MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO.

WHEREAS, It is provided in Chapter 7, Article 3, Colorado Revised Statutes 1963, as amended, as follows:

"Section 5. A. The Commissioner of Agriculture shall administer and enforce the provisions of this Act and shall have and may exercise any or all of the administrative powers conferred upon the head of a department of the State. In order to effectuate the declared purposes of this Act, the Commissioner of Agriculture is hereby authorized to issue, administer, and enforce the provisions of marketing orders hereunder regulating the handling of agricultural commodities produced in Colorado.

B. Whenever the Commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this Act, with respect to any agricultural commodity, he shall either upon his own motion or upon application of any producer or handler of such commodity, give due notice of and an opportunity for a public hearing upon a proposed marketing order.

C. Due notice of any hearing called for such purpose shall be given to all persons who may be directly affected by any action of the Commissioner pursuant to the provisions of this Act, and whose names appear upon lists to be filed by such agricultural industry with the Commissioner. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the Commissioner at his office.

D. In order to effectuate the declared policy of the Act, the Commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, distributors, producers, and others engaged in the handling of any agricultural commodity, regulating the preparation, sale, and handling of such agricultural commodity which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order provided for in this Act. The Commissioner may issue such marketing order without executing a marketing agreement, or may execute a marketing agreement without issuing a marketing order covering the same commodity. The Commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for, giving due notice and opportunity for hearing for a marketing order as provided in this Act," and

WHEREAS, The Commissioner of Agriculture, having reason to believe that by amending the Marketing Order which was issued by the Commissioner of Agriculture of

the State of Colorado on the twenty-ninth (29th) day of August, A.D., 1941, and the issuance of a new marketing order would tend to effectuate the declared policy of the Act with respect to potatoes grown in the State of Colorado, and upon application by the Area II Administrative Committee, pursuant to the provisions of the Act, on the 27th day of April 1966, gave notice of a public hearing to be held at Denver, Colorado, on the 19th day of May 1966, upon a proposed amended marketing order and agreement regulating the handling of potatoes grown in the State of Colorado, and did upon said date and at said place conduct such public hearing thereon, and did give due notice of such hearing and opportunity to be heard to all persons directly affected by any action of the Commissioner pursuant to the provisions of said Act, and

WHEREAS, The Commissioner of Agriculture has determined heretofore from ballots of potato producers, as herein defined, that this Order is approved, assented to, and favored by more than two-thirds (2/3) of the producers voting in a referendum, and who produced more than two-thirds (2/3) of the volume voted, and

WHEREAS, The Commissioner of Agriculture finds pursuant to the provisions of said Act that this Marketing Order regulating the handling of potatoes grown in the State of Colorado, will tend to:

1. Reestablish or maintain prices received by producers for potatoes at a level which will give to such potatoes a purchasing power with respect to the articles and services which farmers commonly buy equivalent to the purchasing power of such potatoes in the base period.

2. Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for such potatoes.

3. Prevent the unreasonable or unnecessary waste of agricultural wealth because of improper preparation of such potatoes for market, lack of uniform grading and inspection, or excessive shipments to market.

4. Protect the interests of consumers of such potatoes by exercising the powers of this Chapter, only to such extent as is necessary to establish the equality of purchasing power described in subsection (1) of this section, and

WHEREAS, In making the findings herein above set forth, the Commissioner of Agriculture has taken into consideration any and all facts available to him with respect to economic factors specified in Section 6 (b) of the Act, and

WHEREAS, This Marketing Order regulating the handling of potatoes grown in the State of Colorado, embraces all persons of a like class in the State who are engaged in the specific and distinctive agricultural industry regulated by this Marketing Order.

NOW, THEREFORE, It is ordered by the Commissioner acting under the authority vested in him by the Act, that such handling of potatoes grown in the State of Colorado, from and after the date herein specified, shall be in conformity to and in compliance with the terms and conditions of this Order.

SECTION I

DEFINITIONS

A. "COMMISSIONER" means the Commissioner of Agriculture of the State of Colorado.

B. "ACT" means Chapter 7, Article 3, Colorado Revised Statutes 1963, as amended.

C. "PERSON" means an individual, partnership, corporation, association, legal representative, or any organized group or business unit of individuals.

D. "AREA" means any of the subdivisions of the State of Colorado as set forth in this section, or as reestablished pursuant to Section VI-D.

1. AREA NO. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, in the State of Colorado, and all counties in said State west of the aforesaid counties.

2. AREA NO. 2, commonly known as the San Luis Valley, includes and consists of the counties of Chaffee, Saguache, Huerfano, Las Animas, Mineral, Archuleta, Rio Grande, Conejos, Costilla, and Alamosa, in the State of Colorado.

3. AREA NO. 3, includes and consists of all the remaining counties in the State of Colorado, which are not included in Area No. 1 or Area N o. 2.

E. "POTATOES" means and includes all varieties of Irish potatoes grown within any of the aforesaid areas.

F. "SEED POTATOES" or "Seed" means any potatoes which have been certified by the official seed certification agency of the State of Colorado and bear the official tags, seals, or other appropriate identification indicating such certification.

G. "HANDLER" is synonymous with "Shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes.

H. "HANDLE OR SHIP" means to transport, sell, or in any way to place potatoes in the current of commerce between points within the State of Colorado, or between the State of Colorado and any point outside thereof.

I. "PRODUCER" means any person engaged in the production of potatoes for market.

J. "FISCAL PERIOD" means the period beginning and ending on the dates approved by the Commissioner pursuant to recommendations by an area committee.

K. "GRADE, SIZE, AND MATURITY." "Grade" means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture (51.1540 to 51.1556, inclusive of this title) or Colorado grades established by the Commissioner, or amendments thereto, or modification thereof, or variations based on any of the foregoing.

L. "VARIETIES" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

M. "PACK" means a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, or any combination of these recommended by the committee and approved by the Commissioner.

N. "CONTAINER" means a sack, bag, crate, box, basket, barrel, or bulk load, or any other receptacle used in the packaging, transportation, or sale of potatoes.

O. "CULLS" means potatoes which do not meet the requirements set forth in Section II A (1).

P. "COMMITTEE" means any of the area committees established pursuant to Section VI or the Colorado Potato Committee established pursuant to Section VI.

Q. "EXPORT" means the shipment of potatoes to any destination which is not within the 50 contiguous states, or the District of Columbia, of the United States.

R. "PROCESSING" means the conversion of fresh potatoes into such products as potato chips, shoestring potatoes, frozen potato products, canned potatoes, starch and dehydrated products such as potato flakes and potato granules.

SECTION II

REGULATION

A. MARKETING POLICY

1. General Cull Regulation. It shall be the marketing policy for each area to maintain a general cull regulation in effect prohibiting the handling of potatoes in Colorado, except as otherwise provided in this subpart, which do not meet the requirements of U.S. No. 2 Grade or better, 1 1/2 inch minimum diameter or larger.

    a. Upon recommendation of the Colorado Potato Committee or on other available information, the general cull regulation may be suspended or modified by the Commissioner during a specified period with respect to any or all varieties of potatoes.

    b. All potatoes utilized for processing, with the exception of those potatoes utilized for potato chips or shoestring potatoes, shall be exempt from the provisions of this Order. Each area committee shall require by regulation that adequate records be maintained to verify that such exempted potatoes are utilized for processing.

2. Area Marketing Policies. Each season prior to or at the same time as initial recommendations are made pursuant to Section II-B, each area committee shall submit to the Commissioner a report setting forth the marketing policy it deems desirable for the industry to follow in handling the respective area's potatoes during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by an area committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

    a. Supply of potatoes by grade, size, quality, and maturity in the respective area, in the production area, and in other areas;

    b. Market prices for fresh potatoes, including grower, shipping point, and terminal market prices by grade, size, and quality in different packs or in different containers;

    c. Market prices for potatoes in other outlets, including growers' and other market price levels by grade, size, and quality;

d. The trend and level of consumer income;

e. Establishing and maintaining such orderly marketing conditions for potatoes as will be in the public interest; and

f. Other relevant factors.

B. RECOMMENDATIONS FOR REGULATIONS

An area committee upon complying with the requirements of Section II-A may recommend regulations or modifications, suspension or termination thereof, to the Commissioner whenever it finds that such regulations as provided for in this subpart will tend to effectuate the declared policies of the Act.

C. ISSUANCE OF REGULATIONS

1. The Commissioner shall limit by regulation the handling of potatoes whenever he finds from recommendations and information submitted by an area committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such regulation may:

   a. Limit the handling of particular grades, sizes, qualities, or maturities of any or all varieties of potatoes, or any combination of the foregoing during any period.

   b. Limit the handling of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for different containers, for different packs, for different portions of the production area, for different purposes under Section II-D, or for any combination of the foregoing, during any period.

   c. Provide a method through rules and regulations issued pursuant to this subpart for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes, or both.

   d. Establish in terms of grades, sizes, or both, minimum standards of quality and maturity.

2. Any regulation issued hereunder may be amended, modified, suspended, or terminated by the Commissioner on recommendations by an area committee, or on other available information, to provide for

   a. Such changes in regulations found necessary by changes in supplies, demand, or prices;

b. Minimum quantities which should be relieved of regulatory or administrative obligations; or

c. Relief from regulations no longer tending to effectuate the declared policies of the Act.

3. The Commissioner shall notify each committee of each regulation recommended by it and issued pursuant to this section. The respective committee shall give reasonable notice thereof to handlers. No regulation, except when relieving limitations, shall become effective less than two days after issuance thereof.

