FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948 [7 CFR part 948], as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by 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 is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, 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 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 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 120 handlers of Colorado potatoes who are subject to regulation under the marketing order and approximately 400 producers of Colorado potatoes in the regulatory areas. Small agricultural service firms 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 whose annual receipts are less than \$500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

The production area under Marketing Order No. 948 is divided into three regulatory areas. Area No. 1 (Area 1), also called the Western Slope, consists of 17 counties in the western portion of the State of Colorado. Marketing order regulations are not currently in effect in Area 1 because of limited potato production. Area No. 2 (Area 2), known as the San Luis Valley, consists of 9 counties and is located in the southern part of the State. Area No. 3 (Area 3), the Greeley area, consists of 37 counties covering most of the eastern part of the State. Producers in Areas 2 and 3 produce significant quantities of potatoes, and, thus, have active committees and regulations.

Section 948.150, reestablished area committees as administrative agencies for both of the active areas.

Section 948.53 provides authority for areas, subdivisions of areas, or distribution of representation among the subdivision of areas, to be reestablished by the Secretary upon area committee recommendations.

This proposed rule would (1) reestablish area boundaries by removing Chaffee County from Area 3 and adding it to Area 2, and (2) combine Chaffee County with Saguache County for the purpose of providing Chaffee County with producer representation on the Area 2 Committee.

The Area 2 and Area 3 Committees met on October 13, 1994, and October 18, 1994, respectively, and each unanimously recommended this reestablishment of boundaries between Area 2 and Area 3. The Colorado Potato Committee, which consists of representatives from both of the area Committees, ratified the recommendation on November 2, 1994.

The Area 2 Committee also unanimously recommended that Chaffee County be combined with Saguache County for the purpose of providing Chaffee County with producer representation on the Area 2 Committee, rather than the Area 3 Committee.

The Committees made their recommendations to reestablish boundaries after reviewing a request from a producer/handler located near Salida, Colorado, a relatively new potato production area in Chaffee County. Salida is approximately 250 miles from the administrative headquarters of the Area 3 Committee in Greeley, Colorado, but only 65 miles from the administrative headquarters of the Area 2 Committee in Monte Vista, Colorado.

There are approximately 115 acres of potatoes grown in Chaffee County. Arable land in Chaffee County is generally limited to the area around Salida. Industry estimates place the potential for additional potato production at about 500 acres.

The Chaffee County production area is geographically separated from the rest of Area 3 potato production and is much closer to that of Area 2. Potatoes produced in Chaffee County are marketed similarly to those in Area 2. Potatoes grown in Chaffee County are, for example, often marketed through handlers from Area 2, but seldom marketed by Area 3 handlers located outside of Chaffee County.

The proposed rule would increase the opportunity for the producers or handlers to serve on an area committee by greatly decreasing travel time and cost to attend area Committee meetings. This rule would also enable any Chaffee County producers to be in the same committee area with handlers who most often handle their production.

The proposed rule would also modify the distribution of producer membership of the Area 2 Committee to accommodate the proposed addition of Chaffee County to Area 2. Saguache County, immediately to the south of Chaffee County, currently has one producer representative on the Area 2 Committee. The proposed rule would combine Chaffee and Saguache Counties as one district for the purpose of nominating a producer member to the Area 2 Committee. The change would continue to provide balanced representation on the Area 2 Committee, consistent with acreage and production. Chaffee County handlers also would be represented as the Area 2 Committee has five handler member positions, two representing bulk handlers.

The close proximity of the Area 2 administrative office to Chaffee County would improve the efficiency of