

premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay.

§ 550.152 [Reserved]

3. Section 550.152 is removed and reserved.

4. In § 550.154, the introductory language of paragraph (a) is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay:

[FR Doc. 90-23882 Filed 10-9-90; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Parts 841, 870, 871, 872, 873, and 890

RIN: 3206-AD53

Survivor Benefits, Health Benefits, and Life Insurance for Certain Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is making final its interim Federal Employees Retirement System (FERS), Federal Employees' Group Life Insurance (FEGLI) Program, and Federal Employees Health Benefits (FEHB) Program regulations regarding individuals eligible for an immediate annuity under the "Minimum Retirement Age (MRA) plus 10" provision of the FERS law. The regulations clarify the retirement and insurance status of individuals who qualify for certain retirement benefits. These regulations (1) Provide for reinstatement of life insurance and health benefits coverage for individuals who qualify for an immediate annuity when they leave Federal service but postpone the commencing date of the annuity, and (2) enable survivors of these individuals to qualify for survivor benefits and health

insurance coverage as surviving family members.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: Public Law 99-335, enacted June 6, 1986, established the Federal Employees Retirement System (FERS). Under a provision of FERS, known as the "MRA plus 10" provision (5 U.S.C. 8412(g)), employees who separate from service after attaining the minimum retirement age specified in 5 U.S.C. 8412(h) (currently age 55) and completing 10 years of creditable service (including at least 5 years of civilian service) are eligible for an immediate annuity. The annuity is reduced by $\frac{1}{12}$ of 1 percent for each month the retiree is under age 62 when the annuity commences (5 U.S.C. 8415(f) and 5 CFR 842.404). To lessen this age reduction, separated employees may postpone the annuity commencing date to the first day of any month before they become age 62. The separated employees may apply for retirement immediately and then postpone the commencing date of the annuity or they may wait until they are ready for the annuity to begin to make application. On January 11, 1990, OPM published interim regulations in the *Federal Register* (55 FR 993) to clarify the circumstances under which health and life insurance may continue for employees who postpone their annuity commencing date under FERS and the status of their survivors if they die before they apply for the annuity. On February 16, 1990, OPM published a correction to the January 11 interim regulation in which § 890.301(bb) was redesignated as 890.301(cc).

OPM received comments from one Federal agency. The comments primarily concerned revisions in language rather than any substantive changes in the provisions themselves. We did not adopt most of these editorial changes because they did not improve clarity of the interim regulations.

The commenter expressed a concern that people might try to apply § 841.204(b), which provides that certain deceased former employees are considered as deceased annuitants, to entitlement to life insurance benefits. Therefore, we have revised § 841.204(b) to clarify that it applies only for the purpose of determining eligibility for a survivor annuity.

The commenter also suggested that a provision be added to part 890 (health benefits) to provide that a former employee who had exercised his or her conversion right or his or her right under

the temporary continuation of coverage (TCC) provisions (5 CFR 890, subpart K) and whose regular health benefits coverage is restored when the MRA-plus-10 annuity begins would receive a refund of premiums for the conversion contract or TCC coverage for any time after the MRA-plus-10 annuity commenced. The stated reason for this is to parallel the life insurance provision in the last sentence of § 870.601(a)(4).

It is not necessary or desirable to make the health benefits provisions parallel to the life insurance provisions in this respect because the circumstances are different. Under the life insurance regulations, a conversion contract terminates when FEGLI coverage resumes under these regulations. Therefore, a refund of premiums covering a period after the termination is reasonable. However, the health benefits regulations do not require that a conversion contract terminate when FEHB coverage is restored. The termination of the contract is controlled by the former employee and any refunds are subject to the terms of the conversion contract.

The TCC regulations provide that TCC coverage stops whenever an enrollee becomes covered under a regular health benefits enrollment. Any premiums collected after that date would be erroneous, and therefore refundable.

OPM has revised the last sentence of § 890.301(cc) to correct a typographical error.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects

5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Life insurance, Health insurance.

U.S. Office of Personnel Management.
Constance Barry Newman,
Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR Parts 841, 870, 871, 872, 873, and 890 published on January 11, 1990, (55 FR 993) as corrected on February 16, 1990, (55 FR 5563), as final rules, with the following changes:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744; Subparts J and K also issued under titles I and II, respectively, of Pub. L. 100-654.

2. In § 841.204, paragraph (b) is revised to read as follows:

§ 841.204 Deemed application to protect survivors.

(b) For the purpose of determining entitlement to a survivor annuity, a former employee who is deemed to have filed an application under paragraph (a) of this section is considered to have died as a retiree.