D. HANDLING FOR SPECIAL PURPOSES

Upon the basis of recommendations and information submitted by an area committee, or other available information, the Commissioner, whenever he finds that it will tend to effectuate the declared purposes of the Act, shall modify, suspend, or terminate requirements in effect pursuant to Section II-A to II-C inclusive, or Section V or Section VII-C, or any combination thereof, to facilitate handling of potatoes for:

1. Relief or charity;

2. Livestock feed;

3. Export;

4. Seed

5. Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

6. Manufacture or conversion into specified products;

7. Other purposes recommended by the committees and approved by the Commissioner; and

8. Each area committee, with the approval of the Commissioner, may permit the shipment of ungraded potatoes, whether in bulk or in packages, from the point of production to a point of preparation for market within the area under the following conditions:

a. That the receiver of such potatoes is a person who is properly licensed to deal in potatoes and who owns or controls facilities for preparing potatoes for market.

b. That the receiver of such potatoes has been notified in writing by the committee concerning applicable grade, size, quality, or maturity regulations issued pursuant hereto;

c. That the receiver of such potatoes has been registered by the committee for the purposes of this section; and

d. That prior to the beginning of any such shipments the committee has established applicable safeguards pursuant to Section II-E hereof.

E. SAFEGUARDS

1. Each area committee, with the approval of the Commissioner, shall prescribe adequate safeguards for potatoes handled pursuant to Section II-D from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

2. Such safeguards may include requirements that handlers or processors desiring to handle potatoes pursuant to Section II-D shall:

a. Apply for and obtain Certificates of Privilege from the area committee for handling potatoes affected or to be affected under the provisions of Section II-D.

b. Obtain inspection as required by Section V or pay the assessment levied pursuant to Section VII-C, or both, except as modified pursuant to Section II-D in connection with shipments made under any such certificate; and

c. Furnish the committee such information, and execute or obtain execution of such documents, as the committee may require.

3. An area committee may rescind or deny to any handler permission to handle potatoes pursuant to Section II-D of this subpart if proof satisfactory to the committee is obtained that potatoes handled by him for a purpose stated in Section II-D were handled contrary to the provisions of this subpart.

4. The committee shall make reports to the Commissioner, as required showing the number of applications for such certificates, the quantity of potatoes covered by such application, the number of such applications denied and certificates granted, the quantity of potatoes handled under duly issued certificates, and such other information as may be requested.

SECTION III

EXEMPTIONS

A. POLICY

Any producer whose potatoes have been adversely affected by acts beyond the control or reasonable expectation of a prudent grower and who by reason of any regulation issued pursuant to this part, is or will be prevented from shipping or having shipped during the then current marketing season, or a specific portion thereof, as large a proportion of his potato crop as the average proportion shipped or to be shipped during comparable portions of the season by all producers in his immediate area of production, may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

B. PROCEDURE

Rules and procedures for granting exemptions may be issued by the Commissioner, upon recommendation of area committees. Such rules and procedures may provide for methods of determination by area committees of average proportions of crops shipped or being shipped in respective areas or subdivisions thereof during any or all portions of a season, for processing applications for exemption, for issuing or denying certificates of exemption, for administrative compliance with certificates issued, for reports by handlers thereon, and for such other producers as may be necessary to the administration hereof.

C. GRANTING EXEMPTIONS

An area committee may issue certificates of exemption to any qualified applicant who furnishes adequate evidence to such committee;

1. That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond his control or reasonable expectations;

2. That by reasons of regulations issued pursuant to Section II-A or II-C, the applicant will be prevented as a producer from shipping or having shipped as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate area of production during the season, or a specific portion thereof.

3. Each such certificate issued shall permit the person identified therein to ship or have shipped the potatoes described thereon, and evidence of such certificates shall be made available to subsequent handlers thereof.

D. INVESTIGATION

An area committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

E. APPEAL

If any applicant for exemption certificates is dissatisfied with the determination by an area committee with respect to his application, he may file an appeal with the committee. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal.

SECTION IV

ADVERTISING, SALES PROMOTION, RESEARCH AND/OR UTILIZATION PLAN

A. RECOMMENDATION OF THE AREA COMMITTEE

Whenever any area committee deems it advisable that an advertising, sales promotion, research and/or utilization plan be established in connection herewith for any such area, it may submit to the Commissioner a recommendation for the establishment of such plan and information upon which such recommendation is based. At the time of submitting such recommendation and information, the area committee shall prepare and submit a budget of the expenses that will necessarily be incurred in connection with the execution, operation, and administration of such plan and a rate of assessment based upon the gross quantity of potatoes handled to be levied against each handler in such area for the purpose of providing a fund to defray such expenses.

B. ESTABLISHMENT OF PLAN

Whenever the Commissioner finds, from the recommendation and information submitted by an area committee or from other available information, that the establishment of an advertising, sales promotion, research and/or utilization plan in any area will tend to effectuate the declared purposes of the Act, he will prepare and issue an advertising, sales promotion, research and/or utilization plan regulation based upon the plan submitted and recommended by the area committee for such area.

C. ADMINISTRATION OF PLAN

The Commissioner shall administer any advertising, sales promotion, research and/or utilization plan issued pursuant to this section in such manner as best to effectuate the purposes hereof; provided that any such plan shall be directed toward creating new or larger markets and increasing the sale of potatoes without reference to a particular brand or trade name, unless such brand or trade name is

descriptive of the general variety of potatoes produced in the respective area in which such plan is being operated; and provided further that no advertising, sales promotion, research and/or utilization plan shall be issued or administered by the Commissioner which shall make use of false or unwarranted claims in behalf of potatoes or which shall disparage the quality, size, or use of any other agricultural commodity.

