Proposed Rules

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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; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement No. 113 and Marketing Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order (order) for Irish potatoes grown in Washington. Seven 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: Written exceptions must be filed by December 27, 2004.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776 or *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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).

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

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement No. 113 and Marketing Order 946 regulating the handling of Irish potatoes grown in Washington, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued 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 orders (7 CFR Part 900).

The proposed amendments are based on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. Notice of this hearing was published in the **Federal Register** on October 10, 2003 (68 FR 58638). The notice of hearing contained order changes proposed by the Committee and USDA.

The Committee's proposed amendments include: Adding 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; updating provisions pertaining to districts and allocation 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 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.

Four industry witnesses testified at the hearing. These witnesses represented fresh Irish potato producers and handlers in the production area, and they all supported the Committee's recommended changes.

Industry witnesses addressed the need for adding authority to establish container and marking regulations, noting that uniform industry regulations and increased flexibility in marketing practices would positively affect the Washington fresh potato industry. Witnesses also recommended that definitions of ''pack'' and ''container'' be added to the order.

Industry witnesses stated their approval of the Committee's recommendations to: Require producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; update obsolete order language pertaining to districts; and to require Committee nominees to submit a written background and acceptance statement prior to their selection by USDA. These proposals would ensure adequate representation of fresh potato growers on the Committee, replace outdated language pertaining to districts and allocation of membership among the districts, and combine the Background Statement and the Letter of Acceptance into a single form.

Witnesses also supported the proposals to allow for nominations to be held at large industry meetings rather than at meetings in each district, and to add authority for changes in Committee size. Witnesses stated that the former would broaden grower participation in the nomination process. The latter would allow the Committee to assess the appropriateness of current Committee size and structure in light of changes in the Washington potato industry.

Lastly, industry witnesses testified in support of allowing a temporary alternate to serve at Committee meetings when both a member and his or her alternate are unable to attend. This would facilitate attaining a quorum and prevent delays in Committee decision-making.

A USDA witness testified in support of tenure limitations as a means of broadening industry participation in administering the programs. That witness also favored continuance referenda as a means of periodically determining whether potato growers want the program to continue.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be 30 days after USDA's receipt of the hearing record transcript. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to add authority to establish container and marking regulations;

(2) Whether Committee producer members should be required to have produced potatoes for the fresh market in at least 3 out of the last 5 years before nomination;

(3) Whether to update order provisions pertaining to establishment of districts and allocation of Committee membership among those districts;

(4) Whether to require Committee nominees to submit a written background and acceptance statement prior to selection by USDA;

(5) Whether to allow for nominations to be held at industry meetings or events;

(6) Whether to add authority to change the size of the Committee;

(7) Whether to add authority to allow for temporary alternates to serve when a Committee member and that member's alternate are unable to serve;

(8) Whether to establish tenure limitation for Committee members; and

(9) Whether to require periodic grower continuance referenda.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Authority To Establish Container and Marking Regulations

The order should be amended to give authority to the Committee to recommend, for approval by USDA, container and container marking regulations. Such recommendations could include specification of the size, capacity, weight, dimensions, pack, and marking or labeling of the containers that can be used in the packaging or handling of Irish potatoes grown in Washington. This amendment would also require the definition of two new terms: ''pack'' and ''container.'' ''Pack'' would be defined to mean a quantity of potatoes in any type of container which falls within specific weight limits or within specific grade and/or size limits, or any combination thereof. ''Container'' would be defined to mean 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.

Section 946.52 of the order currently authorizes the establishment of grade, size, quality and maturity regulations for fresh potatoes. Under this authority, fresh potatoes grown in the production area must meet a minimum grade requirement of U.S. No. 2, and must meet minimum size, cleanness, and maturity specifications. Additionally, potatoes packed in cartons must grade at least U.S. No. 1. These requirements appear in § 946.336 of the order's rules and regulations.

