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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03-948-1 FR]

Irish Potatoes Grown in Colorado; Increase in Membership on the Area No. 2 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the number of members on the Area No. 2 Colorado Potato Administrative Committee (Committee) from 12 to 14. The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. Specifically, this rule increases from seven to nine the number of producers serving on the Committee by adding a second representative from the district comprised of Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from Area No. 2. This rule does not change the number of handler representatives on the Committee, which remains at five. The addition of two new producer members provides the Committee with greater industry representation and therefore increased effectiveness.

EFFECTIVE DATE: This final rule becomes effective July 8, 2003.

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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 increases from 12 to 14 the number of members on the Committee by adding a second producer representative for Chaffee County and

Saguache County, and by creating a position for a producer representative for certified seed potato producers from Area No. 2. Consistent with § 948.52, each new member position has an alternate with the same qualifications as the member. This rule does not change the number of handler representatives on the Committee, which remains at five. This action was unanimously recommended by the Committee at a meeting on March 20, 2003.

Section 948.4 of the order establishes three subdivisions, or areas, within the State of Colorado, and § 948.50 provides authority for the establishment of a committee as an administrative agency for each area. Section 948.53 provides authority for the reestablishment of these areas or subdivisions of these areas, as well as the redistribution of representation within area subdivisions or among marketing organizations within the respective areas. Finally, § 948.6 provides a definition for seed potatoes.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee as reestablished pursuant to § 948.53. For Area No. 2, the Committee consists of seven producer members and five handler members with two producers from Rio Grande County, one producer from Chaffee County or Saguache County, one producer from Conejos County, two producers from Alamosa County, and one producer from all remaining counties in Area No. 2. In addition, two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

As indicated above, the order provides that one producer member on the Committee represents producers in both Chaffee County and Saguache County. Based on a Committee recommendation, on March 31, 1995 (62 FR 16565), the USDA reestablished Area No. 2 to include Chaffee County, which previously had been part of the Area No. 3 production area. This reestablishment was initiated largely due to Chaffee County's proximity to Area No. 2 and a request from a Chaffee County producer/handler. That action also reestablished Committee membership by combining Chaffee County and Saguache County as one district for the purpose of nominating a producer member to the Committee.