Proposed Rules

Federal Register
Vol. 61, No. 247
Monday, December 23, 1996

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 980

[FV96–980–1 PR]

Vegetables; Import Regulations; Removal of Banana and Fingerling Types of Potatoes and Exemption of Potatoes for Potato Salad From the Potato Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove banana/fingerling potatoes from the provisions of the potato import regulation (import regulation). Such potatoes cannot now be imported because they are too small or misshapen to meet the minimum requirements under the import regulation. Removing banana/fingerling potatoes from the potato import regulation would allow such potatoes, which do not compete with potatoes currently regulated under Federal marketing orders, to be imported for specialized markets. This proposed rule also would reclassify potatoes used to make fresh potato salad as potatoes for processing. Such potatoes would then be exempt from the grade, size, quality, and maturity requirements of the potato import regulation.

DATES: Comments must be received by January 22, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax number (202) 720–5698. All comments should reference the docket 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.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 690–0464; Fax number: (202) 720–5698. Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Telephone: (202) 720–2491; Fax number: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal to change the potato import regulation (7 CFR 980.1; 61 FR 13051, March 26, 1996) is issued under section 8e of 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 62 importers of potatoes who would be affected by this proposal. Small agricultural service firms, which include potato importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000. The majority of potato importers may be classified as small entities.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this proposed rule should impact on both small and large business entities in a manner comparable to rules issued under marketing orders.

This rule proposes to remove banana/fingerling types of potatoes from the minimum grade, size, quality, and maturity provisions of the potato import regulation. These potatoes cannot now be imported because they cannot meet the minimum size or shape requirements under the import regulation. Removing banana/fingerling potatoes from the minimum requirements of the import regulation would allow such potatoes, which do not compete with potatoes currently regulated under Federal marketing orders, to be imported for specialized markets. Most importers of these potatoes are small business entities that would benefit from being able to import and sell such potatoes.

Reclassifying potatoes imported for use in the preparation of fresh potato salad as potatoes for processing will benefit importers, both large and small. The importers of such potatoes will be subject only to a form filing requirement necessary for the Department to determine that the potatoes are used for their intended purpose. The form filing requirement is specified in § 980.501 (OMB No. 0581–0167).

Therefore, the AMS has determined that this proposal would not have a significant economic impact on a substantial number of small entities.

Section 8e of the Act provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine with which area the imported commodity is in most direct competition and apply regulations based on that area to the imported commodity.

The Secretary has determined that imported potatoes are in most direct competition with potatoes grown in designated counties in Idaho and Oregon, the States of Washington, Colorado, and in designated counties in North Carolina and Virginia. Additionally, the Secretary has found that the minimum grade, size, quality, and maturity requirements for certain types of potatoes imported during specified periods should be the same as those established under the various marketing orders in effect.

Marketing Order No. 945 (7 CFR part 945) regulates the handling of potatoes grown in designated counties of Idaho and Eastern Oregon; all long types of potatoes imported into the U.S. must meet the minimum grade, size, quality, and maturity requirements established under this marketing order all year. Marketing Order No. 946 (7 CFR part 946) regulates the handling of potatoes grown in the State of Washington; imported round red potatoes must meet the requirements established under this order during the July through September period each year. Marketing Order No. 948 (7 CFR part 948) regulates the handling of potatoes grown in Colorado; imported round red potatoes must meet the requirements established under this order during the October through the following June period each season, and imported round white potatoes during the August through the following June 4 period each season. Marketing Order No. 953 (7 CFR part 953) regulates the handling of potatoes grown in designated counties in Virginia and North Carolina; imported round white potatoes must meet the requirements established under this order during the June 5 through July 31 period each year.

The Department has been asked by an importer to remove small white and non-white fleshed varieties of potatoes, known to the trade as banana or fingerling potatoes, from the requirements of the potato import regulation.

These potatoes are much smaller and different in appearance from the round red, round white, or long types of potatoes usually found in the marketplace, and are different varieties, not just round or long types that have not reached maturity. The Department had considered a requirement for maximum size for these potatoes. After examining samples of banana/fingerling potatoes provided by the importer and a domestic producer, the Department concluded that limiting banana/fingerling potatoes to a maximum size may not be an appropriate criterion. However, such potatoes are frequently misshapen compared to potato varieties produced commercially and have a significantly different appearance than the usual commercial varieties.

Recent trends in consumer preferences have resulted in an increasing demand for ''banana'' and ''fingerling'' type potatoes. These have a ''niche'' market as a ''gourmet'' item, and usually bring a much higher price than the potatoes usually found in the marketplace. Removing genetically different varieties of potatoes, such as ''banana'' and ''fingerling'' types, both white and non-white fleshed, from the potato import regulation would recognize that these potatoes do not compete directly with the major commercial varieties regulated under the various marketing orders.

Compliance procedures for banana/fingerling potatoes would be similar to those currently used for the importation of certified seed potatoes. Two alternatives to this proposed rule were considered. The first would have classified the banana/fingerling potatoes as tablestock potatoes, and the second alternative would have required importers to submit Exempt Commodity Form FV–6 to the U.S. Customs Service and to the Department, and receivers to complete the third part of the FV–6 and return it to the Department. Both of these alternatives were rejected with the proposed rule considered to be the most practicable and least burdensome alternative.

On March 26, 1996, the Department revised the potato import regulation (61 FR 13051; March 26, 1996). Among other things, the final rule stated that potatoes offered for importation for use in the preparation of fresh potato salad would be considered as a fresh use, and, therefore, not be exempt from the grade, size, quality, and maturity requirements of the potato import regulation.

Since publication of that rule, the Department has determined that the marketing orders for domestically produced potatoes Nos. 945 (Idaho-Eastern Oregon), 946 (Washington), 947 (Oregon-Northern California), 948 (Colorado), and 953 (Southeastern States), define ''other processing'' as the preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. In the preparation of fresh potato salad, the potatoes are boiled prior to being mixed with the other ingredients. Therefore, potatoes shipped under these orders for processing into fresh potato salad are exempt from minimum grade, size, quality, and maturity requirements established under the orders. Potatoes imported for that use also should be exempt from the grade, size, quality, and maturity requirements of the potato import regulation. Appropriate changes are proposed to exempt such potatoes from all such requirements. Importers of such potatoes would be subject to FV–6 form filing requirements to assure that any potatoes imported for use in the preparation of fresh potato salad were properly used. The form filing requirements are specified in section 980.501.

A minor editorial change is proposed to be made to recognize that the U.S. Bureau of Customs is now called the U.S. Customs Service.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this proposed rule.

A 30-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 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 980 is proposed to be amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 980.1, paragraph (b) introductory text is revised and paragraphs (h)(1) and (h)(2) are redesignated as paragraphs (i) and (j) and revised, to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(b) *Grade, size, quality, and maturity requirements.* The importation of Irish potatoes, except banana/fingerling potatoes and certified seed potatoes, shall be prohibited unless they comply with the following requirements.

* * * * *

(i) *Definitions.* (1) For the purpose of this part, potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size as set forth in the U.S. Standards for Potatoes (§§ 51.1540 to 51.1566, inclusive of this title) may be used.

(2) *Importation* means release from custody of the U.S. Customs Service.

(3) *Banana/fingerling potatoes* means various varieties of potatoes which, when mature, have a significantly different shape from normal commercial varieties of potatoes to the extent that they may be seriously misshapen as set forth in the U.S.Standards for Grades of Potatoes, §§ 51.1540 through 51.1566.

(j) *Exemptions.* The grade, size, quality, and maturity requirements of this section shall not be applicable to potatoes imported for canning, freezing, other processing, livestock feed, charity, or relief, but such potatoes shall be subject to the safeguard provisions contained in section 980.501. Processing includes canning, freezing, dehydration, chips, shoestrings, starch, cooking the potatoes for use in fresh potato salad, and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation.

Dated: December 17, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–32514 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM–61–3]

Heartland Operation To Protect the Environment: Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–61–3) submitted by the Heartland Operation to Protect the Environment. The petitioner requested that the NRC amend its regulations to adopt a rule regarding government ownership of a low-level radioactive waste (LLRW) or (LLW) disposal site that is consistent with petitioner's view of the applicable Federal statutes. The petition is being denied because the NRC believes there is no conflict between Section 151(b) of the Nuclear Waste Policy Act (NWPA) and its regulations requiring that LLW disposal facilities be sited on land owned by Federal or State government. The NRC has the authority to require Federal or State land ownership as a condition for licensing a LLW disposal facility and continues to believe the existing regulatory procedures are appropriate.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, E-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994 (59 FR 39485), prior to receipt of the petition (PRM–61–3), the NRC published an advance notice of proposed rulemaking (ANPRM) in the Federal Register regarding land ownership. The ANPRM announced that the NRC was considering amending its regulations in 10 CFR 61.59(a) to allow private ownership of the land used for a LLRW disposal facility site as an alternative to the current requirements for Federal or State ownership. On July 18, 1995 (60 FR 36744), the NRC published in the Federal Register a notice withdrawing the ANPRM because the rule change was not warranted or needed. The basis for this decision was the general indication from States and compacts that they do not need, nor would they allow, private ownership, and that the rule change under consideration could be potentially disruptive to the current LLW program.

The Petition

On January 9, 1996 (61 FR 633), the NRC published a notice of receipt of a petition for rulemaking filed by the Heartland Operation to Protect the Environment (HOPE). The petitioner states that the NRC's present regulation (10 CFR 61.59(a)), which permits disposal of LLW ''only on land owned in fee by the Federal or a State government,'' is in conflict with a provision in Section 151(b) of the Nuclear Waste Policy Act of 1982, as amended. The NWPA authorizes the U.S. Department of Energy (DOE) ''to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal * * *.'' Therefore, the petitioner proposes that the NRC regulations should conform to the NWPA provision and require private land ownership during operations and closure of the facility, then converting title to the site to the DOE.

The petitioner, who also commented on the ANPRM, further states that the notice withdrawing the ANPRM contains no documentation or statement of any issue of public health and safety as the basis for the regulation. Therefore, the petitioner believes that public health and safety cannot be an issue upon which the NRC regulation is based.

The notice of withdrawal contains the statement: ''The Commission believes that the potential negative impact of disrupting the current process far outweighs any potential benefits that might be derived from making a generic rule change at this time.'' In response, the petitioner asserts that the Commission's role is to regulate nuclear material in a manner that protects public health and safety and the environment, that its role is not to facilitate specific processes, i.e., the current LLRW disposal process.

The petitioner references the following quotation the NRC used in the withdrawal notice. This quotation came from one of the comments received on the ANPRM.

> For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required, may be difficult and generate a significant credibility problem.

In response, the petitioner states that ''* * * credibility problems occur when misrepresentations—i.e. government ownership is necessary in order to assure proper LLRW management—are initially made, and that such credibility problems are exacerbated the longer such misrepresentations are allowed to continue.'' The petitioner asserts that there would appear to be a larger credibility problem for the Commission to maintain 10 CFR 61.59(a) that is, in the petitioners's view, in direct conflict with a statute (i.e., Section 151(b) of the NWPA). The petitioner offers that, ''The Commission might reflect on the Department of Energy's recent efforts to gain credibility by coming clean on past misrepresentations—i.e. secret radiation studies.''

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit written comments