

## PART 944—FRUITS; IMPORT REQUIREMENTS

■ 3. Amend § 944.503 by removing “during the period April 10 through July 10, 2009,” from the fourth sentence in paragraph (a)(1).

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010-7563 Filed 4-2-10; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Doc. No. AMS-FV-08-0115; FV09-948-2 IFR]

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

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

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

**SUMMARY:** This rule relaxes the size requirement prescribed under the Colorado potato marketing order. 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. 3 (Committee). This rule provides for the handling of all varieties of potatoes with a minimum diameter of  $\frac{3}{4}$  inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

**DATES:** Effective April 6, 2010; comments received by June 4, 2010 will be considered prior to issuance of a final rule.

**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; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during

regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

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 Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. 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 relaxes the size requirement for all varieties of Colorado Area No. 3 potatoes by allowing the handling of potatoes with a minimum diameter of  $\frac{3}{4}$  inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

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

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

Grade, size, and maturity regulations specific to the handling of Colorado potatoes grown in Area No. 3 are contained in § 948.387 of the order's administrative rules and regulations.

The Committee met on June 4, 2009, and again on November 17, 2009, to discuss decreasing the minimum size requirement for certain potatoes. As a consequence of these deliberations, the Committee unanimously recommended on November 17 that § 948.387(a) of the order's handling regulation be revised to provide for the handling of all varieties of potatoes with a minimum diameter of  $\frac{3}{4}$  inch, if the potatoes otherwise meet U.S. No. 1 grade requirements (a potato meeting all the requirements of a U.S. No. 1 grade potato as defined in the U.S. Standards for Grades of Potatoes would have a minimum size of  $1\frac{1}{8}$  inches). This recommendation provides for the handling of potatoes within both the

Creamer size category ( $\frac{3}{4}$  inch to  $1\frac{5}{8}$  inch diameter) and the Size B category ( $1\frac{1}{2}$  inch to  $2\frac{1}{4}$  inch diameter), as well as the handling of small potato packs that may fall outside these categories. Prior to the effective date of this action, the handling regulation provided that Area No. 3 potatoes could not be handled unless U.S. No. 2 grade or better,  $1\frac{7}{8}$  inches minimum diameter or 4 ounces minimum weight, and Size B potatoes if U.S. No. 1 grade or better.

The Committee believes that in recent years consumer demand has been increasing for smaller potatoes which often command premium prices. The market for these smaller potatoes is currently being supplied by potato production areas outside Colorado Area No. 3. Having the ability to handle smaller potatoes enables the Colorado Area No. 3 potato industry to market a larger portion of its crop while satisfying consumer demand for smaller potatoes. This size relaxation is also expected to increase returns to producers.

The Committee believes that quality assurance is important to the industry and to consumers. Providing consistent, high quality potatoes is necessary to maintain consumer confidence. The Committee also believes that relaxing the size requirement for all varieties of U.S. No. 1 potatoes will preserve their commitment to quality while allowing the industry to respond to changing consumer preferences.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are nine producers (eight of whom are also handlers) in the regulated area and nine handlers (eight of whom are also producers) subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service

firms are defined as those having annual receipts of less than \$7,000,000.

According to the Committee, 825,617 hundredweight of Colorado Area No. 3 potatoes were produced for the fresh market during the 2007 season. Based on National Agricultural Statistics Service (NASS) data, the average producer price for Colorado summer potatoes for 2007 was \$7.75 per hundredweight. The average annual producer revenue for the nine Colorado Area No. 3 potato producers is therefore calculated to be approximately \$710,948. Using Committee data regarding each individual handler's total shipments during the 2007–2008 fiscal period and a Committee estimated average f.o.b. price for 2007 of \$9.95 per hundredweight (\$7.75 per hundredweight plus estimated packing and handling costs of \$2.20 per hundredweight), none of the Colorado Area No. 3 potato handlers ship over \$7,000,000 worth of potatoes. Thus, the majority of handlers and producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule provides for the handling of all varieties of potatoes with a minimum diameter of  $\frac{3}{4}$  inch, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers to respond to consumer demand for small potatoes.

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

This rule is expected to have a beneficial impact on handlers and producers due to the increased volume of potatoes into the fresh market. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. The size relaxation will result in a greater quantity of potatoes meeting the minimum requirements of the handling regulation. The Committee believes that this relaxation should translate into increased sales thus greater returns for handlers and producers.