SECTION V

INSPECTION AND CERTIFICATION

A. During any period in which the handling of potatoes is regulated pursuant to Section II-A through II-E, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate except when relieved of such requirements by Section II-C-a, II-D, or Section V-B.

B. Rules may be issued by the Commissioner, upon recommendation of the Colorado Potato Committee requiring inspection on regraded, resorted, or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

C. Upon recommendation of an area committee and approval by the Commissioner any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

D. Insofar as the requirements of this section are concerned the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Commissioner.

E. When potatoes are inspected in accordance with the requirements of this section a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

F. Area committees, with the approval of the Colorado Potato Committee, may recommend, and the Commissioner may require, that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

SECTION VI

COMMITTEES

A. AREA COMMITTEES

A committee is hereby established as an administrative agency for each area. Each area committee shall be comprised of members and alternates as set forth in this section or as reestablished by Section VI-D.

1. AREA NO. 1 (Western Slope): Four producers and three handlers selected as follows:

   Two (2) producers and one (1) handler from the counties of Eagle, Garfield, Pitkin, Moffat, and Routt in the State of Colorado;

   Two (2) producers and one (1) handler from the remaining counties of Area No. 1;

   One (1) handler representing all producers' cooperative marketing associations in Area No. 1.

2. AREA NO. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

   Two (2) producers from Rio Grande County;

   Two (2) producers from Saguache and Chaffee County;

   One (1) producer from Conejos County;

   Two (2) producers from Alamosa County;

   One (1) producer from all other counties in Area No. 2;

   One (1) certified seed producer;

   Two (2) handlers representing bulk handlers;

   Three (3) handlers representing handlers other than bulk handlers.

3. AREA NO. 3: Three producers and two handlers selected as follows:

   Three (3) producers from any county in Area No. 3

   Two (2) handlers from any county in Area No. 3

B. COLORADO POTATO COMMITTEE

The Colorado Potato Committee shall be comprised of six members and alternates selected by the Commissioner. Three members and three alternates shall be selected from nominations of Area 2 committee members or alternates, and three members and three alternates shall be selected from nominations of Area 3 committee members or alternates.

C. ALTERNATES

1. For each committee member there shall be an alternate who shall have the same qualifications. During a member's absence, or when called upon to do so in accordance with the terms hereof, or in the event of a member's death, removal, resignation, or disqualification, an alternate shall act in his place and stead until the member's successor is selected and has qualified.

2. Area committees, with the Commissioner's approval, may provide through rules for members or for alternates to recommend regulations for early crop potatoes or for late crop potatoes and to specify the particular crop for which such group shall be responsible.

D. REESTABLISHMENT

Areas, subdivisions of areas, the distribution of representation among the subdivision of areas, or among marketing organizations within respective areas may be reestablished by the Commissioner upon area committee recommendations. Upon approval therefor of respective committees affected thereby, areas may be reestablished. In recommending any such changes, the committee shall consider (1) the relative importance of new producing sections, (2) relative production, (3) changes in marketing organizations and their relative status in the industry, (4) the geographic locations of producing sections as they would affect the efficiency of administration of this part, and (5) other relevant factors.

E. ELIGIBILITY

Area committee members and alternates shall be individuals who shall be residents of, and producers or handlers, as the case may be, in the respective area. Also, each member or alternate to qualify as a representative (1) for producers shall be a producer, or an officer or employee of a producer; (2) for producers' cooperative marketing associations shall be members or employees of such association; or (3) for handlers other than cooperative marketing associations shall be a handler, or an officer or employee of a handler.

F. TERM OF OFFICE

The term of office of each area committee member and alternate shall be for two years. The term of office for Colorado Potato Committee members and alternates shall be for one year. The dates on which terms of office for each committee shall begin and end shall be established by the Commissioner pursuant to respective committee recommendations. Terms of office of area committee members shall be arranged so that approximately one-half shall terminate each year. Determination of which initial members and alternates shall serve for one year or two years shall be by lot.

G. NOMINATION AND SELECTION

1. Each area committee shall hold or cause to be held, not less than 15 days prior to the expiration date of respective terms of office, meetings of producers and handlers for each subdivision in which terms expire or in which vacancies otherwise occur.

2. At each such meeting one or more nominees shall be designated for each impending vacancy as member or alternate. Such designation may be by ballot or by motion at the option of those present in voting capacity.

3. Only producers may participate in designating producer nominees; only handlers may participate in designating handler nominees; and only duly authorized representatives of producers' cooperative marketing associations may participate in designating nominees to represent such associations. If no separate representation is provided for producers' cooperative marketing associations, duly authorized representatives of such associations may participate in designating handler nominees.

4. Each producers' cooperative marketing association shall be entitled to cast only one vote in designating nominees to represent such associations. Each producer and each handler shall be entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates and representatives.

5. If a producer, handler, or producers' cooperative marketing association is engaged in producing or handling potatoes in more than one area, or in more than one subdivision of an area, such producer, handler, or producers' cooperative marketing association shall elect the area or subdivision in which he may participate in designating nominees. In no event shall there be participation in more than one area or subdivision.

