

Proposed Rules

Federal Register

Vol. 76, No. 168

Tuesday, August 30, 2011

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-11-0051; FV11-948-1 PR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the size requirements currently prescribed under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 3 (Committee). This rule would modify the size requirements for handling small potatoes that measure under $1\frac{7}{8}$ inches in diameter. This rule would allow the handling of two size ranges, $\frac{3}{4}$ -inch minimum diameter to $1\frac{7}{8}$ inches maximum diameter and Size B ($1\frac{1}{2}$ to $2\frac{1}{4}$ inches), if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. The revisions would promote orderly marketing by ensuring that only potatoes of certain similar size profiles are packed and shipped in the same container. This rule is expected to benefit the producers, handlers, and consumers of Colorado potatoes.

DATES: Comments must be received by October 31, 2011.

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 document 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, 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:

Barry Broadbent 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: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and 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 rule 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 revisions to the size requirements currently prescribed under the order. This proposed rule would revise the size requirements for small U.S. No. 1 grade potatoes handled under the Colorado Area 3 handling regulations. The rule would modify the current size requirements to establish allowable size ranges for potatoes that measure less than $1\frac{7}{8}$ inches. This rule would allow potatoes that measure $\frac{3}{4}$ -inch minimum diameter to $1\frac{7}{8}$ inches maximum diameter to be handled if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. In addition, Size B potatoes ($1\frac{1}{2}$ inches minimum diameter to $2\frac{1}{4}$ inches maximum diameter) would also be allowed to be handled if they otherwise meet the U.S. No. 1 grade requirements. The size requirements for U.S. No. 2 and better grade potatoes that are $1\frac{7}{8}$ inches minimum diameter and larger would not be affected by this proposed change. The rule was unanimously recommended by the Committee at a meeting on May 12, 2011. The proposed changes are expected to enhance orderly marketing conditions and increase returns for producers and handlers.

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 separate regulatory areas 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 Saguache, 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 Colorado potatoes grown in Area No. 3 are contained in § 948.387 of the order's administrative rules and regulations. Section 948.387(a) currently requires that all varieties of potatoes handled under the order must be U.S. No. 2 or better grade and 1 $\frac{7}{8}$ inches minimum diameter or 4 ounces minimum weight, except that potatoes that meet the requirements of the U.S. No. 1 grade may be $\frac{3}{4}$ -inch minimum diameter.

The Committee met on May 12, 2011, to discuss revising the size requirements in the handling regulations. As a result of the deliberations, the Committee unanimously recommended modifying the size requirements for potatoes that meet the U.S. No. 1 grade. Specifically, the Committee recommended establishing allowable size ranges for small size (under 1 $\frac{7}{8}$ inches in diameter) U.S. No. 1 grade and better potatoes. Two allowable size ranges, $\frac{3}{4}$ -inch minimum diameter to 1 $\frac{7}{8}$ inches maximum diameter and Size B (1 $\frac{1}{2}$ inches minimum diameter to 2 $\frac{1}{4}$ inches maximum diameter), would be established for potatoes that otherwise meet or exceed the minimum requirements of the U.S. No. 1 grade standard. The proposed allowable size ranges would replace the current $\frac{3}{4}$ -inch minimum diameter size requirement allowance now in effect.

The proposed revision would not prohibit the handling of any of the small size potatoes that are currently allowed to be handled under the order. All potatoes that measure $\frac{3}{4}$ -inch minimum diameter and larger and meet the requirements of the U.S. No. 1 grade could continue to be handled under the order. However, in the future, such small potatoes would be required to be handled subject to the new size requirements, with like size potatoes packed into certain size profiles. The handling of all other potatoes currently permitted under the order would continue without change, subject to the U.S. No. 2 or better, 1 $\frac{7}{8}$ inches

minimum diameter size or 4 ounces minimum weight requirements.

The Committee has observed that, in recent years, consumer demand has been increasing for smaller size potatoes and that those size potatoes often command premium prices. The Committee previously responded to this trend by modifying the size requirements in the handling regulations to allow for the handling of $\frac{3}{4}$ -inch minimum diameter and larger size potatoes, if the potatoes otherwise meet the requirements of the U.S. No. 1 grade. However, the current $\frac{3}{4}$ -inch minimum size requirement has no other parameters associated with it and allows for the commingling of small size potatoes (under 1 $\frac{7}{8}$ inches in diameter) with larger size potatoes (over 1 $\frac{7}{8}$ inches in diameter).

The Committee reiterated that quality assurance is important to the industry and to consumers. Providing consistent, high quality potatoes is necessary to maintain consumer confidence. The potential for mixing small size potatoes with larger size potatoes in the same container is perceived by the Committee as being contrary to the goals of maintaining orderly marketing conditions and ensuring that only consistent, high quality potatoes from the production area enter the market. As such, the Committee felt that implementing the proposed revisions to the size requirements would help to maintain the consistency and quality of the product while still allowing the industry the maneuverability to respond to changing consumer preferences.

