

Rules and Regulations

Federal Register

Vol. 62, No. 187

Friday, September 26, 1997

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV97-948-1 IFR]

Irish Potatoes Grown in Colorado; Change in Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the size requirement from a 2 inch minimum diameter or 4 ounce minimum weight to a 1 $\frac{7}{8}$ inch minimum diameter for Centennial Russet variety potatoes grown in Area No. 2 of Colorado. The current size requirement for Centennial Russets is larger than the requirement for similar long varieties. This change recognizes the similarity and should provide potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective September 30, 1997; comments received by November 25, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing

Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This 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 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule relaxes the size requirement for Centennial Russet variety potatoes

grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1 $\frac{7}{8}$ inch minimum diameter with no minimum weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. Further, all Russet varieties will now be required to meet the same size specifications.

Section 948.22 (7 CFR 948.22) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The Colorado Potato Administrative Committee, San Luis Valley Office (Area No. 2) (Committee), is the agency responsible for local administration of the Federal marketing order in Area No. 2.

Size regulations for potatoes grown in Area No. 2 are currently in effect under § 948.386. Centennial Russet variety potatoes must be 2 inches minimum diameter or 4 ounces minimum weight. Other long varieties, which includes other Russet varieties, must be 1 $\frac{7}{8}$ inch minimum diameter, with no minimum weight option. This rule amends that section by removing the weight requirement option for Centennial Russets and reducing the minimum diameter requirement for Centennial Russets to 1 $\frac{7}{8}$ inches. Thus, all Russet varieties will be required to meet the same minimum diameter. The Committee unanimously recommended this change at its August 21, 1997, meeting.

When the current size regulations were established, the Centennial Russet was the dominant variety in the San Luis Valley (Area No. 2), accounting for approximately 65-75 percent of the crop. The other major Russet variety grown in the San Luis Valley was the Russet Burbank, a slimmer potato which was required to meet the 1 $\frac{7}{8}$ inch minimum diameter. Today, the Russet Burbank has been phased out completely and the Centennial Russet accounts for less than 10 percent of the crop. The Burbank and the Centennial have been replaced by other varieties, including new Russet varieties which

have the same bulky features as the Centennial.

The new varieties, however, are required only to meet the 1 7/8 inch minimum diameter, not the 2 inch minimum diameter or 4 ounce minimum weight requirement that Centennial Russets must meet. The industry is concerned that Centennial Russets could be misrepresented as one of the new Russet varieties, so as to comply only with the smaller size requirement. This rule, by establishing the same size requirements for all Russet varieties, eliminates this possibility.

Reducing the size requirement will allow handlers to market a larger portion of the Centennial Russet crop in fresh outlets. This change is expected to improve the marketing of Colorado potatoes and increase returns to producers.

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 initial regulatory flexibility analysis.

There are approximately 120 handlers of Colorado potatoes who are subject to regulation under the marketing order and approximately 400 producers of Colorado potatoes in the regulatory areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) 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 \$500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

Section 948.22 of the order authorizes the issuance of handling regulations for potatoes grown in Colorado. This rule relaxes the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1 7/8 inch minimum diameter with no weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. There is no available information detailing how many potatoes this relaxation will allow to be marketed which could not have been marketed prior to this action.

This rule also eliminates a potential compliance problem, as all Russet varieties will now be required to meet the same size specifications. Other Russet varieties are currently required

only to meet the smaller size regulation of 1 7/8 inch diameter. Because some of the new Russet varieties with characteristics very similar to Centennials face the smaller size requirement and have surpassed Centennials in popularity, there is a possibility that Centennials could be misrepresented as one of the new Russet varieties.

The only viable alternative to reducing the size requirement for Centennials is to increase the size requirement for all other long potatoes, including all other Russets. The Committee surveyed 270 growers from Area No. 2 concerning grade and size regulation. Both options for equalizing the size regulations for all long potatoes were included in the survey. The participating growers rejected increasing the size requirements for all other long potatoes, which would have reduced the number of Colorado potatoes on the market, in favor of the size requirement reduction established by this rule.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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 sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 21, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Also, the Committee surveyed 270 producers in Area No. 2, the majority of whom are small entities, concerning regulation during the 1997-98 potato shipping season. This rule reflects the outcome of that survey of predominantly small growers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the handling regulations currently prescribed for Area No. 2 under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements in the handling regulations; (2) this action must be taken promptly to be in place before handlers begin shipping heavily in early October; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this 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. Section 948.386 is amended by removing paragraph (a)(2), redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(2) through (a)(5), and revising newly redesignated paragraphs (a)(2) and (a)(5) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(2) *Long varieties.* U.S. No. 2, or better grade, 1 7/8 inches minimum diameter.

* * * * *

(5) None of the above categories of potatoes identified in paragraphs (a)(1) through (a)(5) of this section may be commingled in the same bag or other container.

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Dated: September 22, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-25619 Filed 9-25-97; 8:45 am]

BILLING CODE 3410-02-P