Committee, this proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large entities.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, 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.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This proposal invites comments on the termination of Marketing Order No. 953, which regulates the handling of Irish potatoes grown in Southeastern states. All written comments received within the 60-day comment period will be considered before a final determination is made in this matter.

Based on the foregoing, and pursuant to section 608c(16)(A) of the Act and § 953.66 of the Order, USDA is considering termination of the Order. If USDA decides to terminate the Order, trustees would be appointed to conclude and liquidate the affairs of the Committee and would continue in that capacity until discharged by USDA. In addition, USDA would notify Congress 60 days in advance of termination pursuant to section 608c(16)(A) of the Act.

#### List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### PART 953—[REMOVED]

■ For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601-674, AMS proposes that 7 CFR part 953 be removed.

Dated: July 19, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018-15890 Filed 7-24-18; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 1208

[Document No. AMS-SC-18-0041]

#### Processed Raspberry Promotion, Research and Information Order; Continuation Referendum

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

**ACTION:** Notification of referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor continuance of the Agricultural Marketing Service's (AMS) regulations regarding a national processed raspberry research and promotion program.

**DATES:** The referendum will be conducted from September 10 through October 5, 2018. The Department will provide the option for ballots to be returned electronically. Further details will be provided in the ballot instructions. Mail ballots must be postmarked by October 5. Ballots delivered via express mail or email must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on October 5, 2018, to be counted.

**ADDRESSES:** Copies of the processed raspberry program may be obtained from: Referendum Agent, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406-S, Stop 0244, Washington, DC 20250-0244, telephone: (202) 720-9915; facsimile: (202) 205-2800; or contact Hakim Fobia at (202) 720-4835 or via electronic mail: [Hakim.Fobia@ams.usda.gov](mailto:Hakim.Fobia@ams.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Hakim Fobia, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room

1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915, (202) 720-4835 (direct line); facsimile: (202) 205-2800; or electronic mail: [Hakim.Fobia@ams.usda.gov](mailto:Hakim.Fobia@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425) (1996 Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Processed Raspberry Promotion, Research and Information Order (7 CFR part 1208) is favored by eligible producers of raspberries for processing and importers of processed raspberries. The program is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2017. Persons who produced 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States during the representative period and were subject to assessment during that period are eligible to vote. Persons who received an exemption from assessments pursuant to § 1208.53 for the entire representative period are ineligible to vote. The referendum will be conducted from September 10 through October 5, 2018. The Department will provide the option for ballots to be returned electronically. Further details will be provided in the ballot instructions.

Section 518 of the 1996 Act (7 U.S.C. 7417) authorizes continuance referenda. Under § 1208.71(b), the U.S. Department of Agriculture (USDA) must conduct a referendum every seven years to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor continuance of the program. A referendum also may be held by a request of 10 percent or more of all the eligible producers and importers, by request of the National Processed Raspberry Council, which administers the program, or by the Secretary of Agriculture. In March 2018, USDA received a petition requesting a referendum from more than the required 10 percent of eligible entities, thus USDA will hold a referendum. The program will continue if it is favored by a majority of eligible producers and importers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0093. It has