H. FAILURE TO NOMINATE

If nominations are not made pursuant to the provisions of Section VI-G by the date provided therein, the Commissioner may, without regard to nominations,

select members and alternates on the basis of the representation provided for in this subpart.

I. VACANCIES

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for his unexpired term may be selected by the Commissioner from nominations made pursuant to Section VI-G from previously unselected nominees on the current nominee list, or from other eligible persons.

J. QUALIFICATIONS

Each person selected as a member or as an alternate shall qualify by promptly filing a written acceptance with the Commissioner.

K. COMPENSATION AND EXPENSE

1. Members of each area committee and their alternates shall serve without salary, but may be compensated at a rate not in excess of $10.00 per day while engaged on committee business, and may be reimbursed for necessary expenses actually incurred while so engaged. At the discretion of an area committee, alternates may be requested to attend any or all committee meetings and receive compensation and expenses therefor regardless of attendance by the respective members.

2. The compensation and expenses of members and alternates of the Colorado Potato Committee shall be paid by the respective area committee they represent.

3. Such other expenses as may be incurred by the Colorado Potato Committee pursuant to a budget of expenses approved by the Commissioner shall be allotted to, and paid by, one or more of the area committees as may be specified in an order issued by the Commissioner pursuant to the provisions of this subpart.

L. PROCEDURE

1. A majority of all members of a committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

2. Each committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or any other means of communication, provided that any such

vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

M. POWERS

Each committee shall have the following powers:

1. To administer the provisions of this subpart as specified herein;

2. To make rules and regulations to effectuate the terms and provisions of this subpart;

3. To receive, investigate, and report to the Commissioner complaints of violation of the provisions of this part; and

4. To recommend to the Commissioner amendments to this part.

N. DUTIES

1. Each committee shall:

   a. Meet and organize as soon as practical after the beginning of each term of office, select a chairman and such other officers as may be necessary, select subcommittees and adopt such rules and procedures for the conduct of its business as it may deem advisable;

   b. Act as intermediary between the Commissioner and any producer or handler;

   c. Appoint such employees, agents, and representatives as it may deem necessary and determine the salaries and define the duties of each;

   d. Keep minutes, books, and records which clearly reflect all its acts and transactions. Such minutes, books, and records shall be subject to examination at any time by the Commissioner;

   e. Furnish promptly notices of meetings, copies of the minutes of each committee meeting, and such other reports or information as may be requested by the Commissioner, including annual reports of each area committee's operations for the proceeding marketing season or fiscal period.

   f. Make available to producers, and to other area committees and the Colorado Potato Committee, the committee's voting record on recommended regulations and other matters of policy;

g. Meet jointly with other area committees when requested to do so by the Colorado Potato Committee;

h. Consult, cooperate, and exchange information with other area committees, with other marketing agreement committees and other agencies or individuals in connection with proper committee activities and objectives;

i. Take any proper action necessary to carry out the provisions of this subpart; and

j. Cause the books of the committee to be audited by a competent accountant at least once each fiscal period.

2. The Colorado Potato Committee shall also:

a. Supervise the regulation of shipments pursuant to the provisions of the general cull regulation in the absence of more restrictive regulations, and shall cooperate with any area committee in administering any regulation issued pursuant to this subpart;

b. Make recommendations to the Commissioner with respect to suspending or modifying the provisions of the general cull regulations;

c. Make available to area committees its voting record on recommendations for modification of the cull regulation and other matters of policy;

d. Submit to each area committee such available information as may be requested; and

e. Call joint meetings of area committees on matters requiring consideration of statewide marketing policies when requested to do so by an area committee.

SECTION VII

EXPENSES AND ASSESSMENTS

A. EXPENSES

Each area committee is authorized to incur such expenses as the Commissioner may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio

between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

B. BUDGET

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, each area committee shall prepare an estimated budget of income and expenditure necessary for the administration of this part. Each area committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. Each area committee shall present such budget to the Commissioner with an accompanying report showing the basis for its calculations.

C. ASSESSMENTS

1. The funds to cover each area committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles potatoes under this part, shall pay assessments to his respective area committee upon demand, which assessments shall be in payment of such handler's pro-rata share of the area committee's expenses.

2. Assessments shall be levied upon handlers at rates established by the Commissioner. Such rates may be established upon the basis of each area committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

3. At any time during, or subsequent to, a given fiscal period each area committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Commissioner may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes grown within the particular area where an area committee recommends such increase and which were handled by the first handler thereof during such fiscal period.

4. The payment of assessments for the maintenance and functioning of each area committee may be required under this part throughout the period it is in effect irrespective to whether particular provisions thereof are suspended or become inoperative.

5. In order to provide funds to enable each area committee to perform its functions under this part, handlers may make advance payment of assessments.

