

operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Board will begin assessing charges for computer searches.

(i) The Board divides FOIA requestors into four categories: Commercial use requestors; educational and non-commercial scientific institutions; representatives of the news media; and all other requestors. The specific levels of fees for each of these categories are:

(1) *Commercial use requestors.* When the Board receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requestors must reasonably describe the records sought. Commercial use requestors are entitled neither to two hours of free search time nor to 100 free pages of reproduction of documents. The Board may recover the cost of searching for and Reviewing Records even if there is ultimately no disclosure of Records.

(2) *Educational and non-commercial scientific institution requestors.* The Board shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an Educational Institution) or scientific (if the request is from a non-commercial scientific institution) research. Requestors must reasonably describe the records sought.

(3) *Requestors who are representatives of the news media.* The Board will provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requestor must satisfy the definition of representatives of the news media in § 1000.1, and his or her request must not be made for a commercial use. In reference to this class of requestor, a request for Records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the Records sought.

(4) *All other requestors.* The Board shall charge requestors who do not fit into any of the categories above fees that

recover the full reasonable Direct Cost of Searching for and reproducing Records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of Search time shall be furnished without charge. Requestors must reasonably describe the Records sought.

(j) The Board may assess interest charges on an unpaid bill starting on the 31st Calendar Day following the day on which the billing was sent. The fact that the fee has been received within the thirty Calendar Day grace period, even if the fee has not been processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(k) The Board may assess charges for time spent searching, even if it fails to locate the Records or if Records located are determined to be exempt from disclosure. If the Board estimates that Search charges are likely to exceed \$25, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated.

(l) A requestor may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requestor, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, it may aggregate those requests and charge accordingly.

(m)(1) The Board may not require a requestor to make payment before work is commenced or continued on a request, unless:

(i) The Board estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250; or

(ii) A requestor has previously failed to pay a fee charged in a timely fashion (i.e., within 30 Days of the date of the billing).

(2) When the Board acts under paragraph (m)(1)(i) or (ii) of this section, the administrative time limits prescribed in FOIA, 5 U.S.C. § 552(a)(6) will begin only after the Board has received fee payments described in paragraphs (m)(1)(i) and (ii) of this section.

(n) Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or

activities of the Government and is not primarily in the commercial interest of the requestor.

#### § 1000.11 Annual report.

The FOIA Officer or the FOIA Officer's designee shall annually, on or before February 1, submit a FOIA report addressing the preceding fiscal year to the Attorney General. The report shall include those matters required by 5 U.S.C. 552(e)(1). The Board will make the annual report available to the public pursuant to 5 U.S.C. 552(e)(2).

**Mark A. Robbins,**

*Executive Director, Privacy and Civil Liberties Oversight Board.*

[FR Doc. E7-5812 Filed 4-9-07; 8:45 am]

BILLING CODE 3195-W7-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. AMS-FV-06-0182; FV06-946-1 FR]

#### Irish Potatoes Grown in Washington; Modification of Administrative Rules Governing Committee Representation

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the administrative rules governing committee representation under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule reestablishes districts within the production area, reestablishes the Committee with fewer members, and reapportions members among districts. These changes will result in more efficient administration of the program while providing for more effective representation of the Washington fresh potato industry on the Committee.

**DATES:** *Effective Date:* July 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or e-mail: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule modifies the administrative rules governing committee representation under the Washington potato marketing order. This rule reestablishes districts within the production area, reestablishes the Committee with fewer members, and reapportions members among the new districts. Specifically, this rule reestablishes the order's five districts as three districts; decreases Committee membership from fifteen members and fifteen alternate members to nine members and nine alternate members; and reapportions the members such that one handler member and alternate member, and two producer members

and their respective alternate members are elected from each of the three reestablished districts. These changes will result in more efficient administration of the program while providing for more effective representation of the fresh potato industry on the Committee. The Committee unanimously recommended these changes at a meeting held on June 6, 2006, with a request that they be made effective by July 1, 2007.

The order provides in § 946.22 that USDA, 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 order requires that the Committee consider the following: (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.