The Committee proposed amending § 946.52 to add authority for container regulations, including labeling requirements. Witnesses supported this proposal as a way to add flexibility to the order, allowing the industry to adjust to changing market demands. To illustrate their point, witnesses discussed their desire to allow U.S. No. 2 grade potatoes to be packed in cartons, but only if the grade were required to be clearly marked on the container.

Witnesses stated that having the authority to require labeling of cartons is vital to the industry, as mandatory labeling would prevent any handler from misrepresenting the quality of the potatoes packed in specified cartons. As previously mentioned, only U.S. No. 1 or higher grade Washington potatoes have been traditionally packed in cartons. Witnesses pressed the importance of mandatory labeling if U.S. No. 2 potatoes were packed in cartons to differentiate the lower quality pack, thereby preventing customer dissatisfaction with the quality of Washington potatoes. As one witness stated, mandatory labeling would ensure that handlers accurately represent the quality of potatoes packed in cartons, thereby maintaining the market for the industry's premium pack.

According to the hearing record, the U.S. potato industry is highly competitive. Consolidation within the industry has resulted in fewer producers and handlers competing for market demand. For this reason, witnesses asserted that the Washington potato industry's ability to respond to customer demands for alternate containers and labeling or marking requirements is essential to its continued success in the market place.

To illustrate this point, witnesses described a recurring request among industry customers for the packing of U.S. No. 2 grade potatoes in 50-pound cartons. Record evidence indicates this request stems from wholesalers and retailers who desire U.S. No. 2 grade potatoes packed in 50-pound cartons for the purpose of addressing issues such as ease of stacking in warehouses and greater product protection. Adding this authority would allow the Washington potato industry to offer its customers a package that is easier to handle and store, that would protect potatoes from light induced ''greening'', and would help protect against bruising during transport.

Witnesses also submitted as evidence a letter from a major food service distributor outlining several reasons for requesting that U.S. No. 2 grade potatoes from Washington be packed in cartons. Reasons outlined in the letter include:

Reduced damage losses and increased product integrity in the distribution system; increased handling efficiencies in the flow of product from the handlers throughout the distribution system; and efficient receiving, storage, order selection and delivery of the product to the end user as a result of clear, consistent and accurate labeling of product. Labeling could include grade, pack, and product description. When asked if the industry agreed with these statements, witnesses stated that these benefits could be realized if container and marking regulatory authority was added to the order.

Witnesses stated that the order's lack of container and labeling authority has challenged the Washington potato industry's ability to meet evolving requests from its customers. Moreover, witnesses fear that if this authority were not added to the order, the Washington potato industry would potentially lose valuable market share, as customers would search elsewhere to satisfy their demand for specific product in specific packaging.

In addition to meeting packing demands, witnesses noted the importance of proper labeling and product quality. Upholding the integrity of the Washington State potato industry, witnesses explained, is as important as meeting customer specifications. Mandatory labeling would not only ensure that handlers are putting the right product in the right packaging, but it would also assure that customers actually receive what they have ordered, thus alleviating potential consumer perception problems. For example, without labeling authority, a customer could mistakenly receive cartons containing U.S. No. 2 grade potatoes instead of U.S. No. 1 grade potatoes. If such a situation were to occur, it could damage customer perceptions of U.S. No. 1 grade potatoes produced in Washington.

Having the flexibility to market different grades of potatoes in labeled cartons would also expand the marketability of Washington potatoes. Witnesses explained that conditions relating to the production of table stock, or fresh market, potatoes and the resultant marketability of such potatoes can greatly fluctuate annually due to water availability, weather, and variances in pest control and other cultural practices. Thus, the overall quality of the potato crop can change enough from year to year that the U.S. No. 1 grade packout percentage can be widely variable. Witnesses explained that, generally, U.S. No. 2 grade potatoes are directed to the dehydration market, a market that does not always provide returns high enough to meet the costs associated with potato production. Witness added, however, that occasional demand exists for U.S. No. 2 grade potatoes as ''peelers'' in the restaurant sector for use in soups and salads, or as ''natural'' French fries.