D. ACCOUNTING

1. If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

   a. If such excess is not retained in a reserve, as provided in subparagraph (b) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected.

   b. An area committee, with the approval of the Commissioner, may carry over such excess into subsequent fiscal periods as a reserve: Provided, that funds already in the reserve are less than approximately two fiscal period's expenses. Such reserve funds may be used, (1) to defray expenses, during any fiscal period prior to the time assessment income is sufficient to cover such expenses; (2) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (3) to defray expenses incurred during any period when any or all provisions of this subpart are suspended or are inoperative; (4) to cover necessary expenses of liquidation in the event of termination of this subpart. Upon termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Commissioner may determine to be appropriate. To the extent practical, such funds shall be returned pro-rata to the persons from whom such funds were collected.

2. All funds received by an area committee pursuant to the provisions of this subpart shall be used solely for the purposes specified herein. The Commissioner may at any time require an area committee and its members to account for all receipts and disbursements.

3. Upon the removal or expiration of the term of office of any member of an area committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to such committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such committee full title to all of the property, funds, claims vested in such member pursuant to this part.

4. Each area committee may make recommendations to the Commissioner for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Commissioner determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for such committee.

5. Any monies collected pursuant to this order shall be deposited in a bank or banks, or other depository, approved by the State Treasurer, allocated to the area committee under which they are collected and disbursed only for the necessary expenses incurred by the area committees and the Commissioner and approved by the Commissioner. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner. All such expenditures shall be audited at least annually, and a copy of such audit shall be delivered within thirty (30) days after the completion thereof to the Commissioner of Agriculture.

SECTION VIII

REPORTS

A. REPORTS

Upon request of an area committee or of the Colorado Potato Committee through an area committee, each handler within the respective area of such area committee shall furnish to the area committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part.

1. Such reports may include, but are not necessarily limited to the following examples:

    a. The quantities of potatoes received by a handler during any or all periods of a season;

    b. The quantities disposed of by him, segregated as to quantities subject to regulation and where necessary segregated as to types of outlets and special modified regulations applicable to alternative outlets; including quantities not subject to grade, inspection, assessment, or other similar regulations.

    c. The date of each such disposition and the identification of the carrier transporting such potatoes.

    d. Information essential to identification of any or all specific quantities, lots, and disposition of potatoes handled under Section II-D to III-C inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

2. All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

3. Each handler shall maintain for at least two succeeding years such records of the potatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

SECTION IX

COMPLIANCE

Except as provided in this subpart, no handler shall handle potatoes, the handling of which has been prohibited by the Commissioner in accordance with the provisions of this subpart, and no handler shall handle potatoes except in conformity to the provisions of this subpart.

SECTION X

MISCELLANEOUS PROVISIONS

A. RIGHT OF THE COMMISSIONER

The members of each area committee (including successors and alternates) and any agent or employee appointed or employed by any committee shall be subject to removal or suspension by the Commissioner at any time. Each and every order, regulation, decision, determination or other act of each committee shall be subject to the continuing right of the Commissioner to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Commissioner.

B. EFFECTIVE TIME

1. The provisions of this subpart or any amendments thereto shall become effective at such time as the Commissioner may declare and shall continue in force until terminated in one of the ways specified in this subpart.

2. All regulations and rules, including the General Cull Regulation effective August 29, 1941, issued pursuant to the order (this subpart) and in effect immediately prior to the effective date of the order as amended (this

subpart) and not in conflict with the amended order, shall continue in effect under this subpart, until such regulations and rules are changed, modified or suspended. Also, all committee members and alternates selected pursuant to the order and occupying a term of office immediately prior to the effective date of the order as amended, shall continue in office under the amended order until their successors have been selected and have qualified.

C. TERMINATION

1. The Commissioner may at any time terminate any or all provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

   a. The provisions of Section X-B-2 may be terminated when its purpose has been attained.

2. The Commissioner may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of this Act.

3. The Commissioner shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Commissioner have been engaged in the production of potatoes for market: Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market.

4. The provisions of this subpart shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

D. PROCEEDINGS AFTER TERMINATION

1. Upon the termination of the provisions of this subpart the then functioning members of each area committee shall continue as joint trustees for the purpose of liquidating the affairs of their respective area committee of all funds and property then in the possession of or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

2. The said trustees shall continue in such capacity until discharged by the Commissioner; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committees and of the trustees, to such person as the

Commissioner may direct; and shall upon the request of the Commissioner, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

3. Any person to whom funds, property, or claims have been transferred or delivered by an area committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of such committees and upon the said trustees.

E. EFFECT OF TERMINATION OR AMENDMENTS

Unless otherwise expressly provided by the Commissioner, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (1) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulations issued under this subpart; or (2) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (3) affect or impair any rights or remedies of the Commissioner or of any other person with respect to any such violations.

F. DURATION OF IMMUNITIES

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

G. AGENTS

The Commissioner may, by designation in writing, name any person, including any officer or employee of the State of Colorado, to act as his agent or representative in connection with any of the provisions of this subpart.

H. DEROGATION

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Commissioner to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

I. PERSONAL LIABILITY

No member or alternate of any committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any

way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

J. SEPARABILITY

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

K. AMENDMENTS

Amendments to this subpart may be proposed from time to time by a committee or by the Commissioner.

