

Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade to change the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries. This proposed rule would change the designation of the spot markets which are used daily to calculate price differences for cotton futures contracts. The current designations were published in the **Federal Register** on August 4, 1988 (53 FR 29327). As previously stated, differences are quoted for those qualities of cotton which are tenderable on active futures contracts in five designated markets. These differences are averaged to obtain the differences quoted for futures settlement.

This proposed rule would provide that differences would continue to be quoted for those qualities of cotton which are tenderable on active futures contracts in all of the five markets currently designated for this purpose. However, the West Texas spot market would be added as a bone fide spot market for the settlement of futures contracts, and the North Delta and South Delta spot markets would be combined and averaged together when used for this purpose of calculating differences of tenderable qualities for the settlement of futures contracts. This proposed rule would change the calculation of differences of tenderable qualities for the settlement of futures contracts to be the average of the differences of (1) the Southeastern spot market; (2) the East Texas/Oklahoma spot market; (3) the West Texas spot market; (4) the Desert Southwest spot market; and (5) the combination and averaging of the North Delta and South Delta spot markets. The remaining designated spot markets would not change. These proposed modifications are expected to more accurately reflect the trading value of tenderable cotton on futures contracts and add more transparency in the market.

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble, 7 CFR Part 27 is proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. Section 27.94 is amended by revising paragraph (a) to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

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Dated: July 15, 2002.

A.J. Yates,
Administrator, Agricultural Marketing Service.

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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 Curry, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-5698, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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.”

This proposed rule also is issued under § 608e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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.

The Act provides that administrative proceedings must be exhausted before

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 945 and 980

[Docket No. FV00-945-2 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR, and Irish Potatoes Imported into the United States; Proposed Modification of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the reference to Norgold variety potatoes from the handling regulation issued under the marketing order for Idaho-Eastern Oregon potatoes. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order and the less restrictive requirements are not needed. As required under section 608e of the Agricultural Marketing Agreement Act of 1937, the maturity requirements for potato imports would be changed accordingly.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-5698, or e-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number

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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under § 608e of the Act.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the order. Current requirements provide, in part, that all potatoes packed in cartons shall be inspected and certified as meeting U.S. No. 1 grade or better. All varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1–15, and the White Rose and red skinned varieties from August 1–December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements. Size shall be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), and the size must be marked consistent with § 51.1545 of the standards.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would change accordingly. This rule would also remove outdated language and make other conforming changes to the handling and import regulations.

The Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the order, met on November 9, 1999, and unanimously recommended the removal of reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–August 15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area.

Production of this long type variety was discontinued due in part to the Norgold variety's inherent propensity to have lighter, thinner skin early in the season compared to the varieties produced today. Newer replacement varieties are less prone to early season maturity problems, which enables the industry to maintain a consistent maturity level throughout the entire shipping season.

In addition, buyers are accustomed to long type potatoes having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. The degree of skinning or maturity is differentiated by the amount of loss of the outer surface or skin layer. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing.

This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, § 608e of the Act requires that, when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 608e also provides that whenever two or more marketing orders regulating the same commodity

produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the minimum requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under the order since it was established. The current import regulation in § 980.1 specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation.

While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of "slightly skinned." This proposal is not expected to have any economic impact upon importers. Nearly all potato imports come from Canada, and representatives of USDA's Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada.

This proposed rule also removes § 945.130 of the rules and regulations which is obsolete, and revises and updates language in § 980.1, Import regulations; Irish potatoes. Sections 945.22 and 945.23 of the order, regarding committee membership districts within the production area and redistricting and committee reapportionment, were amended on June 5, 1995 (60 FR 29724), and § 945.130 is no longer needed. In addition, this rule would remove references in the potato import regulation to the terminated marketing orders for Red River Valley and Maine potatoes, remove outdated language regarding import regulations in effect during 1970 and 1971, update the list and addresses of inspection offices for imports, and update the references in the import regulation to government agencies.

Initial Regulatory Flexibility Analysis

Pursuant to the 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. 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. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 1,600 potato producers in the regulated area. There are approximately 161 importers of potatoes. Small agricultural service firms, which include potato handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000. A majority of these handlers, importers, and producers may be classified as small entities.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would be changed accordingly.

The Committee met on November 9, 1999, and unanimously recommended the removal of the reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area. In addition, buyers have become accustomed to long type potatoes (such as Norgold variety potatoes) having a higher maturity level

than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing. This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, section 608e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The current import regulation specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation. While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of "slightly skinned."

This proposal is not expected to have an economic impact upon importers. There are no potato imports during the period of August 1–15. In addition, representatives of the USDA Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada. Nearly all potato imports come from Canada, but there are no shipments until the latter part of September.

The removal of the references to Norgold variety potatoes is not expected to impose any additional costs on handlers, importers, or producers.

As alternatives to the proposal, the Committee discussed leaving the handling regulation as currently issued. The Committee rejected this idea because it would have left outdated language in the rules and regulations.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically

reviewed to reduce information requirements and duplication by industry and public sectors. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Further, 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 November 9, 1999, 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 information on 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 the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 608e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

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

7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

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

For the reasons set forth above, 7 CFR parts 945 and 980 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 945 and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.130 [Removed]

2. Section 945.130 is removed.

§ 945.341 [Amended]

3. In § 945.341, paragraph (b)(2) is removed, and paragraphs (b)(3) and

(b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

PART 980—VEGETABLES; IMPORT REGULATIONS

4. Section 980.1 is amended as follows:

- Revise paragraphs (a)(1)(i), (a)(2)(ii), (b)(2), (e), (f), and (g)(1)(ii).
- Redesignate paragraph (i) as paragraph (j).

c. Redesignate paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2) and revise newly designated paragraphs (i)(1) and (i)(2). The revisions read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(a) * * *

(1) * * *

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 945 (part 945 of this chapter), No. 948 (part 948 of this chapter), No. 947 (part 947 of this chapter), No. 946 (part 946 of this chapter), and No. 953 (part 953 of this chapter).

* * * * *

(2) * * *

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct

competition with the marketing of the same type of potatoes produced in the Southeastern States covered by Order No. 953 (part 953 of this chapter); and during the period of August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity requirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those

potatoes which are officially certified and tagged as seed potatoes by the Plant Health and Production Division, Plant Products Directorate, Canadian Food Inspection Agency, and which are subsequently used as seed.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1) * * *

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following applicable inspection offices prior to the time the Irish potatoes would be imported.

Ports and points	Inspection offices	Advance notice (days)
All Maine ports and points of entry	In-Charge, Post Office Box 1058, Presque Isle, ME 04767 (PH 207-764-2100)	1
Port of Boston, MA	In-Charge, Boston Market Terminal Building, Room 1, 34 Market Street, Everett, MA 02149 (PH 617-389-2480).	1
Port of New York, NY	In-Charge, 465B New York City Terminal Market, Bronx, NY 10474 (PH 718-991-7665).	1
Port of Philadelphia, PA	In-Charge, 210 Produce Building, 3301 South Galloway Street, Philadelphia, PA 19148 (PH 215-336-0845).	1
All other ports and points of entry.	Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250 (PH 1-800-811-2373).	3

* * * * *

(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 Grades of Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

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

Dated: July 17, 2002.

A.J. Yates,
Administrator, Agricultural Marketing Service.
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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Insurance of State Banks Chartered as Limited Liability Companies

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: One of the statutory requirements for a State-chartered bank to be eligible for Federal deposit insurance is that it be “incorporated under the laws of any State.” In the recent past the FDIC has received two inquiries regarding whether a State bank that is chartered as a limited liability company (LLC) could be considered to be “incorporated” for purposes of that requirement. The FDIC proposes to issue a regulation that would clarify that a bank that is chartered as an LLC under State law would be considered to be “incorporated” under State law if it meets certain criteria.