Witnesses stated that because the order lacks container labeling authority, greater opportunities to market U.S. No. 2 grade potatoes are not currently available. If this authority were added to the order, witnesses indicated that the Washington fresh potato industry would gain access to opportunities that other production areas have access to that they do not. Witnesses stated that having the ability to pack U.S. No. 2 grade potatoes in labeled cartons would meet the current demand of the food service industry, enable the Washington potato industry to remain competitive with other growing areas, and help potato producers in Washington State remain viable.

While witnesses used the example of packing U.S. No. 2 grade potatoes in cartons, it is not intended that the authority for container (including labeling) requirements be limited to this situation. Witnesses stated that this authority would allow the industry to respond to consumer demands as new market trends develop. Another witness stated that demands on the fresh potato industry are changing on a regular basis. In order to remain competitive, producers and handlers cannot rely on ''business as usual'' from year to year.

Testimony indicated that packing facilities are already configured for packing potatoes in cartons and labeling the cartons. Witnesses noted that there would be little, if any, need for equipment changes or additions. Thus, the proposed change is not expected to negatively affect the costs associated with handling fresh market potatoes. Moreover, one handler testifying in favor of this amendment expressed confidence in the principle that customers seeking alternate packing procedures, container types, or specific marking requirements would also be willing to pay any cost differential. Thus, the witness argued that any additional charge incurred while packing would be offset by the increased selling price. The proposed amendment authorizes container and marking specifications. Any specific recommendation by the Committee to implement this authority would be subject to further analysis through the informal rulemaking process.

It was also requested by witnesses at the hearing that definitions of ''pack'' and ''container'' be added to the order to further clarify this proposed amendment. Adding these two definitions would assist in clarifying future requirements established under the above-proposed authority. Proposed definitions of both terms were presented at the hearing and are supported by the hearing record.

Record evidence supports amending the order to include container and marking regulatory authority. This amendment would allow the Committee to recommend, and USDA to implement, container and marking requirements through the informal rulemaking procedure. No opposition to the above proposal was voiced at the hearing. Accordingly, USDA proposes that § 946.52 be amended.

The USDA also proposes that definitions of ''pack'' and ''container'' be added to the order. Adding these two definitions would assist in defining future requirements established under the above-proposed authority.

Material Issue Number 2—Eligibility Requirements for Producer Members of the Committee

The order should be amended to require Committee producer members to have produced potatoes for the fresh market in at least three out of the last five years before nomination. In addition, producer member nominees should also be required to be current producers of fresh potatoes. Such recommendation would ensure representation of fresh potato interests in a market increasingly dominated by processed potato interests.

Section 946.22 of the order establishes the Washington Potato Committee to locally administer the program. The Committee consists of 10 producer and 5 handler members, each having an alternate. Section 946.25 further provides that a producer member of the Committee must be a producer in the district he or she is nominated to represent, or be an officer or employee of a corporate grower in that district. The record supports adding additional eligibility requirements for producer members of the Committee.

Generally, producers nominated to serve on the Committee produce fresh market potatoes. However, the order does not specifically prevent a producer who is solely engaged in the production of potatoes for processing from being elected to serve on the Committee. Witnesses indicated that adding this requirement to the order would ensure adequate representation of fresh potato producers in Committee deliberations.

Witnesses introduced support for this proposal by noting that Marketing Order 946 was established in 1949 to address market needs of the Washington State

fresh potato industry. Since that time, the proportion of potatoes produced for the fresh market relative to those produced for the processing market has shifted substantially. As an example, one witness noted that, in 1955, nearly three-quarters of the production from the State's 36,000 acres of potatoes was directed to the fresh market. In 2003, the share directed to the fresh market represented only 15 percent of the 165,000 acres grown in Washington. Witnesses stated that the declining number of Washington potato producers, coupled with the decreasing proportion of potato production directed to the fresh market, has heightened the Committee's awareness of its need to ensure representation of fresh producers.

