

# Proposed Rules

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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 51

[Doc. No. AMS-FV-08-0023]

#### United States Standards for Grades of Potatoes

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the United States Standards for Grades of Potatoes which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is proposing to amend the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

Additionally, AMS is proposing to add restrictive tolerances for permanent defects in the en route/at destination tolerances, and also remove the unneeded definition for injury and clarify the scoring guide for sprouts.

AMS also proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend language in the tolerance section to ensure soft rot tolerances are applied correctly.

The purpose of this revision is to update and revise the standards to more accurately represent today's marketing practices and to clarify existing language.

**DATES:** Comments must be received by June 1, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center,

Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361-1199, or on the web at: [www.regulations.gov](http://www.regulations.gov). Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed on the [www.regulations.gov](http://www.regulations.gov) Web site. The current United States Standards for Grades of Potatoes, along with the proposed changes, will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/freshinspection>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, at the above address or call (540) 361-1120.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

##### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) and in the Paperwork Reduction Act (PRA), AMS has considered the economic impact of the proposed actions on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2006-2008 was \$3.482 billion. Dividing that figure by 15,014 farms yields an average potato crop value per farm of just under \$232,000. Since this is well under the SBA threshold of annual receipts of \$750,000, it can be concluded that the majority of these producers may be classified as small entities. Furthermore, there are approximately 180 handlers of potatoes and approximately 168 importers of potatoes that may be classified as small entities and may be affected by this rule.

Additional evidence comes from examining the Agricultural Census acreage breakdown closely. Out of a total of 15,014 potato farms in 2007, 19 percent were less than 10 acres and 66 percent were less than 100 acres. An estimate of the number of acres that it would take to produce a crop valued at \$750,000 can be made by dividing the 2006-08 average crop value of \$3.482 billion by the three-year average bearing acres of 1.097 million, yielding an average potato revenue per acre estimate of \$3,174. Dividing \$750,000 by \$3,174 shows that farms with 236 acres received at least the average price in 2006-08 producing crops valued at \$750,000 or more, and would therefore be considered large potato farms under the SBA definition. Looking at farm numbers for additional census size categories shows that 11,718 potato farms (78 percent) are under 220 acres and 11,994 (80 percent) are less than 260 acres. Since a farm with 236 acres of potatoes falls within this range, it can be concluded that the proportion of small potato farms under the SBA definition is between 78 and 80 percent of all U.S. potato farms.

The effects of this rule are not expected to be disproportionately greater or smaller for small handlers, producers, or importers than for larger entities. The proposed changes are to amend the similar varietal characteristic requirement, add restrictive tolerances for permanent defects in the enroute/at

destination tolerances, remove the definition for injury, and clarify the scoring guides for sprouts. Additionally, AMS proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend the tolerance section to ensure soft rot tolerances are applied correctly. These proposed actions would make the standard more consistent and uniform with marketing trends and practices. These proposed actions will not impose any additional reporting or recordkeeping requirements on either small or large potato producers, handlers, or importers.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of potatoes under 7 CFR parts 945–948 and 953. Potatoes under a marketing order have to meet certain requirements set forth in the grade standards. In addition, potatoes are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported potatoes to meet grade, size, and quality under the applicable marketing order.

Alternatives to this proposed rule (7 CFR part 980) were considered, including the option to issue the rule. However, the need for revision has increased as a result of changing market characteristics, and the proposal represents input from the potato industry.

### Background and Proposed Rule

A proposed rule was published in the September 22, 2006, **Federal Register** (71 FR 55356), seeking comments on possible revisions to the United States Standards for Grades of Potatoes. During the comment period, a comment was received requesting AMS give consideration to allow packing of mixed varieties in the U.S. No. 1 grade. While this change was not in the scope of that rulemaking, AMS believed the suggestion should be considered separately at a later time. AMS agrees that inserting language into the standard to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack would reflect current marketing practices. Upon further evaluation, AMS also believes that this revision should be applied to the U.S. No. 2 grade as well due to changes in the marketing of potatoes. This proposal would revise § 51.1541 (a) and § 51.1543 (a) concerning similar varietal characteristics by inserting "except

when designated as a mixed or specialty pack" into the proposed standard to allow for mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

In addition, a March 21, 2008, rule (73 FR 15054 as corrected at 73 FR 70885) finalized the September 26, 2006, proposed rule by adding en route/at destination tolerances to the U.S. No. 1 and U.S. No. 2 grades. However, restrictive tolerances for permanent defects implemented in those en route/at destination tolerances were not included. These restrictive tolerances are necessary to ensure that additional permanent defects are not allowed en route or at destination than that allowed at shipping point. Therefore, this proposal would revise § 51.1546 (a)(1)(ii) by adding "Provided, That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:" and revise § 51.1546 (a)(3)(ii) by adding "Provided, That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:" Further, this proposal would revise § 51.1546 (a)(1)(ii)(A) by adding "including therein not more than 5 percent for permanent external defects;" § 51.1546 (a)(1)(ii)(B) by adding "including therein not more than 5 percent for permanent internal defects; and" § 51.1546 (a)(3)(ii)(A) by adding "including therein not more than 6 percent for permanent external defects;" and revise § 51.1546 (a)(3)(ii)(B) by adding "including therein not more than 6 percent for permanent internal defects; and"

Additionally, the U.S. Extra No. 1 grade for potatoes was removed from the standard and therefore the definition for injury in the U.S. Standards for Grades of Potatoes is no longer needed. Therefore, AMS proposes to remove the definition for injury from § 51.1559 and reclassify § 51.1559 as "[Reserved]."

AMS also has determined that the current scoring guide for sprouts needs further clarity. Accordingly, AMS proposes to revise the language to help ensure that the scoring guide for sprouts is not interpreted incorrectly. The proposed rule would revise the scoring guide for damage by sprouts in Table III as follows: "When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point, more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which detract from the appearance of

the potato." Similarly, AMS would revise the scoring guide for serious damage by sprouts in Table III as follows: "When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts that seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades."

Further, AMS proposes to add the following language to ensure proper application of soft rot tolerances in the applicable tolerance sections:

§ 51.1546 (a)(1)(i)(B): "5 percent for internal defects; and"

§ 51.1546 (a)(1)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(1)(ii)(C): "Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(2)(iii) and § 51.1546 (a)(3)(i)(B): "6 percent for internal defects; and"

§ 51.1546 (a)(2)(iv) and § 51.1546 (a)(3)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(3)(ii)(C): "Not more than 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

AMS also proposes for clarity to add table numbers, amend table headings, and replace omitted language in sections: § 51.1546 (a)(2)(iii); § 51.1560; § 51.1561; § 51.1564; and § 51.1565.

A 30-day period is provided for interested persons to comment. This period is deemed appropriate in order to implement these changes, if adopted, as soon as possible to reflect current marketing practices. Accordingly, AMS proposes to amend the United States Standards for Grades of Potatoes as follows:

### List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

### PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.



