

Rules and Regulations

Federal Register

Vol. 71, No. 99

Tuesday, May 23, 2006

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV06-945-1 FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the minimum quantity exemption for yellow fleshed Finnish-type potatoes from the handling regulations issued under the Idaho-Eastern Oregon potato marketing order. The marketing order regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Potato Committee (Committee). A minimum quantity shipment exemption of up to 200 hundredweight per day is provided for yellow fleshed Finnish-type potatoes. Because yellow fleshed Finnish-type potatoes are no longer produced in the production area covered under the marketing order, the exemption from handling and assessment regulations is no longer necessary.

DATES: *Effective Date:* This final rule becomes effective May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440.

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@usda.gov.

SUPPLEMENTARY INFORMATION: This 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 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. 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 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 removes the exception for yellow fleshed Finnish-type potatoes from the minimum quantity exemption paragraph of the handling regulations issued under the order. The minimum quantity exemption in the regulation allows handlers to ship up to five hundredweight of potatoes without regard to the inspection and assessment

requirements of the order. An exception for yellow fleshed Finnish-type potatoes is included in the exemption which allows up to 200 hundredweight per day to be shipped without regard to inspection or assessment requirements. The Committee unanimously recommended the removal of the exception at its meeting on November 2, 2005.

Section 945.42 of the order provides authority to assess first handlers of potatoes to provide funds to cover the expenses of the Committee. Sections 945.51 and 945.52 provide authority for the establishment and modification of regulations applicable to the handling of potatoes, including required inspections. Section 945.54 provides authority to establish exemptions from the regulations based on shipment size.

Section 945.341 establishes minimum quality, maturity, pack, and inspection requirements for potatoes handled subject to the order. Paragraphs (e), (f), and (g) of § 945.341 delineate the circumstances in which the shipment of potatoes subject to the order may be granted an exemption from regulation. Paragraph (g) of that section specifies the five hundredweight or less per day shipment exemption, and the exception of up to 200 hundredweight per day for yellow fleshed Finnish-type potatoes.

At its meeting on November 2, 2005, the Committee unanimously recommended the removal of the special exception for yellow fleshed Finnish-type from the handling regulations. In its deliberations, the Committee commented that yellow fleshed Finnish-type potatoes are no longer produced within the production area and that the exception is no longer needed.

The exception to the minimum quantity exemption for yellow fleshed Finnish-type potatoes was added to the regulation in 1987, specifically to promote the production and marketing of this new type potato by relieving shipments of less than 200 hundredweight of the burden of inspection and assessment. In spite of this advantage, the production of yellow fleshed Finnish-type potatoes declined over time and is currently nonexistent. The Committee noted, however, that the production of other colorful varieties (some with yellow flesh but not Finnish-type) has increased and that the exception, if retained, may cause confusion to industry participants.

Since the niche market for which the exception was intended no longer exists, and there remains the potential for misunderstanding within the industry, the Committee believes that the exception should be removed from the handling regulations.

Final Regulatory Flexibility Analysis

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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 48 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 1,000 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

Based on a three-year average fresh potato production of 33,623,000 hundredweight as calculated from Committee records, a three-year average of producer prices of \$4.64 per hundredweight reported by the National Agricultural Statistics Service, and 1,000 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately \$156,000. It can be concluded, therefore, that a majority of these producers would be classified as small entities.

In addition, based on Committee records and 2004–05 f.o.b. shipping point prices ranging from about \$4.00 to \$28.00 per hundredweight reported by USDA's Market News Service, most of the Idaho-Eastern Oregon potato handlers do not ship over \$6,500,000 worth of potatoes. In view of the foregoing, it can be concluded that a majority of the handlers would be classified as small entities as defined by the SBA.

This final rule removes the exception for yellow fleshed Finnish-type potatoes from the minimum quantity exemption

in the order. The exception was added to the regulation in 1987 to allow less restrictive requirements for yellow fleshed Finnish-type potatoes. The intent was to facilitate the production and marketing of this new experimental type potato. In the years that have followed, though, the production and marketing of this type potato has shifted to other potato producing regions. Consequently, yellow fleshed Finnish-type potatoes currently are not produced within the production area covered by the order and the exception to the minimum quantity exemption in handling regulations is no longer warranted. Authority for the establishment and modification of minimum quantity exemptions is provided in § 945.54 of the order.

At the November 2, 2005, meeting, the Committee discussed the impact of this change on producers and handlers. Since there currently is not any production of the type of potato covered by the exception, producers and handlers should not be adversely impacted. In addition, there should be no increased costs associated with this modification of the handling regulations.

As an alternative to the proposal, the Committee discussed leaving the handling regulation as it was issued. The Committee rejected this idea because it would have left outdated language in the rules and regulations. They also felt that the exception, if unchanged, could be misinterpreted by the industry and applied to other colored flesh type potatoes that are not yellow fleshed Finnish-type. No other alternatives were discussed.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large potato handlers or 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 USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the

November 2, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on February 22, 2006 (71 FR 9002). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending April 24, 2006, 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 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.

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 this rule removes provisions that are no longer necessary. Further, handlers are shipping potatoes from the 2005–2006 crop. Moreover, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided in the proposed rule and no comments were received.

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 IN 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 (g) is revised to read as follows:

§ 945.341 Handling regulation.

* * * * *

(g) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed, five hundredweight of potatoes any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes.

* * * * *

Dated: May 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4748 Filed 5–22–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV06–989–2 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2005–06 Crop Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2005–06 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 82.50 percent free and 17.50 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective August 1, 2005, through July 31, 2006. The volume regulation percentages apply to acquisitions of NS raisins from the 2005–06 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by July 24, 2006, 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 E-mail:

moab.docketclerk@usda.gov, or Internet: <http://www.regulations.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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Officer-in-Charge, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906.

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@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, 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. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS raisins for the 2005–06 crop year, which began August 1, 2005, and ends July 31, 2006. 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 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 rule establishes final volume regulation percentages for 2005–06 crop NS raisins covered under the order. The volume regulation percentages are 82.50 percent free and 17.50 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages on January 26, 2006, and further justified their recommendation on March 16, 2006.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2005, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year’s shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable