Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–11–0051; FV11–948–1 PR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the size requirements currently prescribed under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 3 (Committee). This rule would modify the size requirements for handling small potatoes that measure under 1\(\frac{1}{8}\) inches in diameter. This rule would allow the handling of two size ranges for potatoes that measure less than 1\(\frac{1}{8}\) inches in diameter. This rule would also be allowed to be handled if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. The revisions would promote orderly marketing by ensuring that only potatoes of certain similar size profiles are packed and shipped in the same container. This rule is expected to benefit the producers, handlers, and consumers of Colorado potatoes.

DATES: Comments must be received by October 31, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: http://www.regulations.gov. All comments should reference the document number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.regulations.gov. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: Barry.Broadbent@ams.usda.gov or Gary.D.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the size requirements currently prescribed under the order. This proposed rule would revise the size requirements for small U.S. No. 1 grade potatoes handled under the Colorado Area 3 handling regulations. The rule would modify the current size requirements to establish allowable size ranges for potatoes that measure less than 1\(\frac{1}{8}\) inches. This rule would allow potatoes that measure \(\frac{3}{4}\)-inch minimum diameter to 1\(\frac{1}{8}\) inches maximum diameter to be handled if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. In addition, Size B potatoes (1\(\frac{1}{8}\) inches minimum diameter to 2\(\frac{1}{4}\) inches maximum diameter) would also be allowed to be handled if they otherwise meet the U.S. No. 1 grade requirements. The size requirements for U.S. No. 2 and better grade potatoes that are \(\frac{1}{8}\) inches minimum diameter and larger would not be affected by this proposed change. The rule was unanimously recommended by the Committee at a meeting on May 12, 2011. The proposed changes are expected to enhance orderly marketing conditions and increase returns for producers and handlers.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three separate regulatory areas for marketing order purposes. Area No. 1, commonly known as the Western Slope, includes and consists of the...
requirements of the U.S. No. 1 grade
except that potatoes that meet the
diameter or 4 ounces minimum weight,
under the order must be U.S. No. 2 or
Section 948.387(a) currently requires
administrative rules and regulations.
contained in § 948.387 of the order's
potatoes grown in Area No. 3 are
specific to the handling of Colorado
potatoes grown in Areas No. 2 and No.
Currently regulates the handling of
Area No. 1 or Area No. 2. The order
currently regulates the handling of
remaining counties in the State of
includes and consists of all the
counties south thereof; and Area No. 3
includes and consists of the counties of
commonly known as the San Luis
Valley, includes and consists of the
counties of Saguache, Huerfano, Las
Animas, Mineral, Archuleta, and all
counties south thereof; and Area No. 3
is currently not active.

Grade, size, and maturity regulations
specific to the handling of Colorado
potatoes grown in Area No. 3 are
contained in § 948.387 of the order’s
administrative rules and regulations.
Section 948.387(a) currently requires
that all varieties of potatoes handled
under the order must be U.S. No. 2 or
better grade and 1 1⁄2 inches minimum
diameter or 4 ounces minimum weight,
except that potatoes that meet the
requirements of the U.S. No. 1 grade
may be ¾-inch minimum diameter.

The Committee met on May 12, 2011,
to discuss revising the size requirements
in the handling regulations. As a result
of the deliberations, the Committee
unanimously recommended modifying
the size requirements for potatoes that
meet the U.S. No. 1 grade. Specifically,
the Committee recommended
establishing allowable size ranges for
small size (under 1 1⁄2 inches in
diameter) U.S. No. 1 grade and better
potatoes to allow for size ranges, ¾-
inch minimum diameter to 1 1⁄2 inches
maximum diameter and Size B (1 1⁄2
inches minimum diameter to 2 1⁄2 inches
maximum diameter), would be
established for potatoes that otherwise
meet or exceed the minimum
requirements of the U.S. No. 1 grade
standard. The proposed allowable size
ranges would replace the current ¾-
inches minimum diameter size
requirement allowance now in effect.

The proposed revision would not
prevent the handling of any of the small
size potatoes that are currently allowed
to be handled under the order. All
potatoes that measure ¾-inch minimum
diameter and larger and meet the
requirements of the U.S. No. 1 grade
could continue to be handled under
the order. However, in the future, such
small potatoes would be required to be
handled subject to the new size
requirements, with like size potatoes
packed into certain size profiles. The
handling of all other potatoes currently
permitted under the order would
continue without change, subject to the
U.S. No. 2 or better, 1 1⁄2 inches
minimum diameter size or 4 ounces
minimum weight requirements.

The Committee has observed that, in
recent years, consumer demand has
been increasing for smaller size potatoes
and that those size potatoes often
command premium prices. The
Committee previously responded to this
trend by modifying the size
requirements in the handling
regulations to allow for the handling of
¾-inch minimum diameter and larger
size potatoes, if the potatoes otherwise
meet the requirements of the U.S. No. 1
grade. However, the current ¾-inch
minimum size requirement has no other
parameters associated with it and allows
for the commingling of small size
potatoes (under 1 1⁄2 inches in diameter)
with larger size potatoes (over 1 1⁄2
inches in diameter).

The Committee reiterated that quality
assurance is important to the industry
and to consumers. Providing consistent,
high quality potatoes is necessary to
maintain consumer confidence. The
potential for mixing small size potatoes
with larger size potatoes in the same
container is perceived by the Committee
as being contrary to the goals of
maintaining orderly marketing
conditions and ensuring that only
consistent, high quality potatoes from
the production area enter the market. As
such, the Committee felt that
implementing the proposed revisions to
the size requirements would help to
maintain the consistency and quality of
the product while still allowing the
industry the maneuverability to respond
to changing consumer preferences.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in
the Regulatory Flexibility Act (RFA) (5
U.S.C. 601–612), the Agricultural
Marketing Service (AMS) has
considered the economic impact of this
action on small entities. Accordingly,
AMS has prepared this initial regulatory
flexibility analysis.

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.

Based on Committee data, there are
eight producers (the majority of whom
are also handlers) in the regulated area
and eight handlers (the majority of
whom are also producers) subject to
regulation under the order. Small
agricultural producers are defined by
the Small Business Administration (13
CFR 121.201) as those having annual
receipts of less than $750,000, and small
agricultural service firms are defined as
those having annual receipts of less than
$7,000,000.

According to the Committee, 981,609
hundredweight of Colorado Area No. 3
potatoes were produced for the fresh
market during the 2009–2010 season.
Based on National Agricultural
Statistics Service (NASS) data, the
average producer price for Colorado
summer potatoes for that season was
$0.90 per hundredweight. The average
annual producer revenue for the eight
Colorado Area No. 3 potato producers is
therefore calculated to be approximately
$846,637. Using Committee data
regarding each individual handler’s
total shipments during the 2009–2010
fiscal period and a Committee estimated
average f.o.b. price for 2010 of $9.10 per
hundredweight ($6.90 per
hundredweight producer price plus
estimated packing and handling costs of
$2.20 per hundredweight), none of the
Colorado Area No. 3 potato handlers
ship over $7,000,000 worth of potatoes.
Thus, all of the handlers and many of
the producers of Colorado Area No. 3
potatoes may be classified as small
entities.

This rule would revise the current
size requirements contained in the
order’s handling regulations. The rule
would revise the size requirements to
establish two allowable size ranges, ¾-
inch minimum to 1 1⁄2 inches maximum
diameter and Size B, if such potatoes
otherwise meet the requirements of the
U.S. No. 1 grade standard. The revisions
would promote orderly marketing by
ensuring that only potatoes of a similar
size profile are shipped in the same
container.

The authority for regulating grade and
size is provided in § 948.22 of the order.
Section 948.387(a) of the order’s
administrative rules and regulations
prescribes the applicable size
requirements.

This rule is expected to have a
beneficial impact on handlers and
producers by maintaining the superior
reputation of the industry and ensuring
that only consistent, high quality
potatoes are shipped from the
production area. There should be no
extra cost to producers or handlers as a
result of the proposed changes because
current harvesting and handling
methods can accommodate the sorting
of these smaller potatoes. The
Committee believes that this revision
should translate into greater returns for
handlers and producers over time.

Neither NASS nor the Committee
compiles statistics relating to the
production of potatoes measuring less than 1 3/4 inches in diameter. The Committee has relied on information provided by producers and handlers familiar with the small potato market for its recommendation.

As small potatoes have grown in popularity with consumers, high quality potatoes from Colorado have been in demand. The Committee believes that modifying the size requirements for such small potatoes would maintain their consistency and increase their quality reputation in the market. The proposed changes are expected to increase sales of Colorado potatoes and to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including taking no action on the matter. One alternative discussed was to use other size ranges other than the ranges proposed. The Committee believed that the size ranges proposed offered the best compromise between regulatory control and accommodation for the marketing needs of the handlers. Another alternative was to establish just one 3/4-inch to 1 7/8 inches size range for small potatoes. However, that alternative was rejected because it would not have accommodated the mid-size range potatoes that some handlers prefer to ship. Thus, the Committee unanimously agreed that their recommendation reflected the best alternative available to achieve the desired result.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order’s information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee’s meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 12, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/MarketingOrders/SmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

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

2. In §948.387, revise paragraph (a) and add paragraphs (a)(1) through (a)(3) to read as follows:
§948.387 Handling regulation.
* * * * * * * * * * * * * * * * * * * * * * * * * * * * (a) Minimum grade and size requirements—All varieties. (1) U.S. No. 2 or better grade, 1 1/8 inches minimum diameter or 4 ounces minimum weight. (2) U.S. No.1 grade, Size B (1 1/2 inches minimum to 2 1/4 inches maximum diameter). (3) U.S. No.1 grade, 3 1/4-inch minimum to 1 7/8 inches maximum diameter.
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