

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS-FV-11-0027; FV11-953-1 IR]

Irish Potatoes Grown in Southeastern States; Suspension of Marketing Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule suspends the marketing order for Irish potatoes grown in Southeastern states (order), and the rules and regulations implemented thereunder, through March 1, 2014. The order regulates the handling of Irish potatoes grown in Southeastern states and is administered locally by the Southeastern Potato Committee (Committee). The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee unanimously recommended that the order be suspended.

DATES: Effective June 13, 2011 through March 1, 2014; comments received by August 9, 2011 will be considered prior to adoption as a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule 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:

Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734-5243, Fax: (301) 734-5275, or E-mail: Dawana.Clark@ams.usda.gov or Kenneth.Johnson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern states, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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

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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 rule suspends the order and all provisions prescribed thereunder through March 1, 2014. The suspension includes, but is not limited to, grade, size, quality, assessment, reporting, and inspection requirements. The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee agreed that the order should be suspended. The Committee met on February 17, 2011, and unanimously recommended suspending the order for three years, through to March 1, 2014.

The order was promulgated in 1948, and regulates the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The order has been used to provide the industry with grade, size, quality, and inspection requirements. The order also authorizes reporting and recordkeeping functions required for the operation of the order. The program is funded by assessments imposed on handlers.

Over the past several years, the Southeastern potato industry has been in decline, with acreage and production trending downward. Production has fallen from an estimated 1,600,000 hundredweight for the 1996-97 season, to a current estimate of 600,000 hundredweight for the 2010-11 season. In 1996, there were approximately 150 growers and 60 handlers in the production area. Currently, there are approximately 20 growers and 10 handlers covered in the production area.

The Committee met February 17, 2011, to discuss the continued need for the order. During the discussion, several members mentioned that the order was promulgated at a time when the industry was having an issue with the quality of potatoes being produced. The purpose of the order was to establish standards to improve the quality of marketed product.

Since the implementation of the order, the quality of Southeastern potatoes has greatly improved. Advances in farm machinery and improvements in the grading process have helped to ensure that only quality product is being shipped to buyers. Concerns the industry previously had prior to implementation of the order are no longer an issue, and for the past several years, some industry members have started questioning the continued need for the order and its associated costs.

At the meeting, members were informed that to maintain the order, the Committee would have to incur some additional administrative expenses. To cover these costs, the Committee would need to increase the assessment rate. Committee members agreed that the industry would not support an assessment increase.

In addition to the assessment costs, comments were also made regarding the cost of inspection required under the order. It was stated that some industry members see the cost of mandatory inspection as an unnecessary burden. Other Committee members expressed concern over whether inspection would still be available if the order was suspended. This issue was resolved when members were assured that inspection would still be available for those who request it, regardless of the status of the order.

Based on discussion at the meeting, and on letters from growers who were not able to attend, changes in the industry and industry practices have diminished the need for the order. Further, there are concerns regarding the costs associated with maintaining the order, and no industry support for raising assessments to cover increasing administrative costs. Therefore, the Committee unanimously recommended suspending the order for three years, through to March 1, 2014.

The Committee recommended suspension of the order, not termination, to allow the industry an opportunity to review the effectiveness of operating without order requirements. If problems develop, Committee members wanted the industry to have the alternative of reactivating the order. During the suspension period, the industry will be able to monitor the Southeastern potato industry to determine if quality issues reoccur. A meeting will be held prior to March 1, 2014, to review the state of the industry and determine whether to continue the suspension, or to reactivate or terminate the order.

It is hereby determined that Federal Marketing Order No. 953, and the rules

and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This action suspends, through March 1, 2014, the provisions of Federal Marketing Order No. 953, and the rules and regulations issued thereunder, including but not limited to: Provisions of the order dealing with the establishment and the responsibilities of the Committee; provisions of the order dealing with expenses and the collection of assessments; all rules and regulations; and, all information collection and reporting requirements.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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, 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.

