

North Damen Avenue to the point of beginning.

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Done in Washington, DC, this 21st day of April 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-8302 Filed 4-25-05; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 945

[Docket No. FV05-945-1 FR]

#### **Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Relaxation of Handling Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** This rule relaxes the minimum size requirement for all U.S. No. 2 grade non-red round potatoes handled under the marketing order for Idaho-Eastern Oregon potatoes to 1 $\frac{7}{8}$  inches minimum diameter. This relaxation in the handling regulations was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program in the designated production area. This change is intended to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

**EFFECTIVE DATE:** April 27, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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 final rule is issued under Marketing Agreement and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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 final 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 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 final rule relaxes the minimum size requirement for all U.S. No. 2 grade non-red round potatoes handled under the order to 1 $\frac{7}{8}$  inches minimum diameter. Currently, U.S. No. 2 grade round red-skinned potato varieties have to meet this requirement. The other U.S. No. 2 round varieties have to be 2 inches minimum diameter or 4 ounces minimum weight, provided that at least 40 percent of the potatoes in each lot have to be 5 ounces or heavier.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of grade, size, quality, and maturity regulations applicable to the handling of potatoes. Section 945.341 establishes minimum grade, size, and maturity

requirements for potatoes handled subject to the order. In addition to the current minimum size requirement specifications mentioned in the previous paragraph, § 945.341 also allows potatoes that are U.S. No. 1 grade to meet a less stringent size B requirement (1 $\frac{1}{2}$  inches minimum and 2 $\frac{1}{4}$  inches maximum) as specified in the United States Standards for Grades of Potatoes (7 CFR 51.1540-51.1566).

At its meeting on November 4, 2004, the Committee unanimously recommended reducing the minimum size requirement for all varieties of U.S. No. 2 grade round potatoes to 1 $\frac{7}{8}$  inches minimum diameter.

Committee members stated that round potato production, particularly for non-red varieties, has been increasing in recent years. Non-red round potato varieties now make up a significant percentage of total round potato production. In the past, red-skinned varieties were essentially the only round varieties produced within the production area. Some new round varieties that have been introduced have skin colors such as white, yellow, gold, purple, blue, and pink.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes would enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers.

According to the Committee, quality assurance is very important to the industry and to its customers. Providing the public with acceptable quality produce that is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. The Committee reports that potato size is important to buyers and that providing the sizes desired is important to promote sales. Buyers have indicated that 1 $\frac{7}{8}$  inches minimum diameter for all varieties of round potatoes is a desirable size.

This change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

This rule has no impact on potato imports covered by section 608e of the Act.

#### **Final Regulatory Flexibility Analysis**

Pursuant to the 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 final 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 900 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

Based on a three-year average fresh potato production of 33,767,000 hundredweight as calculated from Committee records, a three-year average of producer prices of \$5.18 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately \$194,349. It can be concluded, therefore, that a majority of these producers would be classified as small entities.

In addition, based on Committee records and 2003–04 f.o.b. shipping point prices ranging from \$4.00 to \$28.00 per hundredweight reported by USDA's Market News Service, most of the Idaho-Eastern Oregon potato handlers do not ship over \$6,000,000 worth of potatoes. In view of the foregoing, it can be concluded that a majority of the handlers would be classified as small entities as defined by the SBA.

This final rule establishes a minimum size requirement of 1 $\frac{7}{8}$  inches minimum diameter for all U.S. No. 2 grade round potatoes. Currently, the minimum size requirement for U.S. No. 2 grade round varieties, other than red, is 2 inches minimum diameter or 4 ounces minimum weight provided that at least 40 percent of the potatoes in each lot must be 5 ounces or heavier. The red-skinned round varieties have to be 1 $\frac{7}{8}$  inches minimum diameter.

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the production of non-red varieties of round potatoes. They believe

that relaxing the minimum size requirement for U.S. No. 2 grade round potatoes will enable handlers to market a larger portion of the crop in fresh market outlets and meet the needs of buyers. Buyers have indicated that the 1 $\frac{7}{8}$  inches minimum diameter is a desirable size. This change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

Authority for this action is provided in §§ 945.51 and 945.52 of the order.

At the November 4, 2004, meeting, the Committee discussed the impact of this change on handlers and producers. This action is a relaxation of the handling regulations and, as such, should either generate a positive impact or no impact on industry participants. The Committee did not foresee a situation in which this change will negatively impact either handlers or producers.

Round type potatoes are produced and handled by only a small percentage of the industry. The predominant producing regions are centered around the American Falls, Idaho Falls, and Blackfoot areas of Idaho. Acreage is approximately 6,000 to 7,000 acres, which represents only about 2 percent of the production area's 355,000 acres planted to potatoes in 2004.

Round potato production is increasing within the production area. Shipments for the 2003–2004 season were approximately 300,000 hundredweight. The Committee estimates that round potato shipments for the 2004–2005 season could approach 800,000 hundredweight. The Committee reported that one round yellow-skinned variety might account for 500,000 hundredweight. Through week 33 of the 2004–2005 season, reported shipments of round potatoes were up 69 percent from the prior year.

The Committee reported that smaller size round potatoes of good quality receive premium prices. This contention is consistent with USDA Market News Service reports. Market News does not report on round type potatoes in the Idaho-E. Oregon area, but does report on other round potato producing regions. It would be reasonable to expect price trends between production areas to move together, given that the regions would compete with each other for sales in the domestic market.

Relaxing the size requirement will allow producers and handlers of non-red U.S. No. 2 grade round potatoes to market a greater percentage of their crop under the order. This should lead to increased total net returns for those firms. The benefits derived from this change are not expected to be disproportionately greater or less for

small handlers or producers than for larger entities.

The Committee discussed alternatives to this change. One alternative included making no change at all to the regulations. The Committee did not believe this alternative would meet the needs of buyers or benefit the industry. Another alternative discussed was to allow round potatoes to be exempted from regulations under Certificate of Privilege provisions provided within the order. This option also was rejected because it would allow lower quality potatoes to be shipped to the fresh market. Lastly, the Committee considered further relaxing the size requirement for all round potatoes below the 1 $\frac{7}{8}$  inches minimum diameter. The Committee believed that relaxing the minimum size requirement for U.S. No. 2 round potatoes below 1 $\frac{7}{8}$  inches would result in buyer dissatisfaction. Producers and handlers who wish to ship smaller round potatoes may do so by conforming to the U.S. No. 1 grade standard.

With only a small amount of the total potato crop in the production area expected to be affected by relaxing the size requirement, the Committee believes that relaxing the size requirement of non-red-skinned U.S. No. 2 round potatoes to a 1 $\frac{7}{8}$  inches minimum diameter will provide the greatest amount of benefit to the industry with the least amount of cost.

This final rule relaxes minimum size requirements under the marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, potatoes handled under the order must meet certain requirements set forth in the United States Standards for Potatoes (7 CFR 51.1540–51.1566) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

Further, 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 November 4, 2004, meeting was a public

meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on January 24, 2005 (70 FR 3313). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending March 25, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <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.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping round potatoes from the 2004–2005 crop and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth above, 7 CFR part 945 is amended as follows:

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

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **§ 945.341 [Amended]**

■ 2. In § 945.341, paragraph (a)(2)(i), remove the words “*Round red varieties.*” and add in their place “*Round varieties.*”

Dated: April 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–8246 Filed 4–25–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Parts 385 and 390**

**[Docket No. RM04–9–001]**

#### **Electronic Notification of Commission Issuances**

Issued April 13, 2005.

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

**ACTION:** Final rule; order on rehearing of Order No. 653.

**SUMMARY:** This order on rehearing makes several minor revisions to the Final Rule that was adopted in Order No. 653. The Commission, in that order, amended its regulations to provide for electronic service of Commission issuances and to enhance the use of electronic service between parties to Commission proceedings. The revisions adopted here are necessary to clarify the rules governing service among parties.

**DATES:** *Effective* April 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

#### **SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

#### **Order No. 653–A—Order on Rehearing and Clarification**

1. The Commission issued Order No. 653 on February 10, 2005. In that order it adopted revisions to its regulations to, among other things, provide for electronic service of Commission issuances by the Secretary in proceedings beginning on or after March 21, 2005; modify its electronic registration (eRegistration) system to include e-mail addresses of the members of service lists; and increase the usage of electronic methods of service by service list members serving documents upon one another. Electronic

Notification of Commission Issuances, Order No. 653, 70 FR 8720 (Feb. 23, 2005). The order required persons wishing to be included on the service list of proceedings that begin on or after March 21, 2005, to eRegister with their e-mail addresses, so as to facilitate electronic service of Commission issuances by the Secretary, as well as electronic service by participants upon each other.<sup>1</sup> The order further amended the Commission’s regulations to provide that, absent agreement otherwise, participants shall serve one another electronically in all proceedings, not just those beginning on or after March 21.<sup>2</sup>

2. The Commission has received one rehearing request, filed by Spiegel & McDiarmid (Spiegel). Spiegel requests rehearing or clarification on several, mainly technical points, and also requests that the Commission stay the effectiveness of the Final Rule.

3. One point that Spiegel raises, and with which the Commission agrees, is that the requirement for electronic service, absent agreement among participants, in proceedings begun prior to March 21 may create difficulties in some cases. Because the requirement that service list members eRegister with their e-mail addresses is effective only for proceedings beginning on or after that date, a participant in a proceeding begun before that date would be required to obtain an e-mail address for each service list member. In the interest of clarity, the Commission is revising Rule 2010(f)<sup>3</sup> to provide for electronic service where the sender and recipient agree.

4. Spiegel also expresses concern that the revised rules would require electronic service between participants of protected materials. Spiegel correctly notes that Order No. 653 effectively substituted electronic for paper service with respect to protected information. In Spiegel’s view, protection of electronic information is more difficult than protection of paper documents, with a higher degree of risk of inadvertent disclosure.

5. In the interest of allowing participants the necessary flexibility to protect sensitive information, the Commission is revising Rule 2010(f) so that service of protected information in electronic form is not required. The revision provides that the serving participant may employ paper service where electronic service could jeopardize the security of sensitive information.

<sup>1</sup> 18 CFR 385.2010(h) (2004).

<sup>2</sup> 18 CFR 385.2010(f) (2004).

<sup>3</sup> *Id.*