

Authority: 7 U.S.C. 601–674.

§ 930.158 [Amended]

■ 2. In § 930.158:

■ A. Suspend paragraph (b)(1) indefinitely.

■ B. In paragraph (c)(3), redesignate the first two sentences as paragraph (c)(3)(i) and the remaining sentences as paragraph (c)(3)(ii).

■ C. Newly designated paragraph (c)(3)(ii) is suspended indefinitely.

Dated: October 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–27276 Filed 10–20–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS–FV–11–0027; FV11–953–1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule continues in effect the interim rule that suspended 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 Date:* October 22, 2011 through March 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order and Agreement Division, 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 and Agreement Division, 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 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 continues in effect the interim rule that suspended 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 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 by the Committee 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 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 continues to suspend, 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.

Final 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 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 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 continues in effect the action that suspended 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.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 13), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final 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.

An interim rule concerning this action was published in the **Federal Register** on June 10, 2011 (76 FR 33967). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers. Finally, the rule was made available through the Internet by USDA and Office of the **Federal Register**. A 60-day comment period ending August 9, 2011, was provided to allow interested persons to respond to the rule.

One comment was received during the comment period in response to the rule. The commenter supported suspending the marketing order for Irish potatoes, but added that the better choice would be to terminate the marketing order in its entirety as it is anti-competitive and raises prices for consumers.

The points made by the commenter were thoroughly discussed prior to the Committee vote. During its discussions, the Committee determined they would like to provide the industry an

opportunity to operate without marketing order requirements in order to review the effectiveness of the order. During the suspension period, the industry will be able to monitor the quality of potatoes being shipped. Should problems develop, suspension of the order will provide the Committee the alternative of reactivating the order. Therefore, the Committee voted to suspend, rather than terminate, the marketing order.

Accordingly, no changes will be made to the rule, based on the comment 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/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.

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 the order suspended by this final rule, as hereinafter set forth, does not 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 handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the interim rule.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that suspended 7 CFR part 953 and that was published at 76 FR 33967 on June 10, 2011, is adopted as a final rule, without change.

Dated: October 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-27275 Filed 10-20-11; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE-2011-BT-CE-0050]

RIN 1904-AC58

Energy Conservation Program: Compliance Date Regarding the Test Procedures for Walk-In Coolers and Freezers and the Certification for Metal Halide Lamp Ballasts and Fixtures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This document clarifies the compliance date by which manufacturers must begin to use portions of a recently promulgated test procedure (*i.e.*, the April 15, 2011 final rule) when certifying walk-in coolers and walk-in freezers. This document also adopts regulatory text changes to reflect the U.S. Department of Energy's (DOE) intent that only manufacturers of components of walk-in coolers and walk-in freezers are required to submit certification reports. Additionally, the final rule clarifies the types of test data needed to support the certification of compliance pursuant to DOE's existing test procedures for walk-in coolers and walk-in freezers and the recently promulgated test procedure for this equipment. Finally, DOE is adopting an extension to the compliance date for which manufacturers, including importers, need to certify compliance to the Department of metal halide lamp ballasts and fixtures.

DATES: This final rule is effective November 21, 2011.

ADDRESSES: The docket (*i.e.*, docket number EERE-2011-BT-CE-0050 and/or RIN number 1904-AC58) is available for review at <http://www.regulations.gov>, including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mail: Ashley.Armstrong@ee.doe.gov.

In the Office of the General Counsel, contact Ms. Laura Barhydt, U.S.

Department of Energy, Office of the General Counsel, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-5772. E-mail: Laura.Barhydt@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Test Procedures for Walk-In Coolers and Freezers

The Energy Policy and Conservation Act (EPCA), as amended by section 312(c) of the Energy Independence and Security Act (EISA 2007), requires the Department of Energy (DOE) to prescribe a test procedure to measure the energy use of walk-in coolers and freezers (collectively, walk-ins or WICFs). See 42 U.S.C. 6314(a). DOE recently satisfied this requirement by issuing a final rule establishing a test procedure for manufacturers to use when measuring the energy use or energy efficiency of certain walk-in components: Panels, non-display doors, display doors, and refrigeration systems. See 76 FR 21580 (April 15, 2011) (final rule prescribing walk-in test procedures) and 76 FR 33631 (June 9, 2011) (notice containing corrected formulas).

Since the publication of that rulemaking, DOE recognized a need to clarify the date by which manufacturers must begin using the test procedure. The **SUMMARY** and **DATES** sections of the preamble text to the final rule stated that the test procedures will be mandatory for making representations of energy usage or energy efficiency starting October 12, 2011; that is, 180 days after publication of the test procedure final rule. DOE published a notice of proposed rulemaking on August 9, 2011, which proposed to clarify that the compliance date for using the new test procedure for certifications of compliance will be the same as the compliance date for the performance-based energy conservation standards currently under development. 76 FR 48745. At this time, DOE plans to issue the performance-based standards final rule by 2012 and manufacturers must comply with those standards within three years of publication of the final rule. Thus, pending the completion of the performance-based energy conservation standards rulemaking, manufacturers will be required to certify compliance to those standards using the new test procedure in 2015, unless DOE adopts an alternative compliance date.¹ *Id.*

In addition, DOE clarified the entity responsible for certifying compliance to

¹ DOE may also provide for a delayed effective date if the Secretary determines this three-year period is inadequate. (42 U.S.C. 6313(f)(4)(B))