There are approximately 10 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 \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Using AMS Market News Service reported prices, the average f.o.b. price for Southeastern potatoes for the 2010 marketing season was around \$20 per hundredweight. The Committee estimated production for the 2010–11 season at approximately 600,000 hundredweight of potatoes. Based on this information, average annual receipts for handlers would be less than \$7,000,000. Information provided by the National Agricultural Statistics Service indicates that the average producer price for Irish potatoes grown in North Carolina and Virginia in 2010 was approximately \$11.63 per hundredweight. Considering estimated production, average producer revenue would be about \$350,000 for the 2010–11 season. Therefore, the majority of Southeastern potato handlers and

producers may be classified as small entities.

This rule suspends the order and the rules and regulations implemented thereunder through March 1, 2014. The Committee believes advances in farming technology and production quality have reduced the need for the order. When considering the costs associated with continuing the order, the Committee unanimously recommended that the order be suspended. The Committee made this recommendation on February 17, 2011. Authority for this action is provided in section 8c(16)(A) of the Act.

Suspension of the order and its corresponding regulations relieves handlers of quality, inspection, and assessment burdens during the suspension period. Also, handler reports will not be required. Additionally, growers may be relieved of some costs, such as assessment expenses, which are often passed onto them by handlers. Suspension of the order is therefore expected to reduce the regulatory burden on handlers and growers of all sizes.

The Committee considered alternatives to this rule, including maintaining the order or terminating it rather than suspending. Support was not shown for either of these options. Therefore these alternatives were rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Southeastern 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. 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.

Further, the Committee's meeting was widely publicized throughout the Southeastern potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 17, 2011 meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational 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: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the suspension of all provisions prescribed under the marketing order for Irish potatoes grown in Southeastern states. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the order suspended by this interim rule, as hereinafter set forth, does not tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends the order and the rules and regulations thereunder; (2) this change will help the Committee and industry avoid any additional costs associated with the order; (3) handlers are aware of this action, which was unanimously recommended at a public meeting, and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 953—[SUSPENDED]

■ For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601–674, 7 CFR part 953 is suspended effective June 13, 2011 through March 1, 2014.

Dated: June 6, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-14431 Filed 6-9-11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS-FV-09-0082; FV10-985-1A FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2010–2011 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that revised the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year. The interim rule increased the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds, and the allotment percentage from 43 percent to 50 percent. This change is expected to balance the supply of Native spearmint oil produced in the Far West with market needs and to promote market stability.

DATES: Effective June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, 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: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of

Nevada and Utah), 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."

USDA is issuing this rule in conformance with Executive Order 12866.

Salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2010–2011 marketing year were established in a final rule published in the **Federal Register** on May 18, 2010 (75 FR 27631). The rule set salable quantities of 566,962 pounds and 980,265 pounds, and allotment percentages of 28 percent and 43 percent, respectively, for Scotch and Native spearmint oil. The salable quantities and allotment percentages were established prior to the start of the marketing year and were based on the Committee's projection of the supply and demand for spearmint oil for the forthcoming year.

Early in the 2010–2011 marketing year, however, the spearmint industry reported to the Committee that the real demand for Native spearmint oil was greater than the level that was initially projected. The Committee subsequently recommended revising the salable quantity and allotment percentage for Native spearmint to allow the market to satisfy the increased demand.

In an interim rule published in the **Federal Register** on January 25, 2011, and effective June 1, 2010, through May 31, 2011, (76 FR 4204, Doc. No. AMS-FV-09-0082, FV10-985-1A IR), the salable quantity and allotment percentage for Class 3 (Native) spearmint oil for the 2010–2011 marketing year was increased 138,419 pounds and 7 percent, respectively. The aforementioned rule contains an extensive discussion of the volume regulation process.

This final rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. Therefore, the Native spearmint oil salable quantity of 1,118,639 pounds and the allotment percentage of 50 percent remains in effect through the end of the 2010–2011 marketing year.

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.