3. In § 890.301, the last sentence of paragraph (cc) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

(cc) Reenrollment upon application for postponed MRA-plus-10 annuity.

If such former employee dies before the end of the 60-day election period in the preceding sentence, a survivor who is entitled to a survivor annuity may register to enroll in a health benefits plan under this part within 60 days after OPM mails the survivor a notice of eligibility and the appropriate registration form.

[FR Doc. 90-23881 Filed 10-9-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) amends 7 CFR 1.123 by adding another system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). Notice of the amendment, inviting public comments, was published as a proposed rule in the *Federal Register* on August 1, 1990, at 55 FR 31191. No public comments were received. The final rule, as published, is identical to the proposed rule.

DATES: The amendment is effective November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jinhee K. Wilde, Office of the General Counsel, USDA, (202) 447-8045.

SUPPLEMENTARY INFORMATION: This amendment is made necessary due to the fact that the Forest Service system of records entitled "Law Enforcement Investigation Records, USDA/FS-33" was inadvertently omitted when 7 CFR 1.123 was amended in 1988. This system contains investigations conducted pursuant to 16 U.S.C. 559, which authorizes Forest Service employees "to make arrests for the violation of the laws and regulations relating to the national forests * * *." The system, therefore, contains "investigatory material compiled for law enforcement purposes * * *" and may be exempted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2).

This rule has been reviewed under the Secretary's Memorandum 1512-1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of \$100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy Act.

For the reasons set out in the preamble, 7 CFR, subtitle A, part 1, subpart G, § 1.123 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Part 1, subpart G—Privacy Act Regulations, § 1.123 is amended by adding a new entry for the Forest Service alphabetically to read as follows:

§ 1.123 Specific exemptions.

Forest Service

Law Enforcement Investigation Records, USDA/FS-33.

Done this 2nd day of October 1990, at Washington, DC.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 90-23843 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-14-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-90-114]

Irish Potatoes Grown in Colorado; Final Rule to Revise Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires reinspection of regraded, resorted and repacked lots of Colorado potatoes except in cases where such a reinspection requirement will result in unreasonably high inspection costs to repackers. The intent of this action is to ensure that all Colorado potatoes going to fresh market outlets meet the minimum quality and size requirements established under the marketing order.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both 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.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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 rule 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 45 handlers and 395 producers of Colorado potatoes under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers may be classified as small entities.

This rule requires inspection of regraded, resorted or repacked lots of Colorado potatoes except in cases where such an inspection requirement will result in unreasonably high inspection costs to repackers. This action is authorized by § 948.40 of the marketing order, and was unanimously recommended by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), and the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committees), the agencies responsible for local administration of the Federal marketing order for potatoes grown in Colorado.

The marketing order covers the entire State of Colorado, but divides the State into three geographic areas for administrative and regulatory purposes. In Area 1, which is known as the Western Slope, potatoes are no longer grown in significant volume, and no handling requirements are currently in effect for potatoes grown in that area. Potatoes grown in the other two areas are currently required to meet minimum quality and size requirements prior to being shipped to fresh market outlets. For example, potatoes grown in Area 3,

which consists of 37 counties in northeastern Colorado, are required to grade at least U.S. No. 2 and be at least 1½ inches in diameter or 4 ounces in weight. Similar requirements are in effect for potatoes grown in Area 2, which is commonly referred to as the San Luis Valley and is comprised of 9 counties in southcentral Colorado. Potatoes grown in both Area 2 and Area 3 are also required to be inspected by the Federal-State Inspection Service (FSIS) and be certified as meeting applicable grade and size requirements.

Historically, the required inspection is performed at shipping point in the area in which the potatoes are grown. In recent years, however, potatoes have been increasingly moving within the State for regrading, resorting and repacking. These potatoes are inspected at shipping point, shipped in bulk to another packing facility within the production area and then repacked in consumer size containers before reentering commercial channels.

When a lot of potatoes that has been inspected is subsequently regraded, resorted or repacked, it loses its identity with respect to the initial inspection certificate issued to cover the lot. Since the inspection certificate cannot be readily associated with the repacked lot, it is difficult to ascertain whether the repacked lot has been inspected and whether it is in compliance with the applicable grade and size requirements that are in effect.

Quality assurance is very important to the Colorado potato industry. The committees believe that providing the public with potatoes that are of acceptable quality and size is necessary in order to maintain the position of Colorado potatoes in the industry. This rule is expected to benefit Colorado potato producers and handlers by assuring consumers that all Colorado potatoes shipped to fresh market outlets, including those that have been regraded, resorted or repacked, meet the minimum quality and size requirements established under the applicable handling regulations.

