

# 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 51

[Doc. No. AMS-FV-08-0023]

#### United States Standards for Grades of Potatoes

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the United States Standards for Grades of Potatoes which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is proposing to amend the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

Additionally, AMS is proposing to add restrictive tolerances for permanent defects in the en route/at destination tolerances, and also remove the unneeded definition for injury and clarify the scoring guide for sprouts.

AMS also proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend language in the tolerance section to ensure soft rot tolerances are applied correctly.

The purpose of this revision is to update and revise the standards to more accurately represent today's marketing practices and to clarify existing language.

**DATES:** Comments must be received by June 1, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center,

Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361-1199, or on the web at: [www.regulations.gov](http://www.regulations.gov). Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed on the [www.regulations.gov](http://www.regulations.gov) Web site. The current United States Standards for Grades of Potatoes, along with the proposed changes, will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/freshinspection>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, at the above address or call (540) 361-1120.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

##### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) and in the Paperwork Reduction Act (PRA), AMS has considered the economic impact of the proposed actions on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been 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. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2006-2008 was \$3.482 billion. Dividing that figure by 15,014 farms yields an average potato crop value per farm of just under \$232,000. Since this is well under the SBA threshold of annual receipts of \$750,000, it can be concluded that the majority of these producers may be classified as small entities. Furthermore, there are approximately 180 handlers of potatoes and approximately 168 importers of potatoes that may be classified as small entities and may be affected by this rule.

Additional evidence comes from examining the Agricultural Census acreage breakdown closely. Out of a total of 15,014 potato farms in 2007, 19 percent were less than 10 acres and 66 percent were less than 100 acres. An estimate of the number of acres that it would take to produce a crop valued at \$750,000 can be made by dividing the 2006-08 average crop value of \$3.482 billion by the three-year average bearing acres of 1.097 million, yielding an average potato revenue per acre estimate of \$3,174. Dividing \$750,000 by \$3,174 shows that farms with 236 acres received at least the average price in 2006-08 producing crops valued at \$750,000 or more, and would therefore be considered large potato farms under the SBA definition. Looking at farm numbers for additional census size categories shows that 11,718 potato farms (78 percent) are under 220 acres and 11,994 (80 percent) are less than 260 acres. Since a farm with 236 acres of potatoes falls within this range, it can be concluded that the proportion of small potato farms under the SBA definition is between 78 and 80 percent of all U.S. potato farms.

The effects of this rule are not expected to be disproportionately greater or smaller for small handlers, producers, or importers than for larger entities. The proposed changes are to amend the similar varietal characteristic requirement, add restrictive tolerances for permanent defects in the enroute/at

destination tolerances, remove the definition for injury, and clarify the scoring guides for sprouts. Additionally, AMS proposes to add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruising, and amend the tolerance section to ensure soft rot tolerances are applied correctly. These proposed actions would make the standard more consistent and uniform with marketing trends and practices. These proposed actions will not impose any additional reporting or recordkeeping requirements on either small or large potato producers, handlers, or importers.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of potatoes under 7 CFR parts 945–948 and 953. Potatoes under a marketing order have to meet certain requirements set forth in the grade standards. In addition, potatoes are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported potatoes to meet grade, size, and quality under the applicable marketing order.

Alternatives to this proposed rule (7 CFR part 980) were considered, including the option to issue the rule. However, the need for revision has increased as a result of changing market characteristics, and the proposal represents input from the potato industry.

### Background and Proposed Rule

A proposed rule was published in the September 22, 2006, **Federal Register** (71 FR 55356), seeking comments on possible revisions to the United States Standards for Grades of Potatoes. During the comment period, a comment was received requesting AMS give consideration to allow packing of mixed varieties in the U.S. No. 1 grade. While this change was not in the scope of that rulemaking, AMS believed the suggestion should be considered separately at a later time. AMS agrees that inserting language into the standard to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack would reflect current marketing practices. Upon further evaluation, AMS also believes that this revision should be applied to the U.S. No. 2 grade as well due to changes in the marketing of potatoes. This proposal would revise § 51.1541 (a) and § 51.1543 (a) concerning similar varietal characteristics by inserting "except

when designated as a mixed or specialty pack" into the proposed standard to allow for mixed colors and/or types of potatoes when designated as a mixed or specialty pack.

In addition, a March 21, 2008, rule (73 FR 15054 as corrected at 73 FR 70885) finalized the September 26, 2006, proposed rule by adding en route/at destination tolerances to the U.S. No. 1 and U.S. No. 2 grades. However, restrictive tolerances for permanent defects implemented in those en route/at destination tolerances were not included. These restrictive tolerances are necessary to ensure that additional permanent defects are not allowed en route or at destination than that allowed at shipping point. Therefore, this proposal would revise § 51.1546 (a)(1)(ii) by adding "Provided, That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:" and revise § 51.1546 (a)(3)(ii) by adding "Provided, That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:" Further, this proposal would revise § 51.1546 (a)(1)(ii)(A) by adding "including therein not more than 5 percent for permanent external defects;" § 51.1546 (a)(1)(ii)(B) by adding "including therein not more than 5 percent for permanent internal defects; and" § 51.1546 (a)(3)(ii)(A) by adding "including therein not more than 6 percent for permanent external defects;" and revise § 51.1546 (a)(3)(ii)(B) by adding "including therein not more than 6 percent for permanent internal defects; and"

Additionally, the U.S. Extra No. 1 grade for potatoes was removed from the standard and therefore the definition for injury in the U.S. Standards for Grades of Potatoes is no longer needed. Therefore, AMS proposes to remove the definition for injury from § 51.1559 and reclassify § 51.1559 as "[Reserved]."

AMS also has determined that the current scoring guide for sprouts needs further clarity. Accordingly, AMS proposes to revise the language to help ensure that the scoring guide for sprouts is not interpreted incorrectly. The proposed rule would revise the scoring guide for damage by sprouts in Table III as follows: "When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point, more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which detract from the appearance of

the potato." Similarly, AMS would revise the scoring guide for serious damage by sprouts in Table III as follows: "When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts that seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades."

Further, AMS proposes to add the following language to ensure proper application of soft rot tolerances in the applicable tolerance sections:

§ 51.1546 (a)(1)(i)(B): "5 percent for internal defects; and"

§ 51.1546 (a)(1)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(1)(ii)(C): "Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(2)(iii) and § 51.1546 (a)(3)(i)(B): "6 percent for internal defects; and"

§ 51.1546 (a)(2)(iv) and § 51.1546 (a)(3)(i)(C): "Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

§ 51.1546 (a)(3)(ii)(C): "Not more than 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547."

AMS also proposes for clarity to add table numbers, amend table headings, and replace omitted language in sections: § 51.1546 (a)(2)(iii); § 51.1560; § 51.1561; § 51.1564; and § 51.1565.

A 30-day period is provided for interested persons to comment. This period is deemed appropriate in order to implement these changes, if adopted, as soon as possible to reflect current marketing practices. Accordingly, AMS proposes to amend the United States Standards for Grades of Potatoes as follows:

### List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

### PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

2. In § 51.1541, paragraph (a) is revised to read as follows:

**§ 51.1541 U.S. No. 1.**

\* \* \* \* \*

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

\* \* \* \* \*

3. In § 51.1543, paragraph (a) is revised to read as follows:

**§ 51.1543 U.S. No. 2.**

\* \* \* \* \*

(a) Similar varietal characteristics, except when designated as a mixed or specialty pack;

\* \* \* \* \*

4. In § 51.1546, paragraph (a) is revised to read as follows:

**§ 51.1546 Tolerances.**

\* \* \* \* \*

(a) For defects—(1) U.S. No. 1. (i) At Shipping Point: A total of 8 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

- (A) 5 percent for external defects;
- (B) 5 percent for internal defects; and
- (C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) En route or at Destination: A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, That included in this tolerance not more than a total of 8 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:

(A) 7 percent for external defects, including therein not more than 5 percent for permanent external defects;

(B) 7 percent for internal defects, including therein not more than 5 percent for permanent internal defects; and

(C) Not more than a total of 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(2) U.S. Commercial: A total of 20 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 10 percent for potatoes which fail to meet the requirements for U.S. No. 2 grade, including therein not more than:

- (ii) 6 percent for external defects;
- (iii) 6 percent for internal defects; and
- (iv) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(3) U.S. No. 2. (i) At Shipping Point: A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, That included in this tolerance not more than the following percentages shall be allowed for the defects listed:

- (A) 6 percent for external defects;
- (B) 6 percent for internal defects; and
- (C) Not more than a total of 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(ii) En route or at Destination: A total of 12 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, That included in this tolerance not more than a total of 10 percent shall be allowed for permanent defects: *And provided further*, the following percentages shall be allowed for the defects listed:

- (A) 8 percent for external defects, including therein not more than 6 percent for permanent external defects;
- (B) 8 percent for internal defects, including therein not more than 6 percent for permanent internal defects; and
- (C) Not more than a total of 2 percent for potatoes which are frozen or affected

by soft rot or wet breakdown. See § 51.1547.