Neither NASS nor the Committee compiles statistics relating to the production of potatoes measuring much less than  $1\frac{7}{8}$  inches in diameter. The Committee has relied on information provided by producers and handlers familiar with the small potato market for its recommendation.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Colorado. The Committee believes that this regulatory relaxation will

increase the available supply of small potatoes. The Committee also believes that these smaller potatoes will not compete directly with the market for larger fresh market potatoes and that this action will not adversely affect the overall Colorado potato market.

By providing Colorado Area No. 3 handlers the flexibility to pack smaller potatoes, the Committee believes the industry will remain competitive in the marketplace. The small potato market is a premium market and this action is expected to further increase sales of Colorado potatoes to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including not changing the minimum size requirement. Another alternative discussed was to use the term "Creamer" which is defined in the U.S. Standards for Grades of Potatoes as potatoes measuring from  $\frac{3}{4}$  inches in diameter to  $1\frac{5}{8}$  inches in diameter. However, by not using either the terms "Creamer" and "Size B", or the resultant upper and lower size designations, the Committee intends handlers to have greater flexibility in marketing fresh potatoes. The Committee believes that this rule will benefit the industry by augmenting the developing market for small potatoes and enhancing returns to producers.

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

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

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the June 4 and November 17, 2009, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the

regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a relaxation of the size requirement prescribed under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Colorado Area No. 3 potato shipping season began in July; (2) the Committee discussed and unanimously recommended these changes at public meetings and all interested parties had an opportunity to provide input; (3) handlers are aware of this action and want to take advantage of this relaxation as soon as possible; and (4) this rule provides a 60-day comment period and any 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 amended as follows:

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

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

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 948.387, paragraph (a) is revised to read as follows:

#### § 948.387 Handling regulation.

\* \* \* \* \*

(a) *Grade and size requirements—All varieties.*

U.S. No. 2 or better grade, 1<sup>7</sup>/<sub>8</sub> inches minimum diameter or 4 ounces minimum weight: *Provided* That the minimum size may be <sup>3</sup>/<sub>4</sub> inch in diameter, if the potatoes otherwise meet U.S. No. 1 grade.

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Dated: March 26, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–7564 Filed 4–2–10; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket Number EERE–2007–BT–STD–0007]

RIN 1904–AB70

#### Energy Conservation Program: Energy Conservation Standards for Small Electric Motors; Correction

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document contains a technical correction to the final rule regarding the energy conservation standards for small electric motors, which was published on March 9, 2010. In that final rule, the U.S. Department of Energy (DOE) adopted regulations to establish energy conservation standards for small electric motors. Due to a drafting error, an incorrect compliance date for this equipment was inadvertently inserted into the regulation. This correction notice addresses the error.

**DATES:** This technical correction is effective April 8, 2010.

#### FOR FURTHER INFORMATION CONTACT:

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8654. *E-mail:*

*Jim.Raba@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. *E-mail:*

*Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 9, 2010, the DOE's Office of Energy Efficiency and Renewable Energy published a final rule titled "Energy Conservation Standards for Small Electric Motors." 75 FR 10874. Since the publication of that rule, it has come to DOE's attention that, due to a technical oversight, a certain part of the final regulations inadvertently applied an incorrect date by which manufacturers would need to comply with the standards established by that rule. That section of the regulations, section 431.446(a) of Title 10 of the Code of Federal Regulations (10 CFR), Part 431, provides a date of February 28, 2015. 75 FR 10947. Instead, that date should be March 9, 2015, which is 60 months from the date of the final rule's publication in the **Federal Register**, and in the case of a small electric motor that requires listing or certification by a nationally recognized safety testing laboratory, March 9, 2017, 84 months after such date. Both of these dates are specified compliance dates for small electric motor standards under the Energy Policy and Conservation Act of 1975, as amended (EPCA). *See* 42 U.S.C. 6317(b)(3).

## II. Need for Correction

As published, the final regulation contains an erroneous date that this document corrects. In light of the statutory requirement, the considerable amount of time before the compliance date and, in the case of the 2015 date, the small difference in the number of days at issue, the change addressed by today's document is technical in nature. Because these dates are specified by EPCA, DOE does not have the discretion to deviate from these statutorily-prescribed requirements. As such, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) and that the issuance of a separate notice to solicit public comment on the changes contained in this notice is unnecessary. In FR Doc. 2010–4358, appearing in the document beginning on page 10947 in the **Federal Register** of Tuesday, March 9, 2010, the following correction is made:

#### § 431.446 [Corrected]

■ 1. On page 10947, in the third column, under § 431.446, introductory paragraph (a) is corrected to read as follows:

#### § 431.446 Small electric motors energy conservation standards and their effective dates.

(a) Each small electric motor manufactured (alone or as a component of another piece of non-covered equipment) after March 9, 2015, or in the case of a small electric motor which