Prior to this rule change, the Committee had fifteen members, with membership apportioned among five districts. Sections 946.31 and 946.103 previously defined the districts as follows: 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.

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.

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

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.

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.

Further, §§ 946.25 and 946.104 currently provide in part that each of

the five districts are represented as follows:

District No. 1: Three producer members and one handler member; District No. 2: Two producer members and one handler member; District No. 3: Two producer members and one handler member; District No. 4: Two producer members and one handler member; District No. 5: One producer member and one handler member.

The Committee's districts were last reestablished on July 1, 1975, largely due to changes in the production area brought about by the Columbia Basin Project (CBP). The CBP is a large scale irrigation project administered by the Bureau of Reclamation, U.S. Department of Interior. The CBP is comprised of three irrigation districts centered in Grant County, Washington.

The Committee's districts were originally established using county boundaries, whereas the 1975 redistricting process reestablished the districts by utilizing existing county and township lines, as well as the three irrigation districts formed under the CBP. As a consequence, the Committee utilized the CBP irrigation district boundaries in redistricting. At the time, the boundaries of the three irrigation districts were well known to producers in the area. However, as more producers installed wells to irrigate their potatoes, the CBP irrigation district boundaries became less relevant.

Also, the Committee reports that it is having difficulty recruiting members. This recruitment issue is largely due to a decreasing number of qualified individuals willing to take the time away from their families and farms to serve on the Committee.

Finally, the Washington State Potato Commission (Commission), an agency of the State of Washington, has recently reestablished its production area into three districts. The Committee recommended reestablishing the order's districts to align with the Commission's new districts.

After comparing current acreage and production statistics, as well as the current number of fresh potato producers in each of the order's five districts to statistics for the Commission's three new districts, the Committee found that reestablishment of its districts from five to three would not only be feasible, but could enhance the Committee's administration of the order. In considering the trend towards less industry participation on the Committee, as well as the decreasing relative size of the fresh potato producer population (the 5 year average fresh production is 13% of the total Washington potato production), the

Committee also determined that it could more effectively serve the industry if it were to reestablish with as few as nine members.

Prior to this rule, the Committee was comprised of ten producer members and five handler members and their respective alternates. The Committee felt that this ratio—two producer members to each handler member—should also be used in reestablishing and reapportioning the Committee. Based on statistical information available from USDA, the Committee therefore determined that the reestablished Committee should be comprised of nine members—six producer members and three handler members—with two producer members and respective alternates, and one handler member and respective alternate representing each of the three new districts.

In determining how to appropriately divide the production area into three districts, as well as the correct apportionment of nine members in three new districts, the Committee reviewed the relative differences in fresh production and acreage estimates in Washington's various potato producing counties. Using data from the USDA's National Agriculture Statistics Service (NASS), the Committee's research indicated that the new District No. 1 will have 41 percent of the fresh potato producers, 36 percent of the fresh potato production, and 32 percent of the fresh potato acreage in the order's production area. The new District No. 2 will have 31 percent of the producers, 43 percent of the production, and 36 percent of the acreage. Finally, the new District No. 3 will have 28 percent of the producers, 21 percent of the production, and 32 percent of the acreage.

Although these statistics show that the number of fresh potato farms and the related production figures are not evenly divided among the new districts, acreage figures are nearly equal. Additionally, the Committee reports that there are widely variable yields among the various table-stock potato varieties produced in Washington's diverse production areas. In equitably apportioning the nine members among the three districts, the Committee chose not to provide districts that predominately produce a lower yielding variety of potato with less representation on the Committee. As previously noted, the Committee's recommendation therefore includes provision that two producer members and one handler member, as well as their respective alternates, represent each district.

The new districts provide consistency in the Washington potato industry. All of Grant County is located in the reestablished District No. 1 instead of being divided between Districts No. 1, 2 and 4, as was previously the case. The new District No. 1 consists of the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln. The new District No. 2 consists of the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin. Finally, the new District No. 3 consists of all the remaining counties in the State of Washington not included in Districts No. 1 and 2 (essentially all of the counties west of the Cascade Mountains).

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes subject to regulation under the order and approximately 267 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2005–2006 marketing year, 10,516,095 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$7.80 per hundredweight, the Committee estimates that 43 handlers, or about 96 percent, had annual receipts of less than \$6,500,000.