The committees therefore recommended that regraded, resorted or repacked lots be required to be reinspected. This will ensure that all Colorado potatoes being handled are in compliance with the terms of the handling regulations.

While the committees recommended that regraded, resorted or repacked lots be subject to a reinspection requirement, they also recognized that such a requirement could result in unreasonably high inspection costs to repackers under certain circumstances. Some repacking facilities in Colorado

are located at a considerable distance from an FSIS office, and it could be costly and difficult for such repackers to obtain the necessary inspection. The committees therefore recommended that such repackers be able to apply for a waiver from the reinspection requirement. To be entitled to a waiver, the repacker will have to be located at a site where inspection is not readily available, or such repacker's actual inspection costs will have to be unreasonably high.

The FSIS establishes its inspection fees on a per hundredweight basis. Typically, this standard fee covers all inspection costs. Under certain circumstances, however, additional fees are charged. For example, a handler who is located far from an FSIS office is also charged for the inspector's travel time and associated costs. The committees recommended that any repacker whose actual inspection costs will exceed 1½ times the established per hundredweight inspection fee should be entitled to a waiver because the reinspection requirement will impose an unreasonably high inspection cost.

Any repacker seeking an inspection waiver will have to meet these criteria. The repacker will be required to apply to the respective area committee for the waiver, and the committee shall give prompt consideration to each application received.

The committees recommended additional safeguard procedures to ensure that repackers operating under waivers remain in compliance with all other handling requirements in effect. To be eligible for a waiver, the repacker will be required to agree to comply with all handling requirements. Such repackers will also be required to file periodic reports of potato receipts and dispositions. The information provided in such reports will enable the respective area committee to determine whether the potatoes handled by a repacker had been previously inspected and whether they were in compliance with the quality and size requirements in effect.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this final rule were approved by the Office of Management and Budget (OMB) and have been assigned OMB number 0581-0111. It has been estimated that it will take an average of approximately 30 minutes for each handler applying for waiver of reinspection requirements to complete the waiver of inspection form and 10 minutes to complete the weekly shipment report form.

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

A proposed rule concerning this action was published in the July 23, 1990, *Federal Register* (55 FR 29850) affording interested persons until August 22, 1990, to file written comments. None were filed.

After consideration of all relevant matters, including the information set forth in the proposed rule and other available information, it is hereby found that this rule 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 section until 30 days after publication in the *Federal Register*, (5 U.S.C. 553) because (1) The shipping season has begun in Area 3 and will soon begin in Area 2, and this rule should apply to as many shipments as possible to be of maximum effect, and (2) the rule was discussed in public meetings held by the respective committees and all interested persons were given the opportunity to participate.

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 hereby 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: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

2. Sections 948.386 and 948.387 are amended by adding a new paragraph (c)(3) to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 948.386 Handling regulation.

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

§ 948.387 Handling regulation.

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

3. A new heading entitled "Modification of Inspection Requirements" and §§ 948.140, 948.141, 948.142, 948.143 are added to read as follows:

Modification of Inspection Requirements

§ 948.140 Application.

Any handler whose packing facilities are located in an area where inspection is not readily available or the actual cost for inspection would otherwise exceed 1½ times the current per hundredweight inspection fee, may apply to the respective area committee for a waiver from the reinspection requirements. Applications shall be made on forms furnished by the respective area committee and shall contain such information as the respective area committee, with the approval of the Secretary, may find necessary in making a determination regarding the issuance of such waiver.

§ 948.141 Issuance.

Each respective area committee shall give prompt consideration to each application for a waiver from reinspection. In granting a waiver, the handler shall agree to comply with all marketing order requirements. Approval of an application shall be evidenced by the issuance of an applicable waiver by the respective area committee to the handler.

§ 948.142 Reports.

Each handler shipping potatoes pursuant to a waiver from reinspection shall report periodically as specified by the respective area committee on forms furnished by the respective committee the following information on each shipment: quantity of potatoes, variety or varieties, grade, size, type of container(s), date of shipment, carrier, destination, and name and address of receiver.

§ 948.143 Cancellation.

Whenever the respective area committee finds that shipments of potatoes pursuant to a reinspection waiver are not in accordance with the established application and safeguard provisions, such waiver may be cancelled.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-23890 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

[DA-90-029]

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Iowa Federal milk marketing order for the months of September through November for an indefinite period. The action increases the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT:

John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 22, 1990; published August 28, 1990 (55 FR 35150).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.