

permit Florida grapefruit handlers to continue to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1995–96 season, and will provide for the maximization of shipments to fresh market channels.

There are several exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will finalize the relaxation of the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This rule finalizes the relaxation of the minimum size requirements for imported red seedless grapefruit to 3–5/16 inches in diameter (size 56) for the period November 13, 1995, through November 10, 1996, to reflect the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on these considerations, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing this interim final rule without change, as published in the Federal Register (60 FR 58497,

November 28, 1995) as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 60 FR 58497 on November 28, 1995, is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final amending 7 CFR part 944 which was published at 60 FR 58497 on November 28, 1995, is adopted as a final rule without change.

Dated: January 25, 1996.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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7 CFR Part 945

[FV95–945–2FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which changed pack requirements and established marking requirements for Idaho-Eastern Oregon potatoes. These changes are expected to improve the marketing of such potatoes and increase returns to producers. These changes were recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing

order program. The rule also included several conforming changes to recognize that the marketing order regulates shipments of potatoes within, as well as outside, the production area.

EFFECTIVE DATE: This final rule becomes effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or FAX (503) 326–7440; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 205–2829, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 945 (7 CFR part 945), as amended, hereinafter referred to as the “order,” regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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. 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 65 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order and approximately 1,600 producers in the production area. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of potato handlers regulated under the order may be classified as small entities. A majority of producers may also be classified as small entities.

This rule finalizes an interim final rule which amended the handling regulation in § 945.341 by specifying that: (1) All cartons (except when used as master containers) be conspicuously marked as to size of the potatoes in the carton; (2) for all varieties, when 50-pound containers are marked with a count, size, or similar designation, the potatoes contained therein must meet the count, average count, and weight ranges established within the handling regulation; and (3) all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when cartons are used as master containers) shall be U.S. No. 1 grade or better. The interim final rule also included several conforming changes to recognize that the order regulates shipments of potatoes within, as well as outside, the production area.

These changes were recommended by the Committee at its August 9, 1995, meeting. The Committee's recommendations are authorized pursuant to §§ 945.51 and 945.52 of the order. This rule will continue the improvement in the marketing of Idaho-Eastern Oregon potatoes and improve returns to producers.

A recent order amendment (60 FR 29724; June 5, 1995), added authority to § 945.52 to require accurate and uniform marking and labeling of containers in

which Idaho-Eastern Oregon potatoes are shipped. With this authority in the order, the Committee recommended requiring that all cartons shall be conspicuously marked as to potato size; i.e., marked so that the potato size is noticeable on the carton. The Committee recommended this requirement to reduce confusion in the marketplace as to the size of the potatoes in cartons. While most cartons already are marked as to size, the Committee reported that there have been many instances when product size in unmarked cartons was misrepresented through the marketing chain; (e.g., 100-count size potatoes in 50-pound cartons being represented as 90-count size). This type of misrepresentation created market confusion, damaged buyer acceptance, and depressed prices. The marking requirement should continue in effect to prevent such problems.

In addition, the interim final rule changed the pack requirements in § 945.341(c). For several decades, the handling regulation specified that when long varieties of potatoes in 50-pound containers are marked with a count, size or similar designation, the potatoes contained therein must meet the count, average count and weight ranges established within the handling regulation. This benefitted buyers and sellers by reducing market confusion and misrepresentation related to the marking of count and weight ranges on 50-pound containers. In recent years, there has been an increase in the number of plantings of round varieties grown in the Idaho-Eastern Oregon production area. Therefore, the Committee recommended that this pack requirement, which the industry has found to be beneficial for long varieties, be extended to all varieties. The extension of the pack requirement to all varieties should be continued to further the marketing of potatoes from the production area.

The second aspect of the change in pack requirements recommended by the Committee was the establishment of a requirement that all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when cartons are used as master containers) shall be U.S. No. 1 grade or better. Previously, the handling regulation required this only of potatoes packed in 50-pound cartons (except when used as master containers). Some buyers had indicated that a smaller carton size is more desirable than the 50-pound carton. Those buyers indicated that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, those buyers still want to be provided with the same quality of

potatoes; i.e., U.S. No. 1 grade or better. Previously, the grade of potatoes packed in other than 50-pound cartons had to be U.S. No. 2 grade or better. This finalization of change in the handling regulation reflects the industry's intention to provide a high quality product, regardless of carton size used. The change should remain in effect so that goal can be met.

Another order amendment revised § 945.9 to broaden the scope of the order to authorize regulating shipments of potatoes within, as well as outside, the production area. Conforming changes were made in § 945.341(d)(3) regarding inspection and certification procedures so these procedures cover all shipments of potatoes, not only shipments made outside the production area.

The changes to the handling regulation were published in the Federal Register as an interim final rule on November 24, 1995 (60 FR 57904). That rule provided that interested persons could file comments through December 26, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

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

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 60 FR 57904 on November 24, 1995, is adopted as a final rule without change.

Dated: January 24, 1996.

Sharon Bomer Lauritsen

Deputy Director, Fruit and Vegetable Division.

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