

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

Proposal No. 7

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV03-946-1 PR]

Irish Potatoes Grown in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on nine proposed amendments to Marketing Agreement and Order No. 946, which regulate the handling of Irish potatoes grown in Washington. Seven amendments are proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These are: adding the authority to establish container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; incorporating language currently existing in the Rules and Regulations subpart pertaining to selection and establishment of districts; requiring Committee nominees to submit a signed acceptance letter prior

to appointment by the Agricultural Marketing Service (AMS); allowing for nominations to be held at large industry meetings; adding the authority to change the size of the Committee; and adding the authority to allow for additional alternates to serve when a Committee member and that member's alternate are unable to serve. AMS proposed two additional amendments to establish tenure limitations for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order.

DATES: The hearing will begin at 9 a.m. in Moses Lake, Washington, on November 20, 2003.

ADDRESSES: The hearing will be held at the Best Western Hallmark Inn, 3000 Marina Drive, Moses Lake, Washington, 98837, (866)-603-9330.

FOR FURTHER INFORMATION CONTACT:

Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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. 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 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes the following amendments as summarized below.

1. Amend the order to authorize container and marking regulations. This would encompass size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in packaging or handling of Irish potatoes grown in Washington.

2. Amend the order to add language to require production for the fresh market in at least 3 out of 5 years preceding nomination to the committee for all producer members.

3. Make administrative changes in § 946.25 "Selection" and § 946.31 "District" to incorporate language currently in the Rules and Regulation subpart.

4. Amend the order to add language requiring Committee nominees to submit a signed letter of acceptance prior to selection by AMS.

5. Allow for nominations to be held at any industry meeting rather than requiring separate meetings in each of the districts, as currently required by the order.

6. Amend the order to authorize the Committee to recommend changes in the number of Committee members and alternates. Such a recommendation would require an analysis of certain factors within the industry and approval by the Department.

7. Allow an alternate member of the same classification (producer or handler) to serve in a member's place and stand in the event a Committee member and that member's alternate are unable to attend a Committee meeting.

The Committee works with USDA in administering the order. These proposals have not received the approval of the Department. The Committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

In addition, AMS proposes adding two provisions which would help assure that operation of the program conforms to current Department policy. The first provision would establish a limit on the number of consecutive terms a person may serve as member on the Committee. The second provision would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order. AMS also proposes to allow such changes to the order as may be necessary to conform with any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the State of Washington Potato Committee:

Proposal No. 1

Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

§ 946.52 Issuance of regulations.

(a) * * *

(5) To regulate the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both.

* * * * *

Add a new § 946.17 to read as follows:

§ 946.17 Pack.

Pack means a quantity of potatoes in any type of container and which falls within the specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

Add a new § 946.18 to read as follows:

§ 946.18 Container.

Container means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

Proposal No. 2

Revise § 946.22 to read as follows:

§ 946.22 Establishment and membership.

The State of Washington Potato Committee consisting of fifteen members, of whom ten shall be producers who have produced potatoes for the fresh market for at least three out of the last five years prior to nomination and five shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

Proposal No. 3

Amend § 946.25 by revising paragraph (c) to read as follows:

§ 946.25 Selection.

* * * * *

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as

designated in § 946.31, will be represented as follows:

- (1) District No. 1—Three producer members and one handler member;
- (2) District No. 2—Two producer members and one handler member;
- (3) District No. 3—Two producer members and one handler member;
- (4) District No. 4—Two producer members and one handler member;
- (5) District No. 5—One producer member and one handler member.

Revise § 946.31 to read as follows:

§ 946.31 Districts.

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby established:

(a) District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(b) District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(c) District No. 3—The counties of Benton, Klickitat, and Yakima.

(d) District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(e) District No. 5—All of the remaining counties in the State of Washington, not included in Districts No. 1, 2, 3, and 4 of this section.

Proposal No. 4

Revise § 946.26 to read as follows:

§ 946.26 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by USDA, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

Proposal No. 5

Amend § 946.32 by revising paragraph (a) to read as follows:

§ 946.32 Nomination.

* * * * *

(a) A meeting of producers and handlers shall be held by the Committee not later than May 1 of each year to designate nominees for members and alternates to the Committee; or the Committee may conduct nominations by mail in a manner recommended by the Committee and approved by the Secretary; and, in arranging for such meetings, the Committee may, if it deems desirable, utilize the services and facilities of other existing organizations;

Proposal No. 6

In § 946.22, designate the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 946.22 Establishment and membership.

(b) The Secretary, upon recommendation of the committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

- (1) Shifts in acreage within districts and within the production area during recent years;
- (2) The importance of new production in its relation to existing districts;
- (3) The equitable relationship between membership and districts;
- (4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts and;
- (5) Other relevant factors.

Proposal No. 7

In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.23 Alternate members.

(b) In the event both a member and his or her alternate are unable to attend a committee meeting, the committee members present may designate another alternate of the same classification (handler or producer) to serve in such member's place and stead.

USDA proposes the following:

Proposal No. 8

Amend § 946.27 by revising paragraph (a) to read as follows:

§ 946.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for three years beginning July 1 and continuing until their successors

are selected and have qualified: *Provided, however,* That the terms of office of the initial committee under the amended order shall be determined by the Secretary so that the terms of office of one-third of the initial members and alternates shall be for 1 year, one-third for two years, and one-third for 3 years. Committee members shall not serve more than two consecutive terms. Members who have served for two consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

Proposal No. 9

In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 946.63 Termination.

(d) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by growers.

Proposal No. 10

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

A.J. Yates,
Administrator, Agricultural Marketing Service.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-03-132]

RIN 1625-AA08

Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations during the "International Tug-of-War", a marine event to be held over the waters of Spa Creek between Eastport and Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event.

This action is intended to restrict vessel traffic in portions of Spa Creek during the event.

DATES: Comments and related material must reach the Coast Guard on or before November 10, 2003.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-03-132), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 20-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners. We also expect to make the final rule effective less than 30 days