

# 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

[Docket No. FV05-948-1 PR]

#### Irish Potatoes Grown in Colorado; Relaxation of Handling Regulation for Area No. 2 and Certain Imported Potatoes

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This rule would relax the minimum grade requirements for potatoes handled under the Colorado potato marketing order, Area No. 2. This rule was recommended by the Colorado Potato Administrative Committee for Area No. 2 (Committee), the agency responsible for the local administration of the marketing order. For all potato varieties produced in Area No. 2 measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter, this rule changes the minimum grade from U.S. No. 1 to U.S. Commercial. This rule also would relax the minimum grade requirements between October 1 through June 30 of each year for imported red-skinned round type potatoes of the same size categories under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. The changes are intended to provide potato handlers and importers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of small potatoes, and to bring the section 8e potato import regulation into conformity with the marketing order.

**DATES:** Comments must be received by July 5, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. 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; e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); 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 made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

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@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule 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."

This proposed rule also is issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect

for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the same or comparable requirements established for that particular area. The requirements for red-skinned round type potatoes imported from October 1 through June 30 are based on the Colorado Area No. 2 marketing order requirements.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule would not have retroactive effect. This rule would 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 § 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. Section 608c(15)(B) 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule would relax the minimum grade requirements from U.S. No. 1 to U.S. Commercial for all Colorado Area No. 2 potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-

inch minimum diameter to 1¾-inch maximum diameter. These changes were recommended by the Committee on August 19, 2004, with nine members in favor and four against. The four members who voted against the change felt that the minimum grade for small potatoes should continue to be U.S. No. 1. The Committee believes that the changes would facilitate the marketing of Area No. 2 Colorado potatoes and improve grower returns. As provided under section 8e of the Act, the grade changes also would apply to all red-skinned round type imported potatoes of the same size categories during the months of October through June.

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 regulations 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.

Grade regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order's handling regulations, whereas relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations. Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The State of Colorado is divided into three areas for marketing order purposes. Currently, only Area No. 2 and Area No. 3 are active.

For many years, consumer demand for small fresh market potatoes was relatively soft in comparison to larger sizes. Size B and smaller potatoes were often discarded or fed to livestock. Grade and size regulations were developed to keep lower quality small potatoes out of the fresh market. At that time, the Committee believed that small potatoes, sold at a great discount, eroded the price for large potatoes. By requiring small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse affect on the market for larger potatoes.

Within the past several years, however, demand has increased for small potatoes, which often command premium prices compared to larger size A potatoes (1⅞-inch and larger). With the growing demand for small potatoes, growers and handlers are concerned that

they will not be able to supply this market, because only U.S. No. 1 or better grade can be shipped under the marketing order. Growers and handlers have had requests from their customers for additional small potatoes that grade U.S. Commercial or better. This action would help handlers in Area No. 2 meet their buyers' needs.

Committee statistics show that approximately 75 percent of the entire potato crop in Area No. 2 grades U.S. No. 1 or better. However, the percentage of Size B and smaller potatoes meeting U.S. No. 1 grade is only about 50 percent. The reason for the lower percentage of smaller potatoes is because several potato defects are scored based on the percentage of surface area affected on the individual potato. For example, a cut on a large potato may not affect a large enough surface area to be a scorable defect, but the same size cut would be scorable on a smaller potato. Under such circumstances, it would be much harder for a small potato to meet the U.S. No. 1 grade than it would for a large potato. The U.S. Commercial grade allows a slightly higher percentage of total defects than the U.S. No. 1 grade.

By changing the grade requirements to allow size B potatoes and potatoes measuring from 1-inch minimum diameter to 1¾-inch maximum diameter to meet U.S. Commercial grade or better, the Committee believes more small potatoes would be available to meet increasing demand, and thus help increase returns to growers. Not only would more small potatoes enter the market, small potatoes typically sell for a premium price in today's marketplace. The Committee believes that by allowing small potatoes to meet the more relaxed U.S. Commercial grade instead of U.S. No. 1 grade, available volume for sale into the fresh market could increase by about 25 percent.

Although facing an increasing demand, the market for small potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that the smaller potatoes do not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirements would not adversely affect the overall Area No. 2 potato market.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more

marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under marketing order Nos. 945 (Idaho-Eastern Oregon potatoes), 948 (Colorado potatoes, Area No. 2 and Area No. 3), 947 (Oregon-California potatoes), 946 (Washington potatoes), and 953 (Southeastern potatoes), since the marketing orders were established. Section 980.1 of the vegetable import regulations specifies that import requirements for potatoes are to be based on the seasonal categories of potatoes produced in all marketing order areas. In that regard, imported red-skinned round type potatoes must meet the requirements of the Area No. 2 Colorado potato marketing order during the months of October through the following June and the Washington potato marketing order during the months of July through September.

USDA's Foreign Agricultural Service reports that Canada has been the major source of fresh potato imports into the United States during 1999 through 2003. Imports totaled 276,955 metric tons in 1999, 228,023 metric tons in 2000, 221,303 metric tons in 2001, 281,891 metric tons in 2002, and 288,035 metric tons in 2003. During the five-year period, minor quantities of potatoes also were imported from The Netherlands, Costa Rica, Dominican Republic, Japan, Brazil, Ecuador, India, United Kingdom, Columbia, Fiji, and Jamaica. Imports from these sources represented less than 5 percent of the total imports. We do not have statistics on what portion of these potatoes are red-skinned.

#### **Initial Regulatory Flexibility Analysis**

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.

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 the 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.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 95 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. In addition, based on the most recent information available, approximately 168 importers of potatoes are subject to import regulations and may be affected by this rule. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2003–2004 marketing year, 17,125,898 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 \$6.75 per hundredweight, the Committee estimates that 90 Area No. 2 handlers or about 96 percent had annual receipts of less than \$6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average grower price for Colorado fall potatoes for 2003 was \$4.55 per hundredweight. The average annual grower revenue for the 230 Colorado Area No. 2 potato growers is therefore calculated to be approximately \$338,795. In view of the foregoing, the majority of the Colorado Area No. 2 potato growers and handlers may be classified as small entities. Although it is not known how many importers of potatoes may be classified as small entities, we believe that many of the 168 importers can be classified as such.

This rule would relax grade requirements implemented under Colorado marketing order Area 2 from U.S. No. 1 grade to U.S. Commercial grade for all potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B) and from 1-inch minimum diameter to 1¾-inch maximum diameter. As provided under section 8e of the Act, these changes would also apply to all imported red-skinned round type potatoes of the same size categories between October 1 through June 30 of each year. While no changes would be required in the language of § 980.1, all imported red-skinned round type potatoes in these size categories October 1 through June 30 would be required to meet the requirements of U.S.

Commercial grade or better rather than U.S. No. 1 grade or better.

Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

Regarding the impact of this rule on affected entities, relaxing the grade requirements for these small potatoes is expected to benefit handlers, importers, and growers. By relaxing the minimum grade requirements for small potatoes, a potentially greater quantity of potatoes would meet the order's handling regulations and the import regulations. This could translate into an increased market for these small potatoes and greater returns for handlers, importers, and growers.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Area No. 2. The Committee believes that a relaxation in the grade requirements would increase the available supply of small potatoes. The small potato market is a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that these small potatoes do not compete directly with most of the potatoes produced in this area and that the relaxation of the grade requirements would not adversely effect the overall Area No. 2 potato market.

Based on Committee records, about half the handlers ship all of the size B and smaller potatoes grown in Area No. 2. Committee records also indicate that during the 2003–2004 season, approximately 165,000 hundredweight (less than 1 percent) of size B and smaller were inspected and shipped. If this proposed change in the minimum grade requirements is implemented, the Committee estimates that the marketable supply of size B and smaller potatoes would increase at least 25 percent and add about 41,250 hundredweight to the marketable supply. The Committee anticipates that the greater quantity of small potatoes would expand Area No. 2's market share, increase the supply of potatoes available for consumers, and increase grower returns.

The Committee considered several alternatives to the proposed relaxation in grade requirements for small sized potatoes. Prior to the August 19, 2004, meeting, the Committee mailed a survey to all Area No. 2 Colorado potato growers requesting recommendations on grade and size requirements. The consensus among the responding growers indicated that the majority preferred U.S. Commercial as a

minimum grade for these two size categories.

After reviewing the results of the survey, the Committee discussed the merits of taking no action—thereby leaving the grade requirement at U.S. No. 1 grade or better—or adopting U.S. Commercial grade or U.S. No. 2 grade as a minimum requirement for the two size categories. The Committee felt that leaving the minimum grade at U.S. No. 1 would not have provided additional potatoes to supply the increasing market demand. In regards to the merits of U.S. Commercial grade as a minimum versus U.S. No. 2 grade, the Committee concurred with the industry that a U.S. No. 2 grade minimum would be too much of a relaxation due to quality considerations.

After discussing the alternatives, the Committee determined that a relaxation in the grade requirements to U.S. Commercial grade or better for small potatoes would provide the greatest benefit to the industry by augmenting the developing market for small potatoes and increasing grower returns.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers or importers. 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 rule.

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 19, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. In addition, the World Trade Organization and known importers of potatoes will be notified of this proposed action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this proposed rule 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a proposed change to the handling regulations prescribed under the

Colorado potato marketing order and the potato import regulations. Any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance 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 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 § 948.386, paragraphs (a)(3) and (a)(4) are revised to read as follows:

#### § 948.386 Handling regulation.

\* \* \* \* \*

(a) \* \* \*

(3) *All varieties.* Size B, if U.S. Commercial grade or better.

(4) *All varieties.* 1-inch minimum diameter to 1¾-inch maximum diameter, if U.S. Commercial grade or better.

\* \* \* \* \*

Dated: May 3, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–9110 Filed 5–5–05; 8:45 am]

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#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

**18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375, and 385**

[Docket No. RM01–5–000]

#### Electronic Tariff Filings

April 29, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of technical conference, comment deadline, and electronic format manual.

**SUMMARY:** The Federal Energy Regulatory Commission is establishing August 1, 2005 as the deadline for comments on the regulatory text changes to accommodate electronic

filing proposed in the Commission's July 8, 2004 Notice of Proposed Rulemaking (69 FR 43929) (NOPR). The Commission also is holding a technical conference on May 24, 2005 to discuss the computer software to be used in compliance with the Notice of Proposed Rulemaking. The date for comments on the software and other related aspects of the NOPR's proposal will be established in a subsequent notice. Additionally, the Commission is making available on its Web-site a draft electronic format manual for electronic tariff and rate filings to be made in conformance with the NOPR.

**DATES:** May 24, 2005 technical conference. August 1, 2005 for comments on the proposed regulatory text.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble of the Notice of Proposed Rulemaking for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8525, [Keith.Pierce@ferc.gov](mailto:Keith.Pierce@ferc.gov).

Jamie Chabinsky (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6040, [Jamie.Chabinsky@ferc.gov](mailto:Jamie.Chabinsky@ferc.gov).

Bolton Pierce (Software Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8803, [Bolton.Pierce@ferc.gov](mailto:Bolton.Pierce@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Notice of Technical Conference, Comment Deadline and Electronic Format Manual

Take notice that on August 1, 2005, comments will be due on the regulatory text changes proposed in the Federal Energy Regulatory Commission's (Commission) Notice of Proposed Rulemaking (NOPR) requiring electronic tariff filings. *Electronic Tariff Filings, Notice of Proposed Rulemaking*, 69 FR 43929 (July 23, 2004) FERC Stats. &

Regs., Proposed Regulations ¶ 32,575 (July 8, 2004). Also, on May 24, 2005, Commission staff will host a technical conference to discuss the electronic tariff and rate case filing software that has been developed by the Commission. The software is available to download and test at <http://www.ferc.gov/docs-filing/etariff.asp>. Additionally, the Commission is making available on its Web site (<http://www.ferc.gov>) a draft electronic format manual for electronic tariff and rate filings to be made in conformance with the NOPR. The link for the manual can be found at <http://www.ferc.gov/docs-filing/etariff/electronic-manual.pdf>.

Because of the large number of regulatory text changes proposed in the NOPR, an earlier comment date on regulatory text changes is necessary in order to expedite the implementation of electronic filing. The date for comments specific to the computer software to be used for future electronic tariff and rate filings and other aspects of the proposal made in the NOPR will be established through a notice issued at a later date after the technical conference.

The technical conference will be held on May 24, 2005 from 9 a.m. until 4 p.m. (EDT). The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in Hearing Room 1.

The agenda shall include a demonstration of the electronic tariff filing software. Topics to be discussed include the scope of tariff filings to be filed electronically, the use of sections, tariff text format, meta data, the electronic tariff filing process and confidential information.

The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and click on “FERC”.

The conference is open to the public to attend, and pre-registration is not required.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.