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 this rule, as hereinafter set forth, will 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 already shipping potatoes from the 2011–2012 crop and handlers want to take advantage of the revisions as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.387, revise paragraph (a) to read as follows:

§ 948.387 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements—All varieties.* (1) U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight.

(2) U.S. No. 1 grade, Size B (1½ inches minimum to 2¼ inches maximum diameter).

(3) U.S. No. 1 grade, ¾ inch minimum to 1⅞ inches maximum diameter.

* * * * *

Dated: December 14, 2011.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–32927 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS–DA–11–0007; DA–11–02]

National Dairy Promotion and Research Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Dairy Promotion and Research Order (Dairy Order). The amendment modifies the number of National Dairy Promotion and Research Board (Dairy Board) members in eight regions, merges Region 8 and Region 10, merges Region 12 and Region 13, and apportions Idaho as a separate region. The total number of domestic Dairy Board members would remain the same at 36 and the total number of regions would be reduced from 13 to 12. This amendment was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, Director, Promotion, Research and Planning Division, AMS, USDA, 1400 Independence Ave. SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233. Phone: (202) 720–6909. Email: *Whitney.Rick@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983 [7 U.S.C. 4501–4514], as amended.

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have a retroactive effect. In accordance with section 4512(a) of the Dairy Act, this rule will not preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary of Agriculture (Secretary) a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Act authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

The Small Business Administration [13 CFR 121.201] defines small dairy producers as those having annual receipts of not more than $750,000 annually. Most of the producers subject to the provisions of the Dairy Order are considered small entities.

The final rule amends the Dairy Order by modifying the number of National Dairy Promotion and Research Board (Dairy Board) members in eight regions, merges Region 8 and Region 10, merges Region 12 and Region 13, and apportions Idaho as a separate region. The total number of domestic Dairy Board members remains the same at 36

and the total number of regions is reduced from 13 to 12. This modification was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

The Dairy Order is administered by a 38-member Dairy Board, 36 members representing 13 geographic regions within the United States and 2 representing importers. The Dairy Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from the regions in order to better reflect the geographic distribution of milk production volume in the United States. The Dairy Board is required to conduct the review at least every 5 years and not more than every 3 years. The Dairy Board was last modified in 2008 based on 2007 milk production.

Based on a review of the 2010 geographic distribution of milk production, the Dairy Board concluded that the number of Dairy Board members for eight regions should be changed. Additionally, the Dairy Board proposed to merge Region 8 and Region 10, merge Region 12 and Region 13, and apportion Idaho as a separate region.

This amendment will not have a significant economic impact on persons subject to the Dairy Order. The changes merely allow representation of the Dairy Board to better reflect geographic milk production in the United States.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection requirements and record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581–0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Statement of Consideration

The Dairy Order currently is administered by a 38-member Dairy Board, 36 members representing 13 geographic regions within the United States and 2 representing importers. The Dairy Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every 5 years and not more than every 3 years. The Dairy Board was last modified in 2008 based on 2007 milk production.

Since the Dairy Board's last reapportionment, the Dairy Order was amended by a final rule (importer final rule) [76 FR 14777, March 18, 2011] to implement an assessment on imported dairy products to fund promotion and research and to add importer representation, initially two members, to the Dairy Board. Additionally, the final rule amended the term ''United States'' in the Dairy Order to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Assessments on producers in these areas were effective April 1, 2011. These amendments to the Dairy Order were implemented pursuant to the Farm Security and Rural Investment Act of 2008 (2008 Farm Bill) (Pub. L. 110–246).

In order to complement the current geographical makeup of the existing regions of the Dairy Board, the importer final rule added these four new jurisdictions to the region of closest proximity. Alaska was added to Region 1, currently comprised of Oregon and Washington; Hawaii was added to Region 2, currently California; and the District of Columbia and the Commonwealth of Puerto Rico were added to Region 10, currently comprised of Florida, Georgia, North Carolina, South Carolina and Virginia. These regional modifications were effective March 18, 2011, and were reflected in the importer final rule.