In addition, based on information provided by NASS, the average producer price for Washington potatoes for the 2005 marketing year (the most recent period that final statistics are available) was \$5.60 per hundredweight. The average annual producer revenue

for each of the 267 Washington potato producers is therefore calculated to be approximately \$220,562. In view of the foregoing, the majority of the handlers and producers of Washington potatoes may be classified as small entities.

This final rule modifies §§ 946.103 and 946.104 of the order's administrative rules and regulations by reestablishing the order's districts from the current five districts to three districts, reestablishing the Committee with nine members rather than fifteen members, and reapportioning the membership such that each district is represented by two producers and one handler and their respective alternates. This final rule is effective July 1, 2007. Authority for reestablishing the districts, as well as reestablishing and reapportioning the Committee is provided in § 946.22 of the order.

The Committee believes that these changes will not negatively impact handlers and producers in terms of cost. Costs for Committee meetings should actually decrease because of the reduction in the number of members and their respective alternates traveling to meetings. Such savings could ultimately be passed on to handlers and producers in the form of reduced assessments. The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed various alternative reductions in Committee size and how to reapportion fewer members among the districts. Ultimately, the Committee determined that reducing its size to nine members would best mitigate the problems associated with recruitment of qualified members.

Since this final rule modifies the administrative rules governing committee representation by reestablishing districts, reestablishing the Committee, and reapportioning members among districts, additional reporting or recordkeeping requirements will not be imposed on either small or large potato handlers. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under OMB No. 0581–0178, Vegetable and Specialty Crops. 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the February 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on January 16, 2007 (72 FR 1685). Copies of the rule were sent to all Committee members and were made available for all attendees at the February 7, 2007, Committee meeting. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending March 19, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs adequate time to conduct nominations and a mail vote to elect new Committee members and alternates prior to the fiscal period beginning on July 1, 2007. Further, Committee members and alternates are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 946 is 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. Section 946.103 is revised to read as follows:

##### § 946.103 Reestablishment of districts.

Pursuant to § 946.22, on and after July 1, 2007, the following districts are reestablished:

(a) District No. 1—the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln.

(b) District No. 2—the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) District No. 3—all of the remaining counties in the State of Washington, not included in Districts No. 1 and No. 2 of this paragraph.

■ 3. Section 946.104 is revised to read as follows:

##### § 946.104 Reestablishment and reapportionment of committee.

(a) Pursuant to § 946.22, on and after July 1, 2007, the State of Washington Potato Committee consisting of nine members, of whom six shall be producers and three shall be handlers, is hereby reestablished. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Pursuant to § 946.22, on and after July 1, 2007, membership representation of the State of Washington Potato Committee shall be reapportioned among the districts of the production area so as to provide that each of the three districts as defined in § 946.103 are represented by two producer members and one handler member and their respective alternates.

Dated: April 5, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07–1794 Filed 4–6–07; 12:20 pm]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Parts 105 and 115

[Docket No. 02–107–2]

RIN 0579–AC29

#### Viruses, Serums, Toxins, and Analogous Products; Suspension, Revocation, or Termination of Biological Licenses or Permits; Inspections

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Virus-Serum-Toxin Act regulations to specify the actions to be taken by veterinary biologics licensees and permittees upon receipt of notice from the Animal and Plant Health Inspection Service (APHIS) to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product. After receiving notice from APHIS, licensees and permittees must notify each wholesaler, dealer, jobber, consignee, or other recipient known to have any such product in their possession to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of such product. In addition, licensees and permittees must provide a complete accounting of the remaining inventory of affected serials or subserials of such product in the current possession of known wholesalers, dealers, jobbers, consignees, or other known recipients and provide written documentation concerning the required notification(s) as directed by the Administrator of APHIS. These changes are necessary in order to clarify the regulations, provide for the most expeditious means of disseminating stop distribution and sale notices, and to mitigate the risk that any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product may cause harm to animals, the public health, or to the environment.

**DATES:** *Effective Date:* May 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231, (301) 734–8245.

**SUPPLEMENTARY INFORