

# Proposed Rules

Federal Register

Vol. 70, No. 29

Monday, February 14, 2005

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 946

[Docket No. AO-F&V-946-3; FV03-946-01]

#### Irish Potatoes Grown in Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 946

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amending the marketing agreement and order (order) for Irish potatoes grown in Washington, and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These amendments include: adding authority for 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; updating order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts; requiring Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; and adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: to establish tenure limitations for Committee members, and to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** The referendum will be conducted from March 18 through April 8, 2005. The representative period for the purpose of the referendum is July 1, 2003 through June 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, 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, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the *Federal Register* (68 FR 58638), and a Recommended Decision issued on November 19, 2004 and published in the November 26, 2004 issue of the *Federal Register* (69 FR 68819).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

#### Preliminary Statement

The amendments are based on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 946, regulating the handling of Irish potatoes grown in the State of Washington, hereinafter referred to as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained numerous proposals submitted by the Committee and two proposals by the

Agricultural Marketing Committee (AMS).

The amendments included in this decision would: add authority to establish container and marking regulations; require Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; update provisions pertaining to districts and allocation of Committee membership among those districts; require Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allow for nominations to be held at industry meetings or events; add authority to change the size of the Committee; and add authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: to establish tenure limitations for Committee members, and require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order. In addition, USDA proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 19, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 27, 2004. No exceptions were filed.

#### Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Washington fresh potato industry.

The record indicates that there are about 39 fresh potato handlers currently regulated under the order. With total fresh sales valued at \$108 million, on average, these handlers each received \$2.8 million. In addition, there are about 160 producers of fresh potatoes in the production area. With total fresh sales at the producer level valued at \$58 million, each grower's average receipts would be \$362,500. Witnesses testified that about 76 percent of these producers are small businesses.

It is reasonable to conclude that a majority of the fresh Washington potato handlers and producers are small businesses.

### Potato Industry Overview

Record evidence supplied by the Washington State Potato Commission indicates that there are approximately 323 potato producers in the State, of which approximately 160 (50 percent) are producers of fresh market potatoes. Approximately 76 percent of the fresh market potato producers are small entities, according to the SBA definition. Many of these farming operations also produce potatoes for the processing market. The Washington State potato industry also includes 39 handlers and 12 processing plants.

A 2001 publication of Washington State University (WSU) Extension estimated that total demand for potatoes produced in Washington State was \$495 million dollars. Of this total sales value figure for Washington potato producers, fresh market potato pack-out represented approximately 12 percent, with producer sales valued at \$58 million. The largest proportion of the crop (\$357 million or 72 percent) was represented by sales to the frozen potato product market, principally for French fries. Other uses included seed potatoes, dehydration and potato chips.

The WSU report also explained that the supply of fresh market potatoes is handled by various potato packers (handlers) whose operations vary in size. These handlers supply the retail market, including supermarkets and grocery stores, as well as restaurants and other foodservice operations. Potatoes are prepared for the fresh market by cleaning, sorting, grading, and packaging before shipment is made to final destinations. Due to customer specifications about sizes, shapes, and blemishes, as well as the minimum quality, size, and maturity regulations of the order, about 42–43 percent of the potatoes delivered to handlers are graded out of the fresh market. Potatoes not meeting grade are generally delivered to processors for use in the frozen French fry and dehydrated potato markets. The total output of the fresh pack industry in terms of sales value is \$108 million.

Washington State acreage and production is second only to that of Idaho, but its yields per acre are the highest of any State in the United States. Produced on 165,000 acres, total potato production in Washington in 2002 was 92.4 million hundredweight, with an average yield of 560 hundredweight per acre. Over the last several years, Washington has produced about 21 percent of the total U.S. potato production on about 13 percent of the total acreage dedicated to potatoes. Washington's share of the total value has been about 17 percent of the nation's total. Fresh utilization has varied between 11 percent and 15 percent from 1993 through 2002. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS).

The record indicates that soil type, climate, and number of irrigated acres combine to make Washington an excellent area to grow potatoes. In 2000, Washington produced a record crop with 105 million hundredweight grown on 175,000 acres with a total industry value of \$555.2 million. This represents a substantial increase from 1949—the year in which the marketing order was established—in which producers harvested 29,000 acres with a yield of 6.4 million hundredweight of potatoes valued at \$14.8 million. According to testimony, the producer price per hundredweight of potatoes was \$2.30 in 1949 and \$5.40 in 2002.

### The Role of U.S. No. 2 Grade Potatoes in the Washington Potato Industry

Witnesses at the hearing explained that potato production is dependent on many factors over which they have little control, including water availability,

weather, and pest and weed pressures. For example, the potato crop may be of higher average quality one year, yielding an increased supply of U.S. No. 1 grade potatoes, and have an overall lower quality the next year with a preponderance of U.S. No. 2 grade potatoes.

