

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 65 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order and approximately 1,600 producers in the production area. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of potato handlers regulated under the order may be classified as small entities. A majority of producers may also be classified as small entities.

This rule finalizes an interim final rule which amended the handling regulation in § 945.341 by specifying that: (1) All cartons (except when used as master containers) be conspicuously marked as to size of the potatoes in the carton; (2) for all varieties, when 50-pound containers are marked with a count, size, or similar designation, the potatoes contained therein must meet the count, average count, and weight ranges established within the handling regulation; and (3) all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when cartons are used as master containers) shall be U.S. No. 1 grade or better. The interim final rule also included several conforming changes to recognize that the order regulates shipments of potatoes within, as well as outside, the production area.

These changes were recommended by the Committee at its August 9, 1995, meeting. The Committee's recommendations are authorized pursuant to §§ 945.51 and 945.52 of the order. This rule will continue the improvement in the marketing of Idaho-Eastern Oregon potatoes and improve returns to producers.

A recent order amendment (60 FR 29724; June 5, 1995), added authority to § 945.52 to require accurate and uniform marking and labeling of containers in

which Idaho-Eastern Oregon potatoes are shipped. With this authority in the order, the Committee recommended requiring that all cartons shall be conspicuously marked as to potato size; i.e., marked so that the potato size is noticeable on the carton. The Committee recommended this requirement to reduce confusion in the marketplace as to the size of the potatoes in cartons. While most cartons already are marked as to size, the Committee reported that there have been many instances when product size in unmarked cartons was misrepresented through the marketing chain; (e.g., 100-count size potatoes in 50-pound cartons being represented as 90-count size). This type of misrepresentation created market confusion, damaged buyer acceptance, and depressed prices. The marking requirement should continue in effect to prevent such problems.

In addition, the interim final rule changed the pack requirements in § 945.341(c). For several decades, the handling regulation specified that when long varieties of potatoes in 50-pound containers are marked with a count, size or similar designation, the potatoes contained therein must meet the count, average count and weight ranges established within the handling regulation. This benefitted buyers and sellers by reducing market confusion and misrepresentation related to the marking of count and weight ranges on 50-pound containers. In recent years, there has been an increase in the number of plantings of round varieties grown in the Idaho-Eastern Oregon production area. Therefore, the Committee recommended that this pack requirement, which the industry has found to be beneficial for long varieties, be extended to all varieties. The extension of the pack requirement to all varieties should be continued to further the marketing of potatoes from the production area.

The second aspect of the change in pack requirements recommended by the Committee was the establishment of a requirement that all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when cartons are used as master containers) shall be U.S. No. 1 grade or better. Previously, the handling regulation required this only of potatoes packed in 50-pound cartons (except when used as master containers). Some buyers had indicated that a smaller carton size is more desirable than the 50-pound carton. Those buyers indicated that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, those buyers still want to be provided with the same quality of

potatoes; i.e., U.S. No. 1 grade or better. Previously, the grade of potatoes packed in other than 50-pound cartons had to be U.S. No. 2 grade or better. This finalization of change in the handling regulation reflects the industry's intention to provide a high quality product, regardless of carton size used. The change should remain in effect so that goal can be met.

Another order amendment revised § 945.9 to broaden the scope of the order to authorize regulating shipments of potatoes within, as well as outside, the production area. Conforming changes were made in § 945.341(d)(3) regarding inspection and certification procedures so these procedures cover all shipments of potatoes, not only shipments made outside the production area.

The changes to the handling regulation were published in the Federal Register as an interim final rule on November 24, 1995 (60 FR 57904). That rule provided that interested persons could file comments through December 26, 1995. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation and other available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 60 FR 57904 on November 24, 1995, is adopted as a final rule without change.

Dated: January 24, 1996.

Sharon Bomer Lauritsen

Deputy Director, Fruit and Vegetable Division.

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Commodity Credit Corporation**7 CFR Part 1485****Agreements for the Development of Foreign Markets for Agricultural Commodities**

AGENCY: Commodity Credit Corporation (CCC).

ACTION: Interim final rule.

SUMMARY: This interim final rule amends regulations implementing the Market Promotion Program (MPP) authorized by Section 203 of the Agricultural Trade Act of 1978. This rule revises procedural and documentation requirements pertaining to program participants' contracts with third parties. The rule also corrects an erroneous cross-reference.

DATES: This interim rule is effective on February 1, 1996. Comments must be received in writing by February 15, 1996 to be assured of consideration.

ADDRESSES: Sharon L. McClure, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250-1042.

FOR FURTHER INFORMATION CONTACT: Sharon L. McClure, (202) 720-5521.

SUPPLEMENTARY INFORMATION: This interim final rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to the interim final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede

their full implementation. The rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

On February 1, 1995, Commodity Credit Corporation ("CCC") published final rules governing the MPP. These new rules were applicable beginning with a participant's 1995 marketing year. Following publication, CCC participated with interested parties in five information sessions designed to familiarize participants with the new regulations and offer participants an additional opportunity to identify any problem areas. At these sessions, participants expressed concern that new regulatory requirements applicable to a participant's contracts with third parties imposed an undue administrative burden and, because of the relatively late announcement of 1995 MPP allocations, could significantly delay effective implementation of some participants' 1995 programs. Specifically, participants expressed concern regarding the requirements for a price or cost analysis for each contract, 7 CFR 1485.23(c)(2)(v), and for certain procedural requirements in the solicitation of bids, 7 CFR 1485.23(c)(2)(vi).

CCC agrees that these requirements may unnecessarily increase costs to participants and may delay implementation of many activities and thereby be detrimental to the operation of an efficient market development program. Consequently, this rule will eliminate the current requirements in 7 CFR 1485.23(c)(2)(vi) regarding specific procurement procedures. In addition, the regulation regarding price or cost analysis is revised to indicate that CCC is not requiring a specific type of analysis or formal procedure for such analysis. Rather, the regulation makes it clear that various types of informal analysis should suffice, e.g., a simple comparison of price quotes with present market conditions. In this way, CCC

requires the participant to act in a reasonable manner when entering into obligations to be reimbursed with project funds, without imposing any undue administrative burden on the participant.

This rule also revises an erroneous cross-reference presently in § 1485.16(c)(24).

Information Collection Requirements

The amendment set forth in this interim final rule does not impose any new reporting or record keeping requirements. The information collection requirements for participating in the MPP were approved for use by the Office of Management and Budget under OMB control number 00551-0027.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

PART 1485—AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

1. The authority citation for Part 1485 continues to read:

Authority: 7 U.S.C. 5623, 5662-5664 and sec. 1302, Pub. L. 103-66, 107 Stat. 330.

Subpart B—Market Promotion Program

2. Section 1485.16(c)(24) is revised to read as follows:

§ 1485.16 Reimbursement rules.

* * * * *

(c) * * *

(24) Generic commodity promotions (see § 1486.16(f));

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3. Section 1485.23 is amended by revising paragraph (c)(2)(v) to read as follows and by deleting paragraph (c)(2)(vi):

§ 1485.23 Miscellaneous provisions.

* * * * *

(c) * * *

(2) * * *

(v) Perform some form of price or cost analysis such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices.

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Signed at Washington, DC, this 25th day of January 1996.

August Schumacher, Jr.,
Administrator, Foreign Agricultural Service
and Vice President, Commodity Credit Corporation.

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