

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 945****[Docket No. FV00-945-1 IFR]****Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulations****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule would relax pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound cartons to better meet buyer needs. Currently, only U.S. No. 1 and better grade potatoes can be shipped in cartons. The relaxed pack requirements will enable handlers to ship a substantial amount of U.S. No. 2 grade potatoes in cartons and help maximize producer returns.

DATES: Effective May 4, 2000. Comments must be received by July 3, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.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.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the Idaho-Eastern Oregon potato marketing order. Current requirements provide, in part, that all potatoes packed in cartons shall be inspected and certified as meeting U.S. No. 1 grade or better. All varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1-15, and the White Rose and red skinned varieties from August 1-December 31 can be moderately skinned). During other periods of the year, the White Rose and

red skinned varieties are not subject to maturity requirements. Size shall be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540-51.1566), and the size must be marked consistent with § 51.1545 of the standards.

This rule will relax pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the carton is permanently and conspicuously marked as to grade. This will enable handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 or better grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade.

To meet the needs of the food service industry, the Committee recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color that are permanently and conspicuously marked as to grade. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee then conducted a telephone vote on February 3, 2000, and unanimously passed a motion to relax the pack requirements.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers now purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. The Committee would like to respond to these changing market conditions so that handlers will remain

competitive with the other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to relid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore the Committee included in their recommendation that the fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked to grade.

Pursuant to the 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 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 63 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the marketing order and about 1,600 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities.

This rule would relax pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade. This would enable handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements.

The relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade is expected to allow the industry to ship more potatoes. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee then conducted a telephone vote on February 3, 2000, and unanimously passed the pack relaxation motion.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties experienced in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers now purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. The Committee would like to respond to these changing market conditions so that handlers will remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish the U.S. No. 2 grade potatoes in cartons from this industry's traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to relid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore, the Committee included in its recommendation that the fiberboard cartons be of one-piece construction, of a natural kraft color, and be permanently and conspicuously marked to grade.

At the meetings the Committee discussed the impact of allowing U.S. No. 2 potatoes in one-piece 50 pound

cartons. The Committee believes that the recommendation should increase the sale of U.S. No. 2 grade potatoes to the food service industry. Information from the Committee indicates that during an average season, approximately 10 percent of the fresh potato shipments from the production area are of U.S. No. 2 grade, and that approximately 20 percent of the potatoes going to the food service industry are of U.S. No. 2 grade. This action is expected to further increase shipments to the food service industry, and help the Idaho-Eastern Oregon potato industry benefit from the increased growth in the food service industry.

The relaxation of pack requirements allowing handlers to ship U.S. No. 2 grade potatoes in cartons might require the purchase of new equipment that can handle one-piece cartons. However, these costs are expected to be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in that manner. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

As alternatives to this action, the Committee considered various alternatives to distinguish U.S. No. 2 grade potatoes packed in cartons from the traditional premium carton pack of U.S. No. 1 grade potatoes. The Committee decided that it was important that there be a clear distinction between the packs to ensure that the shipments of U.S. No. 2 potatoes in cartons not negatively impact the market for U.S. No. 1 potatoes in cartons.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the potato industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the January 18, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of eight members, of whom three are handlers and five are producers. 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 the following web site: <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.

After consideration of all relevant material 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.

A 60-day comment period is provided to allow interested persons to respond to this interim final rule. All written comments timely received will be considered before a final determination is made on this matter.

Pursuant to 5 U.S.C. 553, it also is 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 action until 30 days after publication in the **Federal Register** because: (1) The Committee unanimously recommended this relaxation in pack requirements; (2) handlers would like to take advantage of the relaxation as soon as possible to better meet buyer needs; (3) handlers are aware of this action which was discussed by the Committee at public meetings; and (4) handlers are currently shipping U.S. No. 2 grade potatoes.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES OF IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 945.341, paragraph (b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively, and paragraph (c)(2) is revised to read as follows:

§ 945.341 Handling regulation.

* * * * *

(c) * * *

(2) Potatoes packed in cartons (except when used as a master container) shall be either:

(i) U.S. No. 1 grade or better, except potatoes of U.S. Extra No. 1 shall be no smaller than 110 size nor larger than 60 size; or

(ii) U.S. No. 2 grade in one-piece 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade.

* * * * *

Dated: April 28, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–11089 Filed 5–1–00; 11:22 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–338–AD; Amendment 39–11709; AD 2000–09–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. This amendment requires, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This amendment is prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety; the latching and locking mechanisms are not of adequate design to prevent structural deformation in the event of component jamming; and that there is an absence of a means to prevent pressurization to an

unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of the door, flight control, or severe structural damage.

DATES: Effective June 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from National Aircraft Service, Inc. (NASI), 9133 Tecumseh-Clinton Road, Tecumseh, MI 49286. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–20–02, amendment 39–8709 (58 FR 53635, October 18, 1993), which is applicable to certain McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on December 22, 1999 (64 FR 71689). The action proposed to continue to require a revision to the Airplane Flight Manual Supplement (AFMS) to ensure that the main deck cargo door is closed, latched, and locked; repetitive inspections of the wire bundle and door latch rollers to detect damage; and repair or replacement of damaged components. The action also proposed to require, among other actions, modification of the indication and hydraulic systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked.

Comment Received

Interested persons have been afforded an opportunity to participate in the