

**Maine**

York

Survey Area

Maine:

York

Area of application. Survey area plus:

Maine:

Cumberland

Kennebec

Penobscot

New Hampshire:

Rockingham

Vermont:

Windsor

\* \* \* \* \*

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BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 51**

[Doc. # AMS-FV-08-0023]

**United States Standards for Grades of Potatoes****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** This rule revises the United States Standards for Grades of Potatoes. These standards are issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is amending 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 adding restrictive tolerances for permanent defects in the en route/at destination tolerances, removing the unneeded definition for injury, and clarifying the scoring guide for sprouts. AMS is also adding table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amending table headings, replacing omitted language in the definition for bruises and amending 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:** Effective June 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, Standardization and Training Section, Fresh Products Branch, (540) 361-1120. The United States Standards for Grades of Potatoes are available through the Fresh Products

Branch Web site at <http://www.ams.usda.gov/freshinspection>.

**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 amended 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 final 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 closely examining the Agricultural Census acreage breakdown. 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.

This rule will 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, this rule will add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omitted language in the definition for bruises, and amend the tolerance section to ensure soft rot tolerances are applied correctly. These actions will make the standard more consistent and uniform with marketing trends and practices. These 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 (7 CFR part 980).

Alternatives to this rule were considered including the option of not issuing the rule. However, the need for revision has increased as a result of changing market characteristics, and this final rule represents input from the potato industry.

A proposed rule regarding these revisions to the United States Standards for Grades of Potatoes was published in the **Federal Register** on April 30, 2010 [75 FR 22707]. A comment period of thirty days was issued which closed June 1, 2010.

### Comments

In response to the request for comments, AMS received comments from nine respondents. Six comments were from national or state trade associations representing potato growers, shippers, and receivers, of which two supported the proposal and four partially supported the proposal. One supporting comment was from a nationwide produce retail chain. Another supporting comment was from a foreign government agency representing its agricultural inspection service. One comment came from a non-supporting consumer, who opposed the proposal in general without providing any specific information. Additionally, one national trade association proposed an additional revision.

AMS proposed to amend the similar varietal characteristic requirement to allow mixed colors and/or types of potatoes when designated as a mixed or specialty pack. Supporting comments were received from five national or state trade associations representing potato growers, shippers, and receivers, one nationwide produce retail chain, and one foreign government agency. One supportive commenter stated that there should only be a U.S. No. 1 mixed or specialty pack as allowing a U.S. No. 2 mixed or specialty pack downgrades the pack. The same commenter also suggested only allowing mixed colors and not mixed types of potatoes. AMS believes that allowing for both U.S. No. 1 and No. 2 mixed grade potatoes and to be mixed colors and/or types of potatoes allows for the appropriate amount of flexibility within the industry to meet current demand of consumers. Therefore, no changes were made to the standards based on these suggestions.

One objection came from a state trade association that believes consumers will prepare potatoes from the same container using one cooking step. This respondent does not find it acceptable for packers and repackers of Idaho potatoes to allow mixed types that perform differently, when cooked, to be packed in one bag. However, there were

seven supporting commenters that believed that allowing mixed colors and/or types of potatoes when designated as a mixed or specialty pack will bring the standards in sync with current marketing practices and consumer demands in the United States and Canada. AMS agrees with these seven commenters. Therefore, AMS is revising the similar varietal characteristic requirement as proposed.

AMS also proposed to add restrictive tolerances for permanent defects in the en route/at destination tolerances. Two national trade associations representing potato growers and receivers and one nationwide produce retail chain supported the proposal. Four national and state trade associations representing potato growers and shippers opposed this revision. The opposing commenters believe that the new language will add confusion to the standards by causing market inspectors to misinterpret the difference between condition and permanent defects. Also, since permanent defects do not change over time, these commenters believe the restrictive tolerances are unnecessary.

On March 21, 2008, a final rule was published in the **Federal Register** (73 FR 15052) that added "en route" or "at destination" tolerances to the U.S. No. 1 and No. 2 grades. Prior to that rulemaking, there were only shipping point tolerances: For U.S. No. 1 a total of 8 percent, and for U.S. No. 2 a total of 10 percent. En route/at destination tolerances added for U.S. No. 1 potatoes allowed a total of 10 percent permanent defects, and for U.S. No. 2 potatoes a total of 12 percent permanent defects. AMS did not add restrictive tolerances to the en route/at destination tolerances in the 2008 final rule. Therefore 2 percent more permanent defects were allowed for both U.S. No. 1 and No. 2 between shipping point and at destination. This rulemaking adds a restrictive tolerance of not more than 8 percent for permanent defects in the U.S. No. 1 tolerances and not more than 10 percent for permanent tolerances in U.S. No. 2 that will ensure that shipping point and en route/at destination tolerances are properly the same.

In addition, AMS proposed to clarify the scoring guide for sprouts. Two national trade associations representing growers and receivers, one nationwide produce retail chain, and one foreign government agency were in favor of, but four national or state trade associations expressed concern regarding the phrase "or have numerous individual and/or clusters of sprouts which materially detract from the appearance of the potato." Those commenters opposed to the change stated that the wording is too

subjective and may nullify the length requirements for shipping point and destination. Currently, the wording in the standards can be interpreted to allow any cluster, no matter how small, to not only be scored as damage but also as serious damage. To ensure clarity, AMS proposed that clusters must be numerous and must materially or seriously detract from the appearance before being scored. Further, numerous individual sprouts that do not exceed the length requirements were also included. AMS believes that even though a potato may have sprouts, either individuals and/or clusters, not exceeding the length requirements, the appearance can be materially or seriously affected due to the sprouts being so numerous. Additionally, scoring numerous individual and/or clusters of sprouts based on materially or seriously detracting from the appearance does not nullify the length requirements for single individual sprouts or clusters. Therefore, AMS is revising the scoring guideline for sprouts as proposed.

Finally, one commenter pointed out that although AMS proposed to replace the omission of "or 6 oz." in the definition of bruises in Table III—External Defects, it appears to be already included in this definition within the Standards. Upon further analysis, AMS determined that "or 6 oz." was never omitted, and therefore does not need to be added back into the standards. However, the language "2½ inch or" in the bruises definition was in fact inadvertently omitted as part of a previous rulemaking (73 FR 70585; November 21, 2008) but appear in the Standards. This rulemaking action is intended to rectify this error.

Therefore, AMS will revise the following as proposed: Remove the definition for injury, add table numbers to the definitions of "Damage," "Serious Damage," and "External Defects," amend table headings, replace omission of "2½ inch or" in the definition for bruises, and amend language in the tolerance section to ensure soft rot tolerances are applied correctly.

In addition to the comments on these proposed revisions, one national trade association representing potato receivers suggested that AMS reinstate the 1 percent soft rot en route/at destination tolerance for the U.S. No. 1 and U.S. No. 2 grades. This proposal is outside the scope of this rulemaking but may be considered at a later time.

### List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts,



TABLE III—EXTERNAL DEFECTS—Continued

Defects	Damage	Serious damage <sup>1</sup>
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*

<sup>1</sup> 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 column heading “Damage Maximum Allowed” in its place, and by removing the column heading “Serious damage maximum allowed”, and by adding the column heading “Serious Damage Maximum Allowed” in its place.

Dated: May 24, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011-13485 Filed 6-1-11; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 201**

[Doc. No. AMS-LS-08-0002]

RIN 0581-AC74

**Federal Seed Act Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** AMS is revising the Federal Seed Act (FSA) regulations. The rule amends the list of prohibited noxious-weed seeds to reflect the recent addition of four species, deletion of two species, and changes in the nomenclature of four species listed in the Federal Noxious Weed Act (FNWA). The rule updates the seed labeling regulations, noxious-weed seed tolerances, seed testing regulations, and seed certification regulations. The rule also revises the nomenclature of kinds regulated under the FSA and corrects several minor errors. The list of

noxious-weed seeds is amended to help prevent the spread of these highly destructive weeds. The labeling regulations and noxious-weed seed tolerances are amended to prevent potential conflicts with State regulations, reflect currently used terms, and reflect current industry practices. The seed testing and seed certification regulations are amended to incorporate the latest in seed testing and seed certification knowledge and to prevent potential conflicts with State regulations.

**DATES:** Effective July 5, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054-2193; telephone (704) 810-8884; fax (704) 852-4109; e-mail [richard.payne@ams.usda.gov](mailto:richard.payne@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This final rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12988**

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

**Regulatory Flexibility Act and Paperwork Reduction Act**

AMS has certified that this action will not have a significant impact on a

substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). Many small entities ship seed in interstate commerce. There are about 3,095 interstate shippers. Small agricultural service firms, which include interstate shippers, are defined by the Small Business Administration as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201). We estimate that about 90 percent of the interstate shippers are small entities.

Shippers, including small entities, usually test and subsequently package and label seed to comply with both the FSA and State seed laws. This is possible because the testing requirements of the State laws are similar or the same as those of the FSA. Therefore, a single test provides information necessary to comply with both State seed laws and the FSA. Changing the seed testing and seed certification regulations will reconcile State and Federal seed testing and seed certification procedures. Moreover, using similar or the same testing procedures will reduce the burden on small entities shipping seed in interstate commerce because a test used for interstate commerce could also be used in intrastate commerce.

Adding four species to the list of seeds that are noxious in seed shipped in interstate commerce will not significantly impact small entities by adding additional costs for seed testing, because all seed must currently be examined for 93 noxious-weed seeds listed in the FSA regulations and those listed in the State laws to be compliant with the FSA. (The FSA requires that seed shipped in interstate commerce comply with the noxious-weed seed requirements of that State into which the seed is shipped.) Therefore, any examination for the weed seeds being added will be in conjunction with examinations that already occur for State noxious-weed seeds. Updating the noxious-weed seed tolerances to be uniform with those required by State