

# Proposed Rules

Federal Register

Vol. 70, No. 14

Monday, January 24, 2005

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 Parts 945

[Docket No. FV05-945-1 PR]

#### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Relaxation of Handling Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would relax the minimum size requirement for U.S. No. 2 grade round potatoes handled under the marketing order for Idaho-Eastern Oregon potatoes. The current size requirement for U.S. No. 2 grade round varieties, other than red, is 2 inches minimum diameter or 4 ounces minimum weight provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. This rule would establish a minimum size requirement of 1 $\frac{7}{8}$  inches minimum diameter, as is currently in effect for round red varieties, for all U.S. No. 2 grade round potatoes. This relaxation was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program in the designated production area. This proposed change is intended to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

**DATES:** Comments must be received by March 25, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. 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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. Comments

should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement 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."

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 rule is not intended to have retroactive effect. This proposal will 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 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 proposed rule would relax the minimum size requirement for U.S. No. 2 grade round potatoes handled under the order. The current requirement for U.S. No. 2 grade round varieties, other than red-skinned, is 2 inches minimum diameter or 4 ounces minimum weight, provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. This rule would establish a minimum size requirement of 1 $\frac{7}{8}$  inches minimum diameter, as is currently in effect for round red-skinned varieties, for all U.S. No. 2 grade round potatoes.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of grade, size, quality, and maturity regulations applicable to the handling of potatoes.

Section 945.341 establishes minimum grade, size, and maturity requirements for potatoes handled subject to the order. Current requirements provide that round red-skinned varieties that grade U.S. No. 2 shall have a minimum diameter of 1 $\frac{7}{8}$  inches. All other U.S. No. 2 grade potatoes are required to meet a 2 inches minimum diameter or 4 ounce minimum weight requirement, provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. Section 945.341 also allows potatoes that are U.S. No. 1 grade to meet a less stringent size B requirement (1 $\frac{1}{2}$  inches minimum and 2 $\frac{1}{4}$  inches maximum) as specified in the United States Standards for Grades of Potatoes (7 CFR 51.1540-51.1566).

At its meeting on November 4, 2004, the Committee unanimously recommended reducing the minimum size requirement for all varieties of U.S.

No. 2 grade round potatoes to 1 $\frac{7}{8}$  inches minimum diameter.

Committee members stated that round potato production, particularly for non-red varieties, has been increasing in recent years and now makes up a significant percentage of total round potato production. In the past, red-skinned varieties were essentially the only round varieties produced within the production area. Some new round varieties that have been introduced have skin colors such as white, yellow, gold, purple, blue, and pink.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes would enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers.

According to the Committee, quality assurance is very important to the industry and to its customers. Providing the public with acceptable quality produce that is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. The Committee reports that potato size is important to buyers and that providing the sizes desired is important to promote sales. Buyers have indicated that the proposed 1 $\frac{7}{8}$  inches minimum diameter for all varieties of round potatoes is a desirable size.

This proposed change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

This rule would have no impact on potato imports covered by section 608e of the Act.

#### 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.

There are approximately 52 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 900 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, 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.

Based on a three-year average fresh potato production of 33,767,000 hundredweight as calculated from Committee records, a three-year average of producer prices of \$5.18 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately \$194,349. It can be concluded, therefore, that a majority of these producers would be classified as small entities.

In addition, based on Committee records and 2003–04 f.o.b. shipping point prices ranging from \$4.00 to \$28.00 per hundredweight reported by USDA's Market News Service, most of the Idaho-Eastern Oregon potato handlers do not ship over \$5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that a majority of the handlers would be classified as small entities as defined by the SBA.

This proposed rule would establish a minimum size requirement of 1 $\frac{7}{8}$  inches minimum diameter, as is currently in effect for round red-skinned varieties, for all U.S. No. 2 grade round potatoes. The current size requirement for U.S. No. 2 grade round varieties, other than red, is 2 inches minimum diameter or 4 ounces minimum weight provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes would enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers. Buyers have indicated that the proposed 1 $\frac{7}{8}$  inches minimum diameter is a desirable size. This proposed change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

Authority for this proposed rule is provided in §§ 945.51 and 945.52 of the order.

At the November 4 meeting, the Committee discussed the impact of this change on handlers and producers. The proposal is a relaxation of current regulation and, as such, should either generate a positive impact or no impact on industry participants. The Committee did not foresee a situation in which this proposed change would negatively impact either handlers or producers.

Round type potatoes are produced and handled by only a small percentage of the industry. The predominant producing regions are centered around the American Falls, Idaho Falls, and Blackfoot areas of Idaho. Acreage is approximately 6,000 to 7,000 acres, which represents only about 2 percent of the production area's 355,000 acres planted to potatoes in 2004.

Round potato production is increasing within the production area. Shipments for the 2003–2004 season were approximately 300,000 hundredweight. The Committee estimates that round potato shipments for the 2004–2005 crop season could approach 800,000 hundredweight. The Committee reported that one round yellow-skinned variety might account for 500,000 hundredweight. Through week seventeen of the 2004–2005 season, reported shipments of round potatoes are up 54 percent from the prior year.

The Committee reported that smaller size round potatoes of good quality receive premium prices. This contention is consistent with USDA Market News Service reports. Market News does not report on round type potatoes in the Idaho-E. Oregon area, but does report on other round potato producing regions. It would be reasonable to expect price trends between production areas to move together, given that the regions would compete with each other for sales in the domestic market.

Relaxing the size requirement would allow producers and handlers of non-red U.S. No. 2 grade round potatoes to market a greater percentage of their crop under the order. This should lead to increased total net returns for those firms. The benefits derived from this rule change are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this proposed change. One alternative included making no change at all to the current regulation. The Committee did not believe this alternative would meet the needs of buyers or benefit the industry. Another alternative discussed

was to allow round potatoes to be exempted from regulations under Certificate of Privilege provisions provided within the order. This option also was rejected because it would allow lower quality potatoes to be shipped to the fresh market. Lastly, the Committee considered further relaxing the size requirement for all round potatoes below the 1 $\frac{7}{8}$  inches minimum diameter. The Committee believed that relaxing the minimum size requirement for U.S. No. 2 round potatoes below 1 $\frac{7}{8}$  inches would result in buyer dissatisfaction. Producers and handlers who wish to ship smaller round potatoes may do so by conforming to the U.S. No. 1 grade standard.

With only a small amount of the total potato crop in the production area expected to be affected by relaxing the size requirement, the Committee believes that the proposed change to relax the size requirement of non-red-skinned U.S. No. 2 round potatoes to a 1 $\frac{7}{8}$  inches minimum diameter would provide the greatest amount of benefit to the industry with the least amount of cost.

This proposed rule would relax the size requirements under the marketing order. Accordingly, this action 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 sector agencies.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, potatoes handled under the order have to meet certain requirements set forth in the United States Standards for Potatoes (7 CFR 51.1540–51.1566) issued under the Agricultural Marketing Act of 1946 (7 CFR part 1621, *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

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 4, 2004, 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.

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 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 945 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **§ 945.341 [Amended]**

2. In § 945.341, paragraph (a)(2)(i), remove the words “*Round red varieties.*” and add in their place “*Round varieties.*”

Dated: January 13, 2005.

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

[FR Doc. 05–1178 Filed 1–21–05; 8:45 am]

**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 987**

**[Docket No. FV04–987–1 PR]**

#### **Domestic Dates Produced or Packed in Riverside County, CA; Modification of the Qualification Requirements for Approved Manufacturers of Date Products**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on modifications to the requirements to be an approved manufacturer of date products under the Federal date marketing order (order). The order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered

locally by the California Date Administrative Committee (committee). The committee's approved product manufacturer program helps assure that higher quality whole and pitted dates are shipped within the USA and to Canada. This rule would clarify the application procedures and qualifications for a manufacturer to continue to be listed as an approved manufacturer of date products. This proposal would also require an applicant who is also a date handler under the order to be in compliance with the order. These modifications would help safeguard the integrity of the approved date product manufacturer program under the order and the quality of whole and pitted dates that are shipped within the USA and Canada.

**DATES:** Comments must be received by February 3, 2005.

**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 E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing