

shipments of mangoes originating from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

\* \* \* \* \*

Done in Washington, DC, this 16th day of December 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. E5-7690 Filed 12-21-05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. FV05-948-1 PRA]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on a relaxation of the minimum grade requirement for certain potatoes handled under the Colorado potato marketing order, Area No. 2. The Colorado Potato Administrative Committee, Area No. 2 (Committee), the agency responsible for local administration of the marketing order, recommended this rule as a replacement for a previously issued proposed rule. This rule would change the minimum grade from U.S. No. 1 to U.S. Commercial for varieties of long, red-skinned, yellow fleshed potatoes 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. The proposed change is intended to provide potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of small specialty potatoes.

**DATES:** Comments must be received by January 6, 2006.

**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; 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; 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 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."

This proposal replaces a proposed rule published in the **Federal Register** on May 6, 2005 (70 FR 23942). The comment period for that proposal, which ended on July 5, 2005, was reopened until September 12, 2005, in a document published on August 22, 2005 (70 FR 48903). Five comments were subsequently received that addressed the substance of the proposed rule. In addition to new information obtained by the Committee, these comments were considered in the preparation of this proposed rule.

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. This proposal 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 rule would relax the minimum grade requirement from U.S. No. 1 to U.S. Commercial for all varieties of long, red-skinned, yellow fleshed potatoes produced in Colorado 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 change to the original proposal was recommended by the Committee on October 20, 2005, with 12 members in favor and one opposed. The member voting against the change felt that the minimum grade for all small potatoes should continue to be U.S. No. 1. This member is opposed to having grading exceptions for any variety of potato. The Committee believes that this change would facilitate the marketing of Area No. 2 Colorado potatoes and improve grower returns. The Committee recommended this rule as a replacement for a previously issued proposed rule.

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. 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.

The Committee's initial recommendation, made on August 19, 2004, was to relax the minimum grade requirement 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. This change was recommended by the Committee with nine members in favor and four opposed. The members voting against the change believed that the minimum grade for all small potatoes should continue to be U.S. No. 1.

The previous proposed rule was published in the **Federal Register** on May 6, 2005 (70 FR 23942), and comments were invited until July 5, 2005. The comment period was reopened until September 12, 2005, in a document published on August 22, 2005 (70 FR 48903), for the purpose of receiving additional input. Five comments were received during the reopened comment period. All of these comments opposed the relaxation of the grade requirement because of the potentially negative impact on the quality of imported round, red-skinned varieties of potatoes. Under section 980.1 of the import regulations, the initially proposed grade change would have applied to all imported round, red-skinned potatoes of the same size categories during the months of October through June. All of the commenters expressed concern that lower quality imported round, red-skinned potatoes would adversely affect the domestic market.

Because this current proposal is limited to all varieties of long, red-skinned, yellow fleshed potatoes, imported round, red-skinned potato varieties would not be affected. Under § 980.1, imported long type potatoes must meet the grade, size, quality, and maturity requirements of Marketing Order No. 945 (Idaho-Eastern Oregon potatoes) throughout the entire year.

The Committee met on October 20, 2005, to consider the comments received regarding the previously issued proposed rule, as well as other information received from the Colorado potato industry. After much discussion, the Committee recommended that the rule be modified to reflect that the relaxed grade requirement would only apply to long, red-skinned, yellow fleshed potato varieties.

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 all small potatoes to grade U.S. No. 1 or better, the Committee believed that high quality small potatoes would not have an adverse effect on the market for larger potatoes.

Recently, however, demand has increased for varieties of long, red-skinned, yellow fleshed small potatoes, which often command premium prices compared to larger size A potatoes (1⅞-inch and larger). With the growing demand for this type of small specialty potato, some 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 order. Growers and handlers have had requests from their customers for long, red-skinned, yellow fleshed varieties of 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 65 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 requirement to allow long, red-skinned, yellow fleshed potato varieties that are size B and those measuring from 1-inch minimum diameter to 1¾-inch maximum diameter to meet U.S. Commercial grade or better, the Committee believes more of this type of small specialty potato would be available to meet increasing demand, and thus help increase returns to growers. Not only would more small long, red-skinned, yellow fleshed potatoes enter the market, these small

specialty potatoes typically sell for a premium price in today's marketplace.

The Committee believes that by allowing small long, red-skinned, yellow fleshed 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 10 percent.

Although facing an increasing demand, the market for small long, red-skinned, yellow fleshed potatoes is a minor segment of the market served by the Area No. 2 production area. As a consequence, the Committee believes that this type of small specialty potato does not compete directly with the predominant large potatoes produced in this area, and that the relaxation of the grade requirement would not adversely effect the overall Area No. 2 potato market.

#### **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.

There are approximately 88 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. 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 2004–2005 marketing year, 17,626,974 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 83 Area No. 2 handlers or about 94 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 2004 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 \$348,708. In view of the foregoing, the majority of the Colorado Area No. 2 potato growers and handlers may be classified as small entities.

This proposal would relax the grade requirement implemented under the order from U.S. No. 1 grade to U.S. Commercial grade for all long, red-skinned, yellow fleshed 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.

Authority for this action is contained in §§ 948.21, 948.22, 948.40, and 948.386.

Regarding the impact of this rule on affected entities, relaxing the grade requirement for small long, red-skinned, yellow fleshed varieties of potatoes is expected to benefit handlers and growers. By relaxing the minimum grade requirement for this type of small specialty potato, a potentially greater quantity of potatoes would meet the order's handling regulations. This could translate into an increased market for small long, red-skinned, yellow fleshed potatoes and greater returns for handlers and growers.

As small long, red-skinned, yellow fleshed varieties of potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of these small, high quality potatoes available from Area No. 2. The Committee believes that a relaxation in the grade requirement would increase the available supply of small long, red-skinned, yellow fleshed varieties of potatoes. These small specialty potatoes are a minor segment of the potato market served by the Area No. 2 production area. As such, the Committee believes that these small long, red-skinned, yellow fleshed potato varieties do not compete directly with most of the potatoes produced in this area and that the relaxation of the grade requirement would not adversely affect 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 2004–2005 fiscal period, 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 requirement is implemented, the Committee estimates that the marketable supply of size B and smaller long, red-skinned, yellow fleshed potato varieties would increase approximately 10

percent and add about 16,500 hundredweight to the marketable supply. The Committee anticipates that the greater quantity of small long, red-skinned, yellow fleshed varieties of potatoes would expand Area No. 2's market share, increase the supply of potatoes available for consumers, and increase grower returns.

After discussing possible alternatives to this proposal and reviewing the comments received in regards to the previously issued proposed rule (70 FR 23942, May 6, 2005; and 70 FR 48903, August 22, 2005), the Committee determined that a relaxation in the grade requirement to U.S. Commercial grade for small long, red-skinned, yellow fleshed potatoes would sufficiently meet the industry's current needs. The relaxation in the grade requirement for this type of small specialty potato would provide the greatest benefit to the industry by augmenting the developing market for these potatoes and thereby increasing grower returns.

The previously issued proposal would have allowed all varieties of small potatoes produced in Area No. 2 to meet U.S. Commercial grade, including round, red-skinned potato varieties. Under the import regulations, round, red-skinned potatoes are required to meet the grade, size, quality, and maturity requirements of the Area No. 2 Colorado potato marketing order from October through June. Under the previous proposal, all imported round, red-skinned potatoes would have been allowed into the U.S. as U.S. Commercial grade during this period. Commenters expressed concern that such a relaxation of the grade requirement for small round, red-skinned potatoes could potentially have a negative impact on the quality of imported round, red-skinned potatoes. They were concerned that lower quality imported round, red-skinned potatoes would adversely affect the domestic market. However, this current proposal would only relax the grade requirement for long, red-skinned, yellow fleshed potato varieties and, therefore, would not change the grade requirement for round, red-skinned potatoes or for any imported round, red-skinned potatoes during the months of October through June.

This proposal 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. USDA has not

identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meetings were widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the August 19, 2004, and the October 20, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on 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/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.

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 since handlers are already shipping potatoes from the 2005–2006 crop. In addition, this rule replaces a previously proposed rule. Affected entities were allowed to provide input during the previous comment periods and all comments were considered in the preparation of this proposal. Also, any additional 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 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. No. 1 or better grade: *Provided*, That varieties of long, red-skinned, yellow fleshed potatoes shall grade U.S. Commercial or better.

(4) *All varieties.* 1-inch minimum diameter to 1¾-inch maximum diameter, if U.S. No. 1 or better grade: *Provided*, That varieties of long, red-skinned, yellow fleshed potatoes shall grade U.S. Commercial or better.

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Dated: December 15, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E5-7677 Filed 12-21-05; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

[Docket No. FV06-979-1 PR]

#### Melons Grown in South Texas; Proposed Termination of Marketing Order 979

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to terminate the Federal marketing order for melons grown in South Texas (order) and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). The Committee recommended terminating the order at a meeting on September 7, 2005. The Department of Agriculture (USDA) suspended regulations under the order while it considered the Committee's recommendation. This rule invites comments on proposed termination of the order.

**DATES:** Comments must be received by February 21, 2006.

**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*; 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:

Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; telephone: (559) 487-5110, Fax: (559) 487-5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, 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*.

**SUPPLEMENTARY INFORMATION:** This proposed rule is governed by section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act", and § 979.84 of the order.

USDA is issuing this rule in conformance with Executive Order 12866.

This proposed termination of the order 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 rule proposes to terminate the Federal marketing order for melons

grown in South Texas and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). At a meeting held on September 7, 2005, the Committee recommended terminating the order. USDA suspended indefinitely regulations under the order while it considers the Committee's recommendation for termination (70 FR 57995; October 5, 2005). This rule invites comments on proposed termination of the order.

Section 979.84 of the order provides, in pertinent part, that the Secretary shall terminate or suspend any or all provisions of the order when he finds that it does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act provides that the Secretary shall terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. The Secretary must notify Congress not later than 60 days before the date the order would be terminated.

The order has been in effect since 1979. It contains authority for grade, size, quality, maturity, pack, container, and reporting requirements. It also authorizes production research and marketing research and development activities. Grade, quality, maturity, container, and pack regulations have historically been utilized under the order, as well as mandatory inspection to ensure these requirements were met. Assessments have been collected to fund order operations, including production research and marketing research and promotion activities. Reporting requirements have also been implemented under the order.

The South Texas melon industry has been shrinking in recent seasons due to the inability to provide a dependable supply of good quality fruit, a lack of success in developing new varieties of improved quality melons, and intense domestic and foreign competition. Acreage decreased from a high of 27,463 acres in 1987 to 4,780 acres in 2004. The number of producers and handlers has decreased significantly as well.

Because of the declining status of the industry, on September 16, 2004, the Committee recommended suspending all regulatory and reporting requirements and assessment collections under the order for the 2004-05 season, except one reporting requirement regarding planted acreage. The suspension was recommended for one season with the hope that new