NOTICE OF ISSUANCE

Pursuant to Chapter 7, Article 3, Colorado Revised Statutes 1963, as amended, I, John P. Orcutt, Commissioner of Agriculture of the State of Colorado, pursuant to the authority in me vested by law, do hereby execute, issue, and publish this Amended Marketing Order at my office in Denver, Colorado, this 15th day of June, 1966, A.D., and do declare that I have this day posted a notice of the issuance of this Amended Order on a public bulletin board in my office. A copy of said notice is hereby ordered published on this date in the Denver Post, a newspaper of general circulation published at Denver, Colorado. Therefore, this Amended Order shall be in full force and effect on and after 12:01 a.m. (Mountain Daylight Time) June 22, 1966, A.D.

Signature on file

_____

John P. Orcutt,
Commissioner of Agriculture
State of Colorado

Section VI A 2 of the Marketing Order Regulating the Handling of Potatoes Grown in the State of Colorado shall be amended to read as follows:

A. Area Committees

2. Area No. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

Two (2) producers from Rio Grande County;

Two (2) producers from Saguache and Chaffee County;

One (1) producer from Conejos County;

Two (2) producers from Alamosa County;

One (1) producer from all other counties in Area No. 2;

One (1) certified seed producer;

Two (2) handlers representing bulk handlers;

Three (3) handlers representing handlers other than bulk handlers.

This change shall become effective June 1, 2003.

Signed __Signed by Don Ament, original on file__ Date __4/1/03_____
Commissioner

Section VI B of the Marketing Order Regulating the Handling of Potatoes Grown in the State of Colorado shall be amended to read as follows:

B. COLORADO POTATO COMMITTEE

The Colorado Potato Committee shall be comprised of six members and alternates selected by the Commissioner. Three members and three alternates shall be selected from nominations of Area 2 committee members or alternates, and three members and three alternates shall be selected from nominations of Area 3 committee members or alternates.

This change shall become effective immediately.

Signed ___Signed by Don Ament – original on file__ Date___November 4, 2003_____
Commissioner

COLORADO DEPARTMENT OF AGRICULTURE
700 Kipling Street
Lakewood, Colorado 80215-8000

ORDER BY THE COMMISSIONER OF AGRICULTURE APPROVING MARKETING REGULATIONS OF THE COLORADO POTATO ADMINISTRATIVE COMMITTEE – SAN LUIS VALLEY OFFICE (AREA II) – PURSUANT TO THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO

Marketing Regulations
Area II 2011-12

Pursuant to the provisions of the Marketing Order regulating the handling of potatoes grown in the State of Colorado dated June 15, 1966, under the applicable provisions of Colorado Revised Statutes 1973, 35-28-101, et seq., and from the recommendation of the Colorado Potato Administrative Committee – San Luis Valley Office (Area II) – established pursuant to the provisions of said marketing order, and upon further information available to the Commissioner of Agriculture, State of Colorado, the Commissioner hereby finds that the limitations of shipments of such potatoes in Area II as hereunder provided will tend to effectuate the declared policy of the act.

Pursuant to the aforesaid authority and compliance therewith, it is hereby ordered that beginning at 12:01 A.M. September 1, 2011, and continuing until changed or rescinded, no handler shall ship potatoes from Area II which do not meet the following requirements:

1. GRADE AND SIZE REQUIREMENTS (2011-12 FALL CROP)

(A) Round Varieties: U.S. No. 2 or better grade. Two (2) inch minimum diameter.

(B) Long Varieties: Two (2) inch minimum diameter or four (4) ounce minimum weight.

(C) All Other Varieties: Two (2) inch minimum diameter or four (4) ounce minimum weight.

(D) All Varieties: Size B if U.S. Commercial or better grade, except that round red skinned varieties shall grade U. S. No. 1.

(E) All Varieties: One (1) inch minimum diameter to one and three-fourths (1¾) inches maximum diameter if U.S. Commercial or better grade, except that round red skinned varieties shall grade U.S No. 1.

2. MINIMUM MATURITY REQUIREMENTS

(A) Effective August 1, 2011 through October 31, 2011 and August 1st, 2012 until such time that new marketing regulations for Area II are enacted, maturity requirements specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

3. EXEMPTIONS FOR SPECIAL PURPOSE

Note: The terms San Luis Valley and Area II are synonymous.

(A) Potatoes destined for relief or charitable purposes are exempt from these regulations. Requests for such potatoes must be made through a San Luis Valley sponsoring organization.

(B) Potatoes used for livestock feed within Area II are exempt from these regulations. Potatoes used for livestock feed beyond the boundaries of Area II must be mechanically sliced, chopped or mutilated at the time of loading.

(C) Seed potatoes certified by the official certifying agency must carry the official tag or bulk certificate issued by the certifying agency. These certified seed potatoes are exempt from the above regulations. "Certified seed potatoes" are potatoes that are capable of sprouting and growing normally. Marketing Order and inspection fees shall be collected on certified seed potatoes shipped <u>within</u> and <u>beyond</u> the boundaries of Area II.