Because the order was created to serve the fresh market industry, witnesses felt that only those producers who supply product to that market should represent the industry. Moreover, witnesses stated that a Committee member's personal experience in the production and marketing of fresh market potatoes would enable that producer to make decisions that are in his or her best interest, as well as in the best interest of the industry.

According to the hearing record, the cultural practices of fresh potato production differ significantly from the cultural practices utilized in the production of potatoes for processing. Witnesses explained that, while some shifts by individual producers in delivery of potatoes to the fresh versus the processing market may occur because of economic conditions, substantial swings in the flow of product are unlikely. Reasons preventing significant diversion of potatoes produced for the fresh market to the processing potato market include different production and harvesting techniques, as well as differences in the varieties grown for each market.

One witness stated that production for the fresh versus processing market is a factor that is taken into consideration before planting of the crop. While some adjustments may be made due to production or market conditions, it is unlikely for an entire crop to be diverted from one market to the other. Therefore, witnesses stressed that representation of the fresh market industry should be distinct from that of the processing market industry, even though there may be some diversion from one to the other.

Witnesses stated that a nominee's eligibility could be easily verified through the collection of pertinent information on nominee background and acceptance statements. Nominees would be asked to designate the number of years they have been growing for the fresh market, and whether they are currently producing for that market.

Record evidence supports amending the order to require producer members to have produced potatoes for the fresh market in at least three out of the last five years before nomination. In addition, USDA recommends clarifying the industry's intent, as presented at the hearing, that producer member nominees also be current producers of fresh potatoes. Further, USDA recommends adding these requirements to § 946.25(a) of the order, rather than to § 946.22 as proposed by the Committee. This would put all producer member eligibility requirements in a single location. This proposal would ensure adequate representation of fresh potato interests on the Committee. There was no opposition given to the above proposal.

Material Issue Number 3—Establishment of Districts and Allocation of Committee Membership Among Districts

Section 946.25, Selection, and § 946.31, Districts, of the order should be revised to incorporate updated language currently in the order's administrative rules and regulations. The intent of this proposal is to replace obsolete order language pertaining to the establishment of districts and the allocation of Committee membership among those districts.

As previously discussed, the Committee is comprised of 10 producer members and 5 handler members. For purposes of Committee representation, the production area is divided into geographic districts, and Committee membership is allocated among those districts.

Section 946.31 of the order establishes five districts. Section 946.25 allocates producer and handler membership among those districts. Section 946.31 further authorizes USDA, upon recommendation of the Committee, to reestablish the districts and to reapportion Committee membership among the various districts.

Under the authority in § 946.31, the districts were reestablished and membership reapportioned in 1975. A further reapportionment occurred in 1987. These revisions were made to reflect changes in production patterns since the order's promulgation in 1952. Current requirements appear in § 946.103, Reestablishment of districts, and § 946.104, Reapportionment of committee membership, of the order's administrative rules and regulations.

To update and simplify the order, the Committee recommended that the current language in §§ 946.104 and 946.103 replace the obsolete language in §§ 946.25 and 946.31.

Witnesses maintained that the currently established districts and apportionment of membership among those districts remain adequate to ensure appropriate representation of the Washington potato industry on the Committee. Further, witnesses supported retaining the authority to further reestablish the districts and reapportion membership in the future if deemed appropriate.

Record evidence supports revising the order by replacing obsolete language pertaining to districts and allocation of membership. As this proposal would facilitate proper interpretation of the order and there was no opposition presented at the hearing, USDA is proposing that §§ 946.25 and 946.31 be revised accordingly.

A conforming change is recommended in § 946.31. Paragraph (b) of that section authorizes reestablishment of the districts and reapportionment of membership among those districts. It also lists the criteria that must be considered in making such changes. As discussed further in connection with Material Issue Number 6, USDA is proposing that this authority be included in § 946.22. Additionally, the criteria for changes in membership (including reestablishment of districts and reapportionment among those districts) are being updated. Thus, USDA recommends deleting current § 946.31(b) as unnecessary and in need of updating.

Material Issue Number 4—Combing Written Background and Acceptance Statements

Section 946.26 should be amended to require Committee nominees to qualify as a member or alternate member by filing a written background and acceptance statement indicating willingness to serve before selection. Currently, USDA requires a background statement to be completed before selection to determine nominees' eligibility to serve. Section 946.26 requires a written acceptance after selection.

Witnesses stated that this amendment would allow the Background Statement to be combined with the Letter of Acceptance for nominated Committee members, thereby reducing the number of forms required of each nominee from two to one. Rather than eliminate any requirements currently outlined in the order, this proposal would streamline the process by making it more efficient.

Currently, nominations of Committee members are made within each district

utilizing mail balloting procedures. This process generally entails two separate mailings, follow-up telephone calls, and finally, submission of the nominees' names to USDA for final selection. The Committee staff first collects the names of individuals interested in being on the Committee. Producers and handlers may nominate themselves or are nominated by other potato producers or handlers. The Committee manager then verifies with each individual his or her consent to serve as a Committee member if selected. The names of all individuals who wish to serve are then placed on a ballot and mailed to all producers and handlers by district. Completed ballots are returned and tabulated at the Committee office.

The producer or handler receiving the highest number of votes for a vacant producer or handler Committee position is designated as the member nominee. The producer or handler receiving the second highest votes is designated as the respective alternate member nominee. Before submission to USDA for selection, nominated members and alternate members are required to complete and sign a Background Statement. The Background Statement allows both the Committee and USDA to determine a nominee's eligibility to serve on the Committee by requiring information on the nominee's position in the Washington potato industry. Following selection by the USDA, the newly appointed Committee members are each required to complete an Acceptance Letter by providing their name, address, and signature.

Testimony indicated that this process utilizing two forms is unnecessary because the producer or handler has already indicated his or her willingness to serve by accepting the nomination and filling out the background statement. The Committee believes that combining the two forms, and requiring the single form's submission at the time of nomination, would be more efficient than the current method. By combining these forms into one and requiring the information at the time of nomination, the Committee and USDA would also know in advance that the nominees are willing to serve on the Committee if selected.

Record evidence supports amending the order to require Committee nominees to submit a written background and acceptance statement before selection by USDA. No opposition to this proposal was presented at the meeting. Accordingly, record evidence supports revising § 946.26 of the order.

Material Issue Number 5—Industry Nomination Meetings

Section 946.32 should be amended to authorize Committee nominations to be held at industry meetings or events rather than at meetings held in each of the five districts. This proposal would provide more flexibility in the nomination process and could result in increased industry participation.

According to the record, several industry-wide meetings are held between the months of November and March each year. Because these meetings include producer education and information components, they typically draw larger crowds than the scheduled district meetings held solely for the purpose of nominations. Given recent challenges in recruiting and maintaining a fully seated Committee, witnesses at the hearing suggested that these large meetings may also represent an untapped opportunity to educate the industry on the duties of the administrative committee and to hold nomination meetings. Witnesses stated that recruitment efforts at these meetings would give Committee vacancies more exposure and could provide greater diversity on the Committee, as a broader group of potential nominees would be reached.

Constant demands for time on both producers' and handlers' schedules limit the effectiveness of current recruitment efforts that rely heavily on distributing marketing order information through the mail. Because of this factor, many in the fresh market potato industry are not knowledgeable about Committee issues and membership responsibilities. Industry meetings or events would provide an opportunity to improve understanding of the Committee, its role, and its objectives relative to the fresh market potato industry. If such authority is added to the order, testimony indicated that the Committee could explore the option of asking for nominations at industry meetings or events. Such meetings would have to be open to all Washington potato growers and handlers.