\* \* \* \* \*

**§ 51.1559 [Removed and Reserved]**

5. Section 51.1559 is removed and reserved.

6. Section 51.1560 is revised to read as follows:

**§ 51.1560 Damage.**

“*Damage*” means any defect, or any combination of defects, which materially detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 5 percent of the total weight of the potato. See Tables III, IV, V and VI in § 51.1564 and Table VII in § 51.1565.

7. Section 51.1561 is revised to read as follows:

**§ 51.1561 Serious damage.**

“*Serious damage*” means any defect, or any combination of defects, which seriously detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 10 percent of the total weight of the potato. See Tables III, IV, V and VI in § 51.1564 and Table VII in § 51.1565.

8. Section 51.1564 is amended by:

A. Amending the introductory text by removing the reference “Table III”, and by adding the reference “Tables III, IV, V and VI”, in its place;

B. Amending Table III by revising the column headings; and

C. Amending Table III by revising the entries for “Bruises (Not including pressure bruise and sunken discolored areas)” and “Sprouts”.

Revisions and addition read as follows.

**§ 51.1564 External defects.**

\* \* \* \* \*

TABLE III—EXTERNAL DEFECTS

Defects	Damage	Serious damage <sup>1</sup>
*	*	*
*	*	*
*	*	*
*	*	*
Bruises (Not including pressure bruise and sunken discolored areas).	When removal causes a loss of more than 5 percent of the total weight of the potato or when the area affected is more than 5 percent of the surface in the aggregate (i.e. ¾ inch on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.	When removal causes a loss of more than 10 percent of the total weight of the potato or when the area affected is more than 10 percent of the surface in the aggregate (i.e. 1¼ inches on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.

TABLE III—EXTERNAL DEFECTS—Continued

Table with 3 columns: Defects, Damage, and Serious damage 1. Each column has asterisks above the text. The text describes potato sprout defects and damage criteria.

1 The following defects are considered serious damage when present in any degree: 1. Freezing. 2. Late blight. 3. Ring rot. 4. Southern bacterial wilt. 5. Soft rot. 6. Wet breakdown.

§ 51.1565 [Amended]

9. Section 51.1565 is amended by:

A. Amending the introductory text by removing the reference "Table IV", and by adding the reference "Table VII", in its place; and

B. Amending Table VII, by removing the column heading "Damage Maximum allowed" and adding the heading "Damage Maximum Allowed" in its place, and by removing the column heading "Serious Maximum allowed", and by adding the column heading "Serious Damage Maximum Allowed" in its place.

Dated: April 22, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010-9822 Filed 4-29-10; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0434; Directorate Identifier 2009-NM-221-AD]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146-100A and -200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation

product. The MCAI describes the unsafe condition as:

The operation of the airbrake lever in the "airbrakes out" to "lift spoiler" range has been the subject of two occurrence reports. The lift spoilers on the BAe 146 and Avro 146-RJ aeroplanes have been designed to deploy on landing to provide aerodynamic braking and to dump lift to ensure that the wheel brakes can provide the necessary speed reduction.

\* \* \* \* \*

The effects of deceleration and landing inertia loads can cause uncommanded movement of the airbrake selector lever from the "lift spoiler" position to the "airbrakes out" position, causing the lift spoilers to retract during the landing roll. This condition, if not corrected, would increase the landing distance, possibly resulting in a runway overrun and consequent injury to aeroplane occupants.

\* \* \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 14, 2010.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the instructions for submitting comments.
Fax: (202) 493-2251.
Mail: U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearn Road, Herndon, Virginia 20171; telephone 703-736-1080; e-mail raebusiness@baesystems.com; Internet

http://www.baesystems.com/Businesses/RegionalAircraft/index.htm. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at http://www.regulations.gov; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include "Docket No. FAA-2010-0434; Directorate Identifier 2009-NM-221-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation