

necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude OIG special agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with OIG's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8-1553 Filed 1-29-08; 8:45 am]

**BILLING CODE 4410-10-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 948**

[Docket No. AMS-FV-07-0115; FV08-948-1 FR]

**Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2**

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the minimum size requirements under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by

the Colorado Potato Administrative Committee, Area No. 2 (Committee). The minimum size requirements for Area No. 2 potatoes specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight, with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1<sup>7</sup>/<sub>8</sub> inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties may be 1<sup>7</sup>/<sub>8</sub> inches in diameter, thus requiring these varieties to also meet the minimum requirements of 2 inches in diameter or 4 ounces in weight. This change is intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

**DATES:** *Effective Date:* January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson 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: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

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 final rule is issued under Marketing Agreement No. 97 and Marketing 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule 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 final rule modifies the minimum size requirements under the order. The minimum size requirements for Area No. 2 potatoes specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1<sup>7</sup>/<sub>8</sub> inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties may be 1<sup>7</sup>/<sub>8</sub> inches in diameter. This rule was recommended by the Committee at a meeting on August 16, 2007.

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 areas of regulation for marketing order purposes. These include: Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Sanguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and, 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 No. 2. The order

currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order.

On August 16, 2001, the Committee recommended increasing the minimum size requirements from 1 $\frac{7}{8}$  inches to 2 inches in diameter or 4 ounces minimum weight for all varieties of potatoes, except for round varieties and the Russet Burbank, Russet Norkotah, and Silverton Russet varieties. This recommendation was made effective July 15, 2002 (67 FR 40844). The Russet Burbank, Russet Norkotah, and Silverton Russet varieties were left at 1 $\frac{7}{8}$  inches minimum diameter.

The Committee believes that the demand for fresh potatoes has decreased over the last several years and that there are currently abundant supplies in the marketplace. Market data also shows that consumers prefer larger, higher quality potatoes. After reviewing such market data over the past six years, the Committee decided to recommend removing the minimum size exception for Russet Burbank, Russet Norkotah, and Silverton Russet varieties. The Committee believes that providing the sizes desired is necessary to maintain consumer confidence in the marketplace. The Committee also believes that most Colorado potato handlers have already been shipping Russet varieties with a minimum size of 2 inches in diameter or 4 ounces in weight.

Russet potatoes subject to the order's handling regulation will meet the size requirements if they are at least 2 inches in diameter or 4 ounces in weight. Some long, thin potatoes might be smaller than 2 inches in diameter, but weigh at least 4 ounces. These potatoes would meet the revised size requirements. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in diameter. These potatoes would also meet the revised minimum size requirements.

Twelve members voted in favor of the modification and one member voted in opposition. The dissenting member was concerned that some industry members who produce smaller Russet potatoes might not support the change. The Committee made the recommendation to provide buyers with the sizes they prefer and to maintain buyer confidence, thus facilitating the handling and marketing of Colorado Area No. 2 potatoes and improving producer returns.

### Final Regulatory Flexibility Analysis

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.

Accordingly, AMS has prepared this final 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.

There are approximately 77 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2006–2007 marketing year, approximately 16,061,432 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$11.00 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 86 percent, had annual receipts of less than \$6,500,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2006 was \$8.80 per hundredweight. The average annual fresh potato revenue for each Colorado Area No. 2 potato producer is therefore calculated to be approximately \$785,226. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

This final rule removes from the handling regulation the exception that Russet Burbank, Russet Norkotah, and Silverton Russet varieties of Area No. 2 Colorado potatoes may be 1 $\frac{7}{8}$  inches in diameter. This rule will thus have the effect of increasing the minimum size requirement for Russet potatoes from 1 $\frac{7}{8}$  inches in diameter or 4 ounces in weight to 2 inches in diameter or 4 ounces in weight.

Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

NASS estimated planted acreage for the 2006 crop in Area No. 2 at 59,900 acres, an increase of 1,700 acres when compared with 58,200 acres planted in 2005. In 2006, NASS data shows that Russet Norkotah, the most popular variety, was planted on 60.3 percent of the total potato acreage. Other Russet varieties accounted for 20.6 percent of the total acres planted, with various other varieties making up the remaining 19.1 percent.

Based on Committee records, 89.6 percent of Area No. 2 potatoes entered the fresh market during the 2006–2007 marketing year (including potatoes produced for seed). Of those potatoes, Russet potato varieties accounted for 89.2 percent.

Only a small portion of the crop is expected to be affected by the size increase (i.e., that portion of Russet Burbank, Russet Norkotah, or Silverton Russet varieties smaller than 2 inches in diameter or 4 ounces in weight, but larger than 1 $\frac{7}{8}$  inches in diameter). Based on current customer demand, many handlers are already shipping 2-inch minimum diameter Russet potatoes. The Committee believes that the expected benefits of improved quality, increased purchases and sales volume, and increased returns received by producers will greatly outweigh the costs related to the regulation.

After discussing possible alternatives to this rule, the Committee determined that an increase in the minimum size for Russet varieties would increase returns to producers while supplying the market with a higher percentage of larger high quality potatoes. The Committee believes that the expected benefits are improved quality, increased purchases and sales volume, and increased returns received by producers. During its deliberations, the Committee also considered increasing the minimum size to 2 $\frac{1}{8}$  inches or 5 ounces in weight for Russet varieties. However, the Committee decided that increasing the minimum size from 1 $\frac{7}{8}$  inches diameter to 2 $\frac{1}{8}$  inches in diameter would be too restrictive at this time.

This final rule increases the size requirements for Russet varieties of potatoes under the order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Russet 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.

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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 11, 2007 (72 FR 70244). Copies of the rule were mailed or sent via facsimile to all Committee members and handlers. The rule was also made available through the Internet by USDA and the Office of the **Federal Register**. A 15-day comment period ending December 26, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

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/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.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2007–2008 crop. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

#### 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 amended as follows:

#### PART 948—IRISH POTATOES GROWN IN COLORADO

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

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 948.386 by revising paragraph (a)(2) to read as follows:

#### § 948.386 Handling regulation.

\* \* \* \* \*

(a) \* \* \*

(2) *All other varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

\* \* \* \* \*

Dated: January 24, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–1570 Filed 1–29–08; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. APHIS–2007–0124]

#### Change in Disease Status of Surrey County, England, Because of Foot-and-Mouth Disease

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Surrey County, England, from the list of regions considered to be free of foot-and-mouth disease (FMD). We are taking this action because the existence of FMD has been confirmed in that area. This action is necessary to prevent the introduction of FMD into the United States. As a result of this interim rule the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine from Surrey County, England, is restricted.

**DATES:** This interim rule is effective January 30, 2008. However, we are imposing this restriction retroactively to August 3, 2007. We will consider all comments that we receive on or before March 31, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0124> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2007–0124, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0124.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services Import Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

#### SUPPLEMENTARY INFORMATION:

#### Background

Foot-and-mouth disease (FMD) is a severe and highly contagious viral infection affecting all cloven-hoofed ruminants, including cattle, deer, goats, sheep, swine, and other animals. The disease is highly communicable and is characterized by fever and blister-like lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in the production of meat, milk, and other dairy products. Although many animals survive the disease, it leaves them debilitated. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.