According to testimony, U.S. No. 2 grade potatoes in Washington are generally diverted for use in making dehydrated potato products. In addition, U.S. No. 2 grade potatoes are occasionally in demand as “peelers” for use in soups and salads, or as “natural” fries. Regardless of the secondary products markets, witnesses explained, the fresh, table stock market is an important additional market for U.S. No. 2 grade potatoes. Witnesses explained that the Washington potato industry cannot currently take advantage of this market without container marking authority. Having the additional flexibility to pack U.S. No. 2 grade potatoes in labeled cartons would help the industry overall.

### Economic Impact of Proposal 1, Adding Container and Marking Regulatory Authority

The proposal described in Material Issue No. 1 would amend § 946.52, Issuance of regulations, to add authority for the Committee to recommend container and marking regulations to the USDA for subsequent implementation. This would be in addition to the existing authority for grade, size, quality and maturity requirements.

In testifying in support of this amendment, witnesses cited an example of how this authority could be used. They stated that the Committee wants to respond to customer demand for U.S. No. 2 grade potatoes packed in cartons, but at the same time it wants to ensure that such cartons would be properly labeled. Three people testified in favor of this proposal, and no one testified in opposition. The three witnesses covered similar themes in expressing their views on the proposal.

Each stated that the U.S. potato market is highly competitive and that the potato industry in Washington needs to be vigilant in responding to market needs so as not to lose market share to other states. Testimony indicated that the fresh market potato industry in Washington needs to ensure that their customers are receiving what they order, and must remain flexible and innovative. All three witnesses emphasized that offering appropriate packaging is a key element of being flexible and responsive to customers.

The witnesses offered an historical perspective by pointing out that 40

years ago, the industry standard for potato packaging was a 50 or 100-pound burlap bag. The passing of 30 years saw the phasing in of 50-pound cartons and polyethylene (poly) bags. Now, potatoes are shipped in burlap, cartons, poly, mesh, cardboard bulk displays and baler bags. Container sizes can range from 2 pounds to 100 pounds. It was emphasized that the industry is constantly looking for new packaging and delivery methods.

Witnesses stated that as early as 1994, the Committee began receiving requests from retailers and wholesalers to pack U.S. No. 2 grade potatoes from Washington in 50 lb. cartons. These customers cited a number of reasons for wanting the U.S. No. 2 grade potatoes in cartons, including ease of handling and stacking in warehouses, improved worker safety, and better product protection (for example, less "greening" from exposure to light, and reduced bruising during transport.)

Although authority exists in the order for the Committee to recommend regulations to allow packing of U.S. No. 2 grade potatoes in cartons, witnesses explained that up until now the Committee has chosen not to permit this lower grade to be packed in cartons because of the inability to mandate labeling. The current handling regulations specify that only U.S. No. 1 or better grade potatoes may be packed in cartons, and as such, buyers of Washington potatoes have learned to expect this premium grade when purchasing potatoes in cartons. Adding this labeling authority would provide assurance to customers and to the industry that the product being shipped is properly identified. Mandatory labeling prevents handlers from misrepresenting the quality of the potatoes packed in the carton. Even one handler sending substandard product to customers can mar the reputation of the Washington State potato industry, according to witnesses.

Witnesses stated that upholding the integrity of the Washington State potato industry is as important to producers as meeting customer specifications. Mandating labeling would help ensure product integrity. The Committee has discussed that without the labeling authority, a customer could potentially receive U.S. No. 2 grade potatoes from a handler, thinking that they are of U.S. No. 1 grade quality. This could damage customer perceptions of the higher-grade potatoes coming out of Washington. Labeling authority would help alleviate consumer perception problems. Further, not only would it help verify that handlers are putting the right product into the right packaging,

but it also would assure customers that they are actually receiving what they have ordered.

Witnesses also emphasized the minimal additional cost of implementing this proposal. They point out that handlers' facilities are already configured for packing potatoes in cartons, and for labeling those cartons, so there is no need for any equipment changes or additions. In the witnesses' view, any additional costs a handler would have in packing potatoes in cartons rather than sacks would be offset by the increased selling price.

The USDA concurs that adding container and marking authority would be a useful market-facilitating improvement to the order. Requiring labeling of cartons would help to improve market transactions between seller and buyer by assuring all concerned as to the exact content of such cartons. Washington producers and handlers would benefit from taking advantage of another market niche, with minimal additional cost.

Testimony and industry data together indicate that little to no differential impact between small versus large producers or handlers would result from the proposed amendment to authorize container and labeling requirements. Although not easily quantifiable, the USDA concurs that benefits to the potato industry appear to substantially outweigh the potential costs associated with implementing this proposal.

#### **Economic Impact of Remaining Amendment Proposals**

Remaining amendment proposals are administrative in nature and would impose no new regulatory burdens on Washington potato producers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

Producer members of the Committee are currently required to be producers in the district they are nominated to represent. Adding another eligibility requirement—that they be producers of fresh potatoes—would ensure that the Committee is representative of, and responsive to, those producers the program impacts most directly. No additional costs would be incurred.

Replacing obsolete order language pertaining to establishment of districts and allocation of Committee membership among those districts would simply update the order. To the extent updating order language simplifies the program and reduces confusion, it would benefit the industry.

Currently, Committee member nominees are required to complete a

Background Statement before selection by USDA, and an Acceptance Letter subsequent to selection. Combining these into a single form would streamline the appointment process and reduce reporting requirements imposed on Committee members.

Nominations of Committee members can be conducted through mail balloting or at meetings held in each of the five established districts. Allowing nominations to be made at larger, industry-wide meetings would provide the industry with an additional option. This option could result in the Committee reaching a larger audience of producers and handlers, thereby broadening industry participation and facilitating the nomination process.

The Washington Potato Committee consists of 10 producers, 5 handlers, and their alternates. Changing the size of the Committee would allow the industry to adjust to changes in fresh potato production patterns and in the number of active industry participants. An increase in Committee size could lead to marginally higher program costs because Committee members are reimbursed for expenses they incur in attending meetings and performing other duties under the order. A reduction in Committee size (deemed to be more likely according to the record) would likewise reduce program costs. Any recommendation to change the size of the Committee would be considered in terms of cost and the need to ensure appropriate representation of producers and handlers in Committee deliberations.

Committee members serve 3-year terms of office, with no limit on the number of terms they may serve. The proposed amendment to add tenure requirements, limiting persons to two consecutive three-year terms, would allow more persons the opportunity to serve as Committee members. It would provide for more diverse membership, provide new perspectives and ideas, and increase the number of individuals in the industry with Committee experience. No additional costs are expected to incur because of this proposed amendment.

The recommendation to require periodic continuance referenda to ascertain industry support for the program would allow producers the opportunity to vote on whether to continue the operation of the order. Most of the costs associated with referenda are borne by USDA. Ensuring that the program is administered in response to producer needs would outweigh these costs.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping provision changes that would be generated by the proposed amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 946 are approved by OMB under OMB number 0581-0178.

The Washington Potato Committee recommended amending producer eligibility requirements to require production of potatoes for the fresh market for 3 out of the 5 years of production prior to nomination. The Committee has also made recommendations that would streamline the nomination process and increase industry participation in nominations. In conformance with these recommendations, the confidential qualification and acceptance statement will be combined in the appointment of committee members. This form is based on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee, and no change in the information collection burden or further OMB approval is necessary.

### Civil Justice Reform

The amendments to Marketing Order 946 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 this proposal.

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 Department 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 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 the Department's ruling on the petition, provided an action is filed not later than

20 days after the date of the entry of the ruling.

### Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 26, 2004, issue of the **Federal Register** are hereby approved and adopted.

### Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Washington." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered,* That this entire decision be published in the **Federal Register**.

### Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of Irish potatoes grown in Washington is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Irish potatoes in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2003, through June 30, 2004.

The agent of the Secretary to conduct such referendum is hereby designated to be Teresa Hutchinson and Gary Olson, 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.

### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Dated: February 8, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

### Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Washington<sup>1</sup>

#### *Findings and Determinations*

The findings hereinafter set forth are supplementary to the findings and

determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

#### *(a) Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 946 (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of Irish potatoes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes grown in the production area as defined

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of

practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

#### Order Relative to Handling

*It is therefore ordered,* That on and after the effective date hereof, all handling of Irish potatoes grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on November 19, 2004, and published in the **Federal Register** on November 26, 2004, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

#### 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. 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.

3. 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.

4. In § 946.22, designate the current text as paragraph (a) and add 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 alternate members, 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 committee apportionment and districts; and,

(4) Other relevant factors.

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

6. Section 946.24 is revised to read as follows:

A. Revising paragraph (a).

B. Redesignating paragraph (b) as paragraph (c).

C. Adding a new paragraph (b).

The revisions read as follows:

##### § 946.24 Procedure.

(a) Sixty percent of the committee members shall constitute a quorum and a concurring vote of 60 percent of the committee members will be required to pass any motion or approve any committee action.

(b) The quorum and voting requirements of paragraph (a) of this section shall not apply to the designation of temporary alternates as provided in § 946.23.

(c) The committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

7. Section 946.25 is amended by:

A. Revising paragraph (a).

B. Revising paragraph (c).

The revisions read as follows:

##### § 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers of fresh potatoes in the respective district for which selected, or officers or employees of a corporate producer in such district. Such individuals must also have produced potatoes for the fresh market for at least three out of the five years prior to nomination.

(b) \* \* \*

(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.

8. Revise § 946.26 to read as follows:

##### § 946.26 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.

9. 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 3 years beginning July 1 and continuing until their successors are selected and have qualified. The terms of office of members and alternates shall be determined so that about one-third of the total committee membership is selected each year. Committee members shall not serve more than 2 consecutive terms. Members who have served for 2 consecutive terms will be ineligible to serve as a member for 1 year.

\* \* \* \* \*

10. 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.

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

**§ 946.32 Nomination.**

\* \* \* \* \*

(a) Nominations for Committee members and alternate members shall be made at a meeting or meetings of producers held by the Committee or at other industry meetings or events not later than May 1 of each year; or the Committee may conduct nominations by mail not later than May 1 of each year in a manner recommended by the Committee and approved by the Secretary.

\* \* \* \* \*

12. 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.

\* \* \* \* \*

13. 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 producers favor continuance of this part.

\* \* \* \* \*

[FR Doc. 05-2743 Filed 2-11-05; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 490**

[Docket No. EE-RM-02-200]

**Alternative Fuel Transportation Program; Fischer-Tropsch Diesel Fuels**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule; notice of availability of status review.

**SUMMARY:** This document announces the availability of a Department of Energy (DOE) document concerning diesel fuel made from natural gas using the Fischer-Tropsch process which is being added to docket number EE-RM-02-200. The document is the DOE's status review of its evaluation of Fischer-Tropsch diesel (FTD) under the Energy Policy Act of 1992 (EPA), undertaken partly in response to three petitions received by DOE requesting rulemakings to designate FTD fuels as alternative fuels. For the reasons identified in the status review document, DOE currently is unable to make the necessary finding that FTD fuel meets the "yields substantial environmental benefits" criterion under section 301(2) and is not undertaking a rulemaking at this time. DOE will keep the rulemaking docket open indefinitely and will periodically review any new submissions received.

**ADDRESSES:** U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE-2G, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

The docket material has been filed under "EE-RM-02-200." This docket will remain open indefinitely. Copies of the status review, workshop transcript, discussion paper, and related DOE laboratory analyses, petitions, and any public comments can be found at the Web site address [http://www.eere.energy.gov/vehiclesandfuels/epact/petition/ftd\\_docket\\_index.shtml](http://www.eere.energy.gov/vehiclesandfuels/epact/petition/ftd_docket_index.shtml). You may also access this document using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To request a copy of any of these documents or to arrange on-site access to paper copies or other information in the docket at the Office of FreedomCAR and Vehicle Technologies, contact Linda Bluestein at the phone number or e-mail address below.

**FOR FURTHER INFORMATION CONTACT:** Linda Bluestein on (202) 586-9171 or [linda.bluestein@ee.doe.gov](mailto:linda.bluestein@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

*a. Statutory Authority*

Under titles III through V of the Energy Policy Act of 1992 (Pub. L. 102-

486, 42 U.S.C. 13211 *et seq.*), DOE is authorized to implement alternative fuel fleet programs covering certain fleets. As part of this responsibility, the Department is also tasked with determining whether fuels may be added to the statutory list of alternative fuels for which vehicles may be acquired under these fleet programs. As it was enacted in 1992, EPA defined "alternative fuel" as follows:

[T]he term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements related to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and *any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits.* Pub. L. 102-486, section 301(2), (emphasis added).

The emphasized portion of that definition states the minimum procedural and substantive requirements for adding a new fuel to the list of fuels enumerated or implicitly covered by the provisions of section 301(2). Subsequently, (in Pub. L. 106-554), section 301(2) of EPA was amended by inserting, "including liquid fuels domestically produced from natural gas" after "natural gas." (**Note:** By rule, effective June 16, 1999, DOE added three specific blends of methyltetrahydrofuran, ethanol, and hydrocarbons known as "P-series" fuels to the regulatory definition of alternative fuel, 64 FR 26822, May 17, 1999. In addition, the Department had earlier specifically identified 100 percent ("neat") biodiesel as qualifying under "fuels (other than alcohol) derived from biological materials" within the Alternative Fuel Transportation Program (Program), 61 FR 10621, March 14, 1996.)

*b. Previous Actions Concerning Designation of Fischer-Tropsch Diesel Fuel as an Alternative Fuel*

DOE has received three petitions, requesting a rulemaking to determine whether certain Fischer-Tropsch diesel (FTD) fuels should be considered alternative fuel under the program regulations (10 CFR part 490). These petitions were submitted by Moss gas (PTY) Limited (now PetroSA), Syntroleum Corporation, and Rentech, Inc. FTD fuels are diesel fuels made from natural gas or other carbon-bearing