

# 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 948

[Doc. No. AMS-FV-09-0055; FV09-948-3 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a modification of the minimum size requirement 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 for Area No. 2 (Committee). This proposed rule would change the minimum size requirement from 1 $\frac{7}{8}$  inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all long varieties of potatoes. This change would return the minimum size requirement to the standard that had been in place prior to the 2008–2009 season, when adverse weather conditions damaged the crop and resulted in the Committee recommending a temporary relaxation in the minimum size requirement.

**DATES:** Comments must be received by December 8, 2009.

**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 Internet: <http://www.regulations.gov>. All 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.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

#### 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@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.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@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 proposal invites comments on a modification of the minimum size requirement under the order. This rule would change the minimum size requirement from 1 $\frac{7}{8}$  inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all varieties of potatoes, except for round varieties. This rule was recommended by the Committee at a meeting on June 25, 2009.

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. 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 June 25, 2009, the Committee unanimously recommended changing the minimum size requirement 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. This had been the industry standard in place prior to the 2008–2009 season. Because severe and adverse weather conditions in 2008 significantly decreased yields and damaged the crop, the Committee had recommended for the 2008–2009 marketing season that the minimum size be reduced from 2 inches in diameter or 4 ounces minimum weight to 1 $\frac{7}{8}$  inches in diameter for all varieties of potatoes, except round varieties. The Committee believes it would now be appropriate to return to the size regulations that were in place prior to the 2008–2009 season.

The Committee believes that quality assurance is very important to the Colorado potato industry. Providing acceptable quality produce that is appealing to consumers on a consistent basis is necessary to maintain buyer confidence in the marketplace and improve producer returns.

Under this proposal, potatoes other than round varieties would meet the size requirement 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 proposed size requirement. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in diameter. These potatoes would also meet the proposed minimum size requirement.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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.

There are approximately 72 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 175 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts are less than \$7,000,000,

and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2007–2008 marketing year, 14,225,568 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 \$12.05 per hundredweight, the Committee estimates that 61 Area No. 2 handlers, or about 85 percent, had annual receipts of less than \$7,000,000. 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 2007 was \$9.85 per hundredweight. The average annual fresh potato revenue for the 175 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$778,455. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule would change the minimum size requirement from 1 $\frac{7}{8}$  inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all potato varieties, except round varieties. Authority for this action is contained in §§ 948.21 and 948.22.

NASS estimated planted acreage for the 2007 crop in Area No. 2 at 59,200 acres, a decrease of 700 acres when compared with 59,900 acres planted in 2006. Based on Committee records, 88.4 percent of Area No. 2 potatoes entered the fresh market during the 2007–2008 marketing year (including potatoes produced for seed). Of those potatoes, Russet or long potato varieties accounted for 88.3 percent.

Only a small portion of the crop is expected to be affected by the proposed minimum size increase (i.e., that portion of varieties, other than round varieties, smaller than 2 inches in diameter or 4 ounces minimum weight, but larger than 1 $\frac{7}{8}$  inches in diameter) and would no longer meet order requirements. However, due to current customer demand, many handlers are already shipping 2-inch minimum diameter potatoes. The Committee believes that the expected benefits of improved quality, increased purchases and sales volume, and increased returns received by producers would greatly outweigh the costs related to the regulation.

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

industry. The Committee believes that the change would increase returns to producers while supplying the market with a higher percentage of larger high quality potatoes.

This proposed rule would change the size requirement for all varieties of potatoes, except for round varieties. This action would 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 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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed 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 June 25, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including 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: <http://www.ams.usda.gov/AMSV1.0/ams:fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible, as handlers will begin shipping potatoes from the 2009–2010 crop in September. All written comments timely received will be considered before a final determination is made on this matter.

#### 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 proposed to be 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: November 17, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–28131 Filed 11–19–09; 4:15 pm]

**BILLING CODE P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 121**

[Docket No. FAA–2009–0675; Notice No. 09–07]

**RIN 2120–AJ43**

#### **Part 121 Activation of Ice Protection**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action would amend the regulations applicable to operators of certain airplanes used in Title 14 Code of Federal Regulations part 121 operations and certificated for flight in icing conditions. The proposed standards would require either the installation of ice detection equipment or changes to the Airplane Flight Manual to ensure timely activation of the airframe ice protection system. This proposed regulation is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions.

**DATES:** Send your comments on or before February 22, 2010.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2009–0675 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Bring comments to Docket Operations Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax comments to Docket Operations** at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**Privacy:** The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Contacts for Further Information:** For operational questions about the proposed rule contact Jerry Ostronic, FAA, Air Carrier Operations Branch, AFS–220, Flight Standards Service, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229, e-mail [Jerry.C.Ostronic@faa.gov](mailto:Jerry.C.Ostronic@faa.gov).

For aircraft certification questions about the proposed rule contact Robert Jones, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–1234; facsimile (425) 227–1149, e-mail [Robert.C.Jones@faa.gov](mailto:Robert.C.Jones@faa.gov).

For legal questions about the proposed rule contact Douglas Anderson, FAA, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; fax: (425) 227–1007, e-mail [Douglas.Anderson@faa.gov](mailto:Douglas.Anderson@faa.gov).

**SUPPLEMENTARY INFORMATION:** Later in this preamble, under the Additional Information section, the FAA discusses how you can comment on this proposal and how the agency will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. The FAA also discusses how you can get a copy of this proposal and related rulemaking documents. Instructions for accessing the docket appear under the **ADDRESSES** heading of this notice of proposed rulemaking (NPRM). Appendix 1 of this preamble defines terms used in the preamble of this NPRM.

#### **Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes new safety standards for the operation of certain airplanes used in air carrier service.

#### **I. Background**

On October 31, 1994, an accident involving an Avions de Transport Regional ATR 72 series airplane occurred in icing conditions. This prompted the FAA to initiate a review of aircraft safety in icing conditions and determine what changes could be made to increase the level of safety. In May 1996, the FAA sponsored the International Conference on Aircraft