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.

Based on Committee data, there are eight producers (the majority of whom are also handlers) in the regulated area and eight handlers (the majority of whom are also producers) subject to regulation under the order. Small agricultural producers are defined by

the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the Committee, 981,609 hundredweight of Colorado Area No. 3 potatoes were produced for the fresh market during the 2009–2010 season. Based on National Agricultural Statistics Service (NASS) data, the average producer price for Colorado summer potatoes for that season was \$6.90 per hundredweight. The average annual producer revenue for the eight Colorado Area No. 3 potato producers is therefore calculated to be approximately \$846,637. Using Committee data regarding each individual handler's total shipments during the 2009–2010 fiscal period and a Committee estimated average f.o.b. price for 2010 of \$9.10 per hundredweight (\$6.90 per hundredweight producer price plus estimated packing and handling costs of \$2.20 per hundredweight), none of the Colorado Area No. 3 potato handlers ship over \$7,000,000 worth of potatoes. Thus, all of the handlers and many of the producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule would revise the current size requirements contained in the order's handling regulations. The rule would revise the size requirements to establish two allowable size ranges, $\frac{3}{4}$ -inch minimum to 1 $\frac{7}{8}$ inches maximum diameter and Size B, if such potatoes otherwise meet the requirements of the U.S. No. 1 grade standard. The revisions would promote orderly marketing by ensuring that only potatoes of a similar size profile are shipped in the same container.

The authority for regulating grade and size is provided in § 948.22 of the order. Section 948.387(a) of the order's administrative rules and regulations prescribes the applicable size requirements.

This rule is expected to have a beneficial impact on handlers and producers by maintaining the superior reputation of the industry and ensuring that only consistent, high quality potatoes are shipped from the production area. There should be no extra cost to producers or handlers as a result of the proposed changes because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. The Committee believes that this revision should translate into greater returns for handlers and producers over time.

Neither NASS nor the Committee compiles statistics relating to the

production of potatoes measuring less than 1 $\frac{7}{8}$ inches in diameter. The Committee has relied on information provided by producers and handlers familiar with the small potato market for its recommendation.

As small potatoes have grown in popularity with consumers, high quality potatoes from Colorado have been in demand. The Committee believes that modifying the size requirements for such small potatoes would maintain their consistency and increase their quality reputation in the market. The proposed changes are expected to increase sales of Colorado potatoes and to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including taking no action on the matter. One alternative discussed was to use other size ranges other than the ranges proposed. The Committee believed that the size ranges proposed offered the best compromise between regulatory control and accommodation for the marketing needs of the handlers. Another alternative was to establish just one $\frac{3}{4}$ -inch to 1 $\frac{7}{8}$ inches size range for small potatoes. However, that alternative was rejected because it would not have accommodated the mid-size range potatoes that some handlers prefer to ship. Thus, the Committee unanimously agreed that their recommendation reflected the best alternative available to achieve the desired result.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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.

In addition, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 12, 2011, meeting was a public meeting and all entities, both large and small, were able to express their 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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. 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. In § 948.387, revise paragraph (a) and add paragraphs (a)(1) through (a)(3) to read as follows:

§ 948.387 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements—All varieties.* (1) U.S. No. 2 or better grade, 1 $\frac{7}{8}$ inches minimum diameter or 4 ounces minimum weight.

(2) U.S. No.1 grade, Size B (1 $\frac{1}{2}$ inches minimum to 2 $\frac{1}{4}$ inches maximum diameter).

(3) U.S. No.1 grade, $\frac{3}{4}$ -inch minimum to 1 $\frac{7}{8}$ inches maximum diameter.

* * * * *

Dated: August 19, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–22111 Filed 8–29–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS–DA–11–0007; DA–11–02]

National Dairy Promotion and Research Program; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the Dairy Promotion and Research Order (Dairy Order). The proposal would modify the number of National Dairy Promotion and Research Board (Dairy Board) members in eight regions, merge Region 8 and Region 10, merge Region 12 and Region 13, and apportion Idaho as a separate region. The total number of domestic Dairy Board members would remain the same at 36 and the total number of regions would be reduced from 13 to 12. This modification was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

DATES: Comments must be submitted on or before September 14, 2011.

ADDRESSES: Comments on this proposed rule should be identified with the docket number AMS–DA–11–0007; DA–11–02. Commenters should identify the date and page number of the issue of the Proposed Rule. Interested persons may comment on this proposed rule using either of the following procedures:

- *Mail:* Comments may be submitted by mail to Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233.

- *Fax:* Comments may be faxed to (202) 720–0285.

- *E-mail:* Comments may be e-mailed to Whitney.Rick@ams.usda.gov.

- *Internet:* <http://www.regulations.gov>.

All comments to this proposed rule, submitted by the above procedures will