(D) Potatoes, in the amount not to exceed 1,000 pounds, transported from Area II in one vehicle, are exempt from all regulations.

(E) All potatoes utilized for processing shall be exempt from the provisions of this order. "Processing" means the conversion of fresh potatoes into such products as potato chips, shoestring potatoes, frozen potato products, canned potatoes, starch and dehydrated products such as potato flakes and potato granules. Processing involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. Potatoes sold for chipping, by agreement, shall pay Marketing Order fee assessments.

(F) Shipments of potatoes handled for experimentation and the manufacture or conversion into specific products from the grade, size, maturity, and inspection requirements are exempt from these regulations.

(G) Area II potatoes shipped to Area III facilities from July 10 to September 10 of each calendar year do <u>not</u> require inspection by an authorized representative of the Federal-State Inspection Service prior to shipment.

COLORADO DEPARTMENT OF AGRICULTURE
305 Interlocken Parkway
Broomfield, Colorado 80021-3484

ORDER BY THE COMMISSIONER OF AGRICULTURE APPROVING THE MARKETING REGULATIONS OF THE COLORADO POTATO ADMINISTRATIVE COMMITTEE—AREA III—PURSUANT TO THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO.

Marketing Regulations
Area III 2016-2017

Pursuant to the provisions of the Marketing Order regulating the handling of potatoes grown in the State of Colorado, Docket No. A-4, dated June 15, 1966, under the applicable provisions of Colorado Revised Statutes 1973, 35-28-113, and from the recommendations of the Colorado Potato Administrative Committee—Area III Office—established pursuant to the provisions of said Marketing Order, and upon further information available to the Commissioner of Agriculture, State of Colorado, the Commissioner hereby finds that the limitation of shipment of such potatoes in Area III as hereunder provided will tend to effectuate the declared policy of the Act.

Pursuant to the aforesaid authority and in compliance therewith, it is hereby ordered that during the Period from July 1, 2016 through June 30, 2017, potatoes shipped by Area III handlers shall meet the following requirements:

GRADE AND SIZE REQUIREMENTS

(a) Round Varieties: U.S. No. 1 grade — 1 7/8 inch minimum size; U.S. No. 2 grade -- 1 7/8 inch minimum size.

(b) Long Varieties: U.S. No. 1 grade and Commercial grades — 1 7/8 inch minimum size; U.S. No. 2 grade — 1 7/8 inch minimum or four-ounce minimum.

(c) "B" size U.S. No. 1 potatoes.

(d) All varieties - U. S. No. 1 grade, 3/4 inch minimum size to 1 7/8 inch maximum size.

MATURITY

Effective July 1, 2016 through December 31, 2017,

(a) U. S. No. 2 — No more than "moderately skinned" as defined in U.S. Standards for Potatoes.

(b) All others — No more than "slightly skinned" as defined in U.S. Standards for Potatoes.

Effective January 1, 2017 through June 30, 2017 there will be no maturity requirements.

EXEMPTIONS FOR SPECIAL PURPOSES

(a) Potatoes destined for pre-peeling shall be exempted from the above regulations.

(b) Potatoes destined to be used for making potato chips shall be exempted from the above regulations.

(c) Potatoes destined to be used for making shoestring potatoes shall be exempted from the above regulations.

(d) Potatoes destined for livestock feed shall be exempted from the above regulations.

(e) Potatoes destined for charity shall be exempted from the above regulations.

(f) Seed potatoes certified by the official certifying agency and carrying the official tag issued by the certifying agency shall be exempted from the above regulations.

(g) Potatoes in the amount not to exceed 2,000 pounds per shipment may be sold free from all regulations.

(h) Potatoes for experimentation and the manufacture or conversion into specific products shall be exempted from the above regulations.

(i) All Area III potatoes shipping to Area II facilities from July 10 to September 10 do not need to be inspected by an authorized representative of the Federal-State Inspection Service prior to shipment.

SAFEGUARDS

The Area III Committee, with the approval of the Commissioner, shall prescribe adequate safeguards to prevent the above-exempted potatoes from entering trade channels other than those authorized herein.

Each handler prior to shipping in or from Area III shall, during the effective time of the Order, have the potatoes not exempted in Section 3, above, included in each shipment inspected by a duly authorized representative of the Federal-State Inspection Service, and shall submit promptly or cause to be submitted to the Area III Committee a Federal-State Inspection Certificate stating that the Federal-State requirements have been met. All shipments of potatoes by motor vehicle shall be accompanied by a copy of the Inspection Certificate or by authorized documentary evidence issued by the Area III Committee.

Potatoes harvested in fields on state lines with parts of each field in both states, with all or part of the potatoes stored in Colorado, shall be considered Colorado potatoes and shall be subject to requirements of the Colorado Marketing Order. Any potatoes grown on state lines will be considered as co-mingled and be subject to the requirements of the Colorado Marketing Order.

IN WITNESS WHEREOF, I, Don Brown, Commissioner of Agriculture, have executed this Order and Notice thereof in the City of Broomfield, State of Colorado, this 5 day of August 2016.

Don Brown
Commissioner of Agriculture