Witnesses stated that this amendment would neither change the Committee's authority to conduct nominations at district meetings or by mail, nor would it affect the current structure of the Committee.

Record evidence supports amending the order to authorize nominations at meetings other than at individual district meetings held by the Committee. This amendment would provide more flexibility in conducting nominations and could result in participation by more growers and handlers. There was no opposition to the above proposal. Accordingly, USDA is proposing that § 946.32 be amended.

Material Issue Number 6—Authority for Changes in Committee Size

Section 946.22 of the order should be revised to add authority for the Committee to recommend changes in Committee size and structure. The intent of this proposal is to provide the Committee with a tool to more efficiently respond to the changing character of the Washington State fresh potato industry. In recommending any such changes, the following would 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) equitable relationship between Committee apportionment and the various districts; (4) other relevant factors.

Testimony indicates that significant changes have occurred in both the production base and industry demographics of the fresh market potato industry since the order was implemented. These changes suggest that flexibility in adapting to the changing character of the Washington fresh market potato industry is important to the administrative applicability of the order. Witnesses stated that, ultimately, the order's ability to remain effective over time would be reliant on its ability to change with the needs of the industry. In this regard, the Committee has proposed adding authority to the order that would allow for Committee size and structure to be considered, and recommendations for change to be made.

Witnesses testified that careful industry analysis would lead to sound recommendations to USDA regarding any change in Committee size or structure. If the authority to change the size of the Committee were added to the order, the Committee could, at a regular meeting, review the current structure of the Committee using the points of consideration mentioned above. Upon completing this analysis on the fresh industry, the Committee could make a recommendation to USDA for a change in the size of the Committee.

Implementation of this authority would allow such changes to be pursued through the informal rulemaking process. Witnesses stated that formal rulemaking does not allow the industry to respond quickly enough to changes in the industry.

Given the changes that the Washington fresh potato industry has seen over the past 10 years, flexibility to

change the size of the Committee in step with the evolving needs of the industry would be an important tool. It would allow the Committee to focus on the increasing competitiveness in the market while minimizing costs and maximizing efficiency.

When asked how procedural aspects of the order would be impacted given a change in Committee size, witnesses stated that administration of the order should continue to be conducted as currently outlined, but should be modified to reflect any changes in the number of Committee members. For example, § 946.24, Procedure, provides that nine members are required for a quorum at Committee meetings, and that nine concurring votes are required to pass any Committee action. If the Committee size were to change from its current 15 members to 10 members, for example, witnesses felt that the intent of § 946.24 should be maintained. To accomplish this, a conforming change is recommended in § 946.24. The current ratio of 9 out of 15 members, or 60 percent, would be applied to the quorum and voting requirements for any newly established Committee. The revision of this language would be necessary to maintain the current voting parameters of the order if the Committee size were to change.

Record evidence supports amending the order to add authority to change in Committee size and structure. This amendment would allow the Committee, given due analysis and consideration of key factors and USDA approval, to more quickly adapt to changes within the industry. There was no opposition to the above proposal. Accordingly, USDA is proposing that §§ 946.22 and 946.24 be amended.

Material Issue Number 7—Designation of a Temporary Alternate To Act for an Absent Committee Member

The order should be amended to include the authority for a Committee member, when that Committee member and his or her alternate are unable to attend a Committee meeting, to designate any available, current Committee member alternate of the same classification (handler or producer) to serve in his or her stead. This should include a provision that, if the absent Committee member is unable or unwilling to designate a temporary alternate to serve in his or her place, the Committee members present could designate the temporary alternate.

The Committee is composed of 15 members, with the industry members allocated among five geographic districts. Each Committee member has an alternate who has the same qualifications as the member. Committee members and alternates are nominated by their peers in the district they represent.

Section 946.23 of the order provides that if a Committee member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Committee's proposal would change § 946.23 to provide that if both a member and his or her alternate cannot attend a Committee meeting, the Committee members present could designate an available, current alternate member of the same classification (handler or producer) to act in their place and stead. Witnesses also stated that the temporary alternate designated should, if possible, represent the same district as the absent member.

Witnesses felt strongly about the need to ensure adequate producer and handler representation at Committee meetings in order to gain efficiencies in Committee meeting time. Witnesses cited examples of meetings where a quorum was not present and Committee discussions and decisions were delayed. Because the Committee typically only meets twice annually, issues are either tabled until the next meeting or have to be addressed through telephone meetings or special mailings or fax transmissions that poll each member on the specific issues requiring Committee action.

According to the record, the lack of a quorum results in the Committee staff dedicating valuable time and resources to secure a Committee decisions through either mail or fax votes. By allowing the Committee to designate temporary alternates, witnesses stated that a quorum could be established and Committee business could be carried out without the need for costly follow-up. This authority would result in a more cost-effective use of industry time and money. Witnesses also testified that assembled meetings are preferred quorums for Committee decision making (as opposed to mail or telephone voting). Such a forum provides for full and open discussion of issues under consideration.

When asked what type of selection mechanism would be employed to designate a temporary alternate, witnesses suggested that that decision should be left to the Committee chairperson, subject to approval from other members present. However, no specific suggestions were made as to how the Committee would either voice its approval or disapproval if no quorum were present, or what guidelines should be offered to ensure impartial selection of the temporary alternate. Witnesses suggested that the Committee, if deemed necessary, could establish specific procedures, as part of its by-laws.

The USDA agrees that full participation at Committee meetings should be encouraged. The USDA also believes that there is merit in allocating membership among districts because the conditions in one district may vary considerably from those in another. Committee members are nominated by their producer and handler peers to represent them at Committee meetings. A Committee member's charge to represent his or her constituents is an important part of fulfilling Committee member responsibilities for that district.

However, it is also recognized that the order should contain flexibility to minimize delays in Committee decisions due to a lack of a quorum. Therefore, should a situation arise where neither a Committee member nor his or her alternate are able to attend a meeting, the Committee member should be able to designate a temporary alternate from among available, current Committee alternate members of the same classification. However, if the absent Committee member does not designate a temporary alternate, such responsibility should fall on his or her alternate. Further, if neither the absent member nor absent alternate member designate a temporary alternate, the responsibility should become that of the Committee members present at the meeting.

USDA proposes that § 927.23 be revised accordingly. A conforming change is recommended in § 946.24 Procedure to provide that Committee action to designate a temporary alternate to serve at a meeting shall not be subject to the quorum and voting requirements of that section.

Material Issue Number 8—Tenure Limitations

Section 946.27, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve as a member of the Committee. Currently, the term of office of each member and alternate member of the Committee is three years. There are no provisions related to tenure in the marketing order. Members and alternates may serve on the Committee until their respective successors are selected and have qualified.

The record evidence is that tenure limits for Committee members could increase industry participation on the Committee, provide for more diverse membership, provide the Committee with new perspectives and ideas, and

increase the number of individuals in the industry with Committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for members and alternates is three years, USDA is proposing that members serve no more than two consecutive three-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternate members. Once a member has served on the Committee for two consecutive terms, or six years, the member would sit out for at least one year before being eligible to serve as a member again. However, the individual could immediately begin serving as an alternate member after completing two consecutive terms as a member.

Industry witnesses presented testimony in opposition to this proposal. Although they agreed increased industry participation in the program is desirable, the application of tenure could be problematic. Testimony indicated that the number of Washington fresh market potato producers is decreasing, and that finding producers willing to serve on the Committee is difficult. Witnesses noted that there currently exist at least six vacancies for alternate member positions on the Committee due in part to the difficulty involved in recruiting new members. Moreover, witnesses stated that industry members who currently serve on the Committee bring knowledge and experience to the Committee that would be difficult to replace.