The importer final rule also modified the language in section 1150.131 of the Dairy Order to remove the specific formula for calculating the factor of pounds of milk per member, which divided total pounds of milk produced by 36, as the Dairy Board is now comprised of 38 members (36 domestic producers and 2 importer representatives). While the Dairy Order no longer specifies the procedure for calculating the factor of pounds of milk per member, for the purposes of the current reapportionment analysis, the procedure remains the same.

The importer final rule also added new language that requires the Secretary to review the average volume of imports of dairy products into the United States and, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. This review will take place at least once every 3 years, after the initial appointment of importer representatives on the Dairy Board.

In 2010, total milk production was 193,468 million pounds and each of the Dairy Board members would represent 5,374 million pounds of milk. For 2007, total milk production was 185,558 million pounds of milk and each of the Dairy Board members represented 5,154 million pounds of milk.

Based on the 2010 milk production data, the Dairy Board proposed that member representation in Region 1 (Alaska, Oregon, and Washington) be increased by one member. Milk production in Region 1 increased to 8,307 million pounds in 2010, up from 7,764 million pounds in 2007, indicating two Dairy Board members (8,307 divided by 5,374 = 1.545) compared to one Dairy Board member based on 2007 milk production data.

Milk production in Region 2 (California and Hawaii) decreased from 40,683 million pounds in 2007 to 40,410 million pounds in 2010. The Dairy Board proposed that seven Dairy Board members (40,410 divided by 5,374 = 7.519) represent Region 2, compared to eight Dairy Board members based on 2007 milk production data.

Milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased from 21,212 million pounds in 2007 to 22,592 million pounds in 2010. Specifically, in Idaho, milk production increased from 10,905 million pounds in 2007 to 12,779 pounds in 2010 and represents more than half of the production of Region 3. Due to the increase in Idaho production, the Dairy Board proposed apportioning Idaho as its own region with two Dairy Board members.

Milk production in Region 8 (Alabama, Kentucky, Louisiana, Mississippi, and Tennessee) decreased from 3,119 million pounds in 2007 to 2,624 million pounds in 2010. The Dairy Board concluded that Region 8 no longer supports one Dairy Board member (2,624 divided by 5,374 = 0.488) and proposed to merge Region 8 into Region 10 (District of Columbia, Florida, Georgia, North Carolina, Puerto Rico, South Carolina, and Virginia) to create a new region with two Dairy Board members.

Similarly, milk production in Region 13 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) decreased from 4,046 million pounds in 2007 to 4,036 million pounds in 2010. The Dairy Board concluded

that Region 13 no longer supports one Dairy Board member (4,036 divided by 5,374 = 0.751) and proposed to merge Region 13 into Region 12 (New York), creating a new region with three Dairy Board members.

Accordingly, Table 1 summarizes by region, the volume of milk production distribution for 2010, the percentage of total milk production and the adopted regions and number of Dairy Board seats for each region.

TABLE 1—REGIONS AND NUMBER OF BOARD SEATS

Regions and states	Milk production (mil. lbs.)	Percentage of total milk production	Adopted number of board seats
1. Alaska, Oregon, Washington	8,307.1	4.3	2
2. California, Hawaii	40,410.3	21.0	7
3. Arizona, Colorado, Montana, Nevada, Utah, Wyoming	9,813.4	5.0	2
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas	20,321	10.4	4
5. Minnesota, North Dakota, South Dakota	11,370	5.8	2
6. Wisconsin	26,035	13.5	5
7. Illinois, Iowa, Missouri, Nebraska	8,867	4.6	2
8. Idaho	12,779	6.6	2
9. Indiana, Michigan, Ohio, West Virginia	17,188	8.9	3
10. Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia	9,663	5.0	2
11. Delaware, Maryland, New Jersey, Pennsylvania	11,965	6.2	2
12. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	16,749.5	8.7	3
Total	193,468.3	100	36

* Milk Production, Disposition, and Income, 2010 Summary, NASS, 2011.
** Puerto Rico—Various Agricultural Statistics, 2010 Summary, NASS, 2011.

On August 30, 2011, the Department of Agriculture (Department) published in the **Federal Register** (76 FR 53844) a proposed rule to amend the Dairy Board as indicated above. Interested parties were provided an opportunity to file comments on the proposed rule on or before September 14, 2011. Two comments were received by the Department. One commenter expressed support for the proposed rule and noted that the proposal's criteria and methodology used to allocate board seats and resulting calculations for regional representation was consistent with the Dairy Order as recommended to the Secretary by the Dairy Board.

A second commenter suggested that milk production should not be the only criteria used in establishing regions. As noted in the proposed rule, the Dairy Act requires that Dairy Board members be nominated to represent specific geographical regions, and that each member represent an equal proportion of total U.S. milk production. No other criteria exist to be used in establishing regions, and therefore no other changes are made to the final rule based on this comment. Additionally, the commenter stated that when making appointments, the Secretary should consider geographical representation and select individuals based on their qualifications and experience in working within the dairy industry, dairy promotion, and commitment to serving the dairy farmers who contribute to the promotion and research program. AMS agrees with this assertion, as it is the Department's policy that board membership accurately reflects the diversity of the individuals served by the program.

This final rule adopts the proposed rule without change, and therefore member representation in Region 1 is increased from one member to two members; Region 2 representation is decreased from eight members to seven members; Region 3 is decreased from four members to two members; Region 8 and Region 10 are combined to create a new Region 10 with two members, and is comprised of Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia; Region 8 is now comprised of the State of Idaho with two members; Regions 12 and 13 are combined to create a new Region 12 and is comprised of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont with three members.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule should be in effect as soon as possible to appoint Board members for the 2011–2014 term.

List of Subjects in 7 CFR Part 1150

Dairy products, Milk, Promotion, Research.

For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. Section 1150.131 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), (b)(8), (b)(10), (b)(12), and removing paragraph (b)(13) to read as follows:

§ 1150.131 Establishment and membership.

* * * * *

(b) Thirty-six members of the Board shall be United States producers. For purposes of nominating producers to the Board, the United States shall be divided into twelve geographic regions and the number of Board members from each region shall be as follows:

(1) Two members from region number one comprised of the following States: Alaska, Oregon and Washington.

(2) Seven members from region number two comprised of the following States: California and Hawaii.

(3) Two members from region number three comprised of the following States: Arizona, Colorado, Montana, Nevada, Utah and Wyoming.

* * * * *

(8) Two members from region number eight comprised of the following State: Idaho.

* * * * *

(10) Two members from region number ten comprised of the following

States: Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.

* * * * *

(12) Three members from region number twelve comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

* * * * *

Dated: December 14, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–32931 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA80

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service; Rural Utilities Service; Rural Housing Service; and Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Business-Cooperative Service is amending its regulations for the Rural Business Investment Program (RBIP) to conform it to the 2008 Farm Bill, to add provisions for Rural Business Investment Companies (RBIC) that wish to participate in a non-leveraged capacity, and to make several clarifications to the existing rule for leveraged RBICs. In addition, this rule amends the categorical exclusions from the National Environmental Policy Act by adding categorical exclusions for the RBIP for both leveraged and non-leveraged RBICs.

DATES: *Effective date.* This rule will become effective January 23, 2012.

Comment date. Written comments on the rule must be received by the Agency or carry a postmark or equivalent no later than January 23, 2012. The comment period for the information collection under the Paperwork Reduction Act of 1995 ends January 23, 2012.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: *Regulation.* Michael Foore, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, 20250; telephone number: (202) 690–4730; email: *michael.foore@wdc.usda.gov.*

Applications and other program materials. Mark Brodziski, Specialty Programs Division, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; telephone number: (202) 720–1400; email: *mark.brodziski@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant'' regulatory action under Executive Order 12866. Therefore, a regulatory assessment is not required.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.860, Rural Business Investment Program.

Executive Order 12372

Executive Order 12372 requires intergovernmental consultation with State and local officials. For the Rural Business Investment Program, the Agency will conduct intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V, which contains the Agency's regulations for implementing Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this interim rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Executive Order 13175

Between October 2010 and January 2011 the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions established a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country as needed. The policies contained in this rule do not have implications that preempt Tribal law.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant