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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

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

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the minimum size requirement under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 2 (Committee). This rule changes the minimum size requirement from 1 $\frac{7}{8}$  inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all long varieties of potatoes. This change returns the minimum size requirement to the standard that had been in place prior to the 2008–2009 season, when adverse weather conditions damaged the crop and resulted in the Committee recommending a temporary relaxation in the minimum size requirement.

**DATES:** *Effective Date:* January 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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.”

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.

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

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension,

or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Sanguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and, Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of potatoes grown in Area No. 2 are contained in § 948.386 of the order.

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

The Committee believes that quality assurance is very important to the Colorado potato industry. Providing acceptable quality produce that is appealing to consumers on a consistent basis is necessary to maintain buyer

confidence in the marketplace and improve producer returns.

Under this final rule, potatoes other than round varieties will meet the size requirement if they are at least 2 inches in diameter or 4 ounces in weight. Some long, thin potatoes might be smaller than 2 inches in diameter, but weigh at least 4 ounces. These potatoes will meet the revised size requirement. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in diameter. These potatoes will also meet the revised minimum size requirement.

### Final 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 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.

There are approximately 72 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 175 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2007–2008 marketing year, 14,225,568 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$12.05 per hundredweight, the Committee estimates that 61 Area No. 2 handlers, or about 85 percent, have annual receipts of less than \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2007 was \$9.85 per hundredweight. The average annual fresh potato revenue for each of the 175 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$778,455.

Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

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

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

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

The Committee discussed alternatives to this rule. One alternative included making no change at all to the current regulation. However, the Committee did not believe this alternative would have met the needs of buyers or provided any benefit to the industry. The Committee believes that the change will increase returns to producers while supplying the market with a higher percentage of larger high quality potatoes.

This final rule changes the size requirement for all varieties of potatoes, except for round varieties. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 25, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on November 23, 2009 (74 FR 61053). Copies of the rule were e-mailed or sent via facsimile to all Committee members and potato handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending December 8, 2009, 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: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter 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 potatoes from the 2009–2010 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed 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 amended as follows:

**PART 948—IRISH POTATOES GROWN IN COLORADO**

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 948.386 by revising paragraph (a)(2) to read as follows:

**§ 948.386 Handling Regulation.**

\* \* \* \* \*

(a) \* \* \*

(2) *All other varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

\* \* \* \* \*

Dated: January 13, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–1000 Filed 1–20–10; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 300**

[Docket No. 070717350–9936–02]

RIN 0648–AV63

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Initial Implementation of the Western and Central Pacific Fisheries Convention**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), which authorizes the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The regulations include requirements related to permitting, vessel monitoring systems, vessel

observers, vessel markings, reporting and recordkeeping, at-sea transshipment, and boarding and inspection on the high seas, among others. NMFS has determined that this action is necessary for the United States to satisfy its international obligations under the Convention, to which it is a Contracting Party. It will have the effect of requiring that all relevant U.S. fishing vessels are operated in conformance with the provisions of the Convention.

**DATES:** This final rule is effective February 22, 2010.

**ADDRESSES:** Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) and environmental assessment (EA), as well as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents, and the small entity compliance guide prepared for this final rule, are also available from the Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared for this rule are included in the proposed rule and this final rule, respectively.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Pacific Islands Regional Office (see contact information above), and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS Pacific Islands Regional Office, 808–944–2219.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This final rule is also accessible at <http://www.gpoaccess.gov/fr>.

**Background**

On May 22, 2009, NMFS published a proposed rule in the **Federal Register** (74 FR 23965) that would add regulations at 50 CFR part 300, subpart O, in order to implement certain provisions of the Convention and decisions of the WCPFC. The proposed rule was open to public comment through June 22, 2009.

This final rule is implemented under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States

Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

The proposed rule includes additional background information, including information on the Convention and the WCPFC, the international obligations of the United States under the Convention, and the basis for the proposed regulations.

**New Requirements**

This final rule establishes the following requirements:

**1. Authorization To Fish**

Owners or operators of U.S. vessels used for commercial fishing for highly migratory species (HMS) on the high seas in the Convention Area will be required to obtain a new NMFS-issued fishing authorization, called a “WCPFC Area Endorsement.” The definition of fishing will include, consistent with its definition under the WCPFC Implementation Act, receiving fish from another fishing vessel and bunkering or otherwise supplying or supporting a vessel that engages in fishing. Thus, carriers that receive HMS from another vessel, vessels that bunker vessels used to fish for HMS, and vessels that engage in operations at sea directly in support of, or in preparation for, fishing or transshipping by other vessels will also be subject to this and other requirements of the final rule. This new authorization will be issued by the Regional Administrator of NMFS, Pacific Islands Region, supplemental to, and as an endorsement on, the permits issued under the authority of the High Seas Fishing Compliance Act of 1995 (HSFCA; 16 U.S.C. 5501 *et seq.*) (hereafter, “high seas fishing permits;” see 50 CFR 300.13). The prerequisites to obtaining a WCPFC Area Endorsement will be: (1) Having a valid high seas fishing permit (or simultaneously applying for one); (2) submitting a complete application (see the next item, “vessel information”); and (3) paying the required administrative fee. The application form will be designed as a supplement to the application for a high seas fishing permit. The WCPFC Area Endorsement will become void upon expiration, suspension, or revocation of the underlying high seas fishing permit. The WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Holding a WCPFC Area Endorsement will trigger a number of