

Done in Washington, DC, this 8th day of October 1996.

A. Strating,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-26349 Filed 10-11-96; 8:45 am]

BILLING CODE 3410-34-P

## Agricultural Marketing Service

### 7 CFR Part 950

[Docket No. FV95-950-1FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule terminates 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 order does not reflect current industry structure and operating procedures. Thus, there is no need to continue this order.

**EFFECTIVE DATE:** November 14, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Specialist, 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 final rule is governed by the provisions of § 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 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 § 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 to review the Secretary's ruling on the petition, provided an action 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 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 of Maine potatoes. Some of them are also handlers who would be subject to seasonal handling regulations under the order. 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.

No seasonal regulations have been implemented under the order since the 1967-68 season. There is no indication that regulations will again be needed. This action terminates the order and regulations issued thereunder. Further, the order does not reflect current industry structure and operating procedures. Therefore, AMS has determined that this action will not have a significant impact on a substantial number of 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.

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 Federal marketing order. 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, the marketing order does not reflect current industry structure and operating procedures.

A proposed rule was published in the November 16, 1995, issue of the Federal Register giving interested persons until December 18, 1995, to file written comments. No comments were received.

Pursuant to § 608c(16)(A) of the Act and § 950.84 of the order, the Secretary has determined that Marketing Order No. 950, covering Irish potatoes grown in Maine, and the rules and regulations issued thereunder, no longer tend to effectuate the declared policy of the Act, and are hereby terminated. Trustees need not 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 has been so notified.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

**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 removed.

Dated: October 4, 1996.

Michael V. Dunn,

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 96-26347 Filed 10-11-96; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 981**

[Docket No. FV96-981-3FIR]

**Almonds Grown in California; Change in Quality Control Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing the quality control requirements currently prescribed under the California almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule removes the exemption from inspection for the Peerless variety of almonds sold inshell. This change is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. In addition, this change will better reflect current industry practices because most almonds are already inspected, including the Peerless variety.

**DATES:** November 14, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, Fax # (202) 720-5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax # (209) 487-5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 981 (7 CFR Part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the "order." This 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 (Department) 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 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 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 his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

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.

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 115 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small

Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule finalizes a change in the order's administrative rules and regulations to remove an exemption from inspection for the Peerless variety of almonds sold inshell as bleaching stock. It also modifies the definition of adjusted kernel weight so that adjusted kernel weight for the Peerless variety is based on actual weight, consistent with other almonds, rather than calculated with a predetermined conversion factor known as a shelling ratio. The majority of handlers already have all almonds inspected, including the Peerless variety. Therefore, this rule will better reflect current industry practice. In addition, this rule is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. Since virtually all of the Peerless almonds sold inshell are currently inspected, there is little or no impact expected on small businesses.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on August 14, 1996, and published in the Federal Register (61 FR 42990, August 20, 1996), with an effective date of August 21, 1996. That rule amended §§ 981.401 and 981.442 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended September 19, 1996. No comments were received.

The almond marketing order authorizes quality control provisions which include a requirement that almonds must be inspected prior to processing to determine the percentage of inedible kernels in each lot, and to determine the adjusted kernel weight of almonds in each lot. Inedible kernels are reported to individual handlers and the Board, and handlers are required to dispose of a quantity of almonds equal to their inedible obligation as determined by the inspection. Inedible kernels are disposed of to non-human consumption outlets for such uses as animal feed or crushing into oil. Adjusted kernel weight is reported to handlers by the Federal-State Inspection Service (FSIS). Handlers are then required to report adjusted kernel weight to the Board, who uses the information to report industry statistics.