The Committee has had difficulty in recent years in recruiting and maintaining a full membership. However, other program changes proposed in this recommended decision have been designed to mitigate problems associated with recruitment and appointment of Committee members. Therefore, USDA recommends establishing tenure requirements for Committee members.

Section 946.27 also provides that Committee members serve staggered terms so that about one-third of the membership is selected each year. The language of this section if proposed to be revised to retain the staggered terms of office, but delete references to initial Committee members' terms of office. These references are obsolete and no longer needed.

Material Issue Number 9—Continuance Referenda

Section 946.63, Termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no requirement in the order that continuance referenda be conducted on a periodic basis. The USDA believes that producers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure producer support for the program. Experience has shown that programs need significant industry support to operate effectively. Under this proposal, USDA would consider termination of the order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same as that for issuance and amendment of an order. Experience in recent years indicates that six years is an appropriate period to allow producers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

Several industry witnesses opposed periodic continuance referenda. They indicated that the industry currently has the ability to request a continuance referendum at any time, and requiring unnecessary referenda would be costly and of little value to the industry or USDA.

The USDA believes, however, that producers should have an opportunity to periodically vote on whether the marketing order should continue, and that the costs in time and money are well worth the periodic producer feedback afforded the Committee and the USDA by such referenda. Accordingly, the record evidence supports adding a requirement that such referenda be conducted.

The USDA also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. All conforming changes have been identified and discussed in this document.

Small Business Consideration

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 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 market 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 grower level valued at $58 million, each grower's average receipts would be $362,500. Witnesses testified that about 76 percent of these growers 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. 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. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS), which is also the source for most of the other production, acreage, yield, and price information used in this document. The Committee provided other figures at the hearing. 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.

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 growers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

Grower members of the Committee are currently required to be growers in the district they are nominated to represent. Adding another eligibility requirement—that they be growers of fresh potatoes—would ensure that the Committee is representative of, and responsive to, those growers 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 growers and handlers, thereby broadening industry participation and facilitating the nomination process.

The Washington Potato Committee consists of 10 growers, 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 growers 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 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 be incurred because of this proposed amendment.

The recommendation to require periodic continuance referenda to ascertain industry support for the program would allow growers 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 grower 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).

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, a confidential qualification and acceptance statement would be used in the appointment of committee members. This form would be based on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee. If this proposal is implemented, the form would only be used after approval by OMB.

Current information collection requirements for Part 946 are approved by OMB under OMB number 0581–0178. Any changes in those requirements as a result of this proceeding would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing date were widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were

able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed in a timely manner. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments to Marketing Agreement 113 and 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 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.

Rulings on Briefs of Interested Persons

Briefs, and proposed findings and conclusions based on the record evidence were solicited in this proceeding. No briefs were filed.

General Findings

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.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the 2005–2006 season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 946 is proposed to be amended as follows:

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:

§ 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.

* * * * *

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to amend three subsections of its lending rule to incorporate legal interpretations previously issued by its Office of General Counsel (OGC) regarding permissible maturities for certain types of loans and the effect of partial government guarantees. The proposal clarifies: The conditions for applying the lending rule to loans secured by mobile homes, recreational vehicles, house trailers and boats; that loans secured by manufactured homes may be considered residential real estate loans; and that loans with a partial government guarantee, insurance, or advance commitment to purchase a portion of a loan fall within the rule. The NCUA Board is proposing these changes because it believes it is helpful to federal credit unions (FCUs) and others that may consult NCUA regulations to incorporate these interpretations as part of the rule itself rather than having them stated separately in OGC legal opinions.

DATES: The NCUA must receive comments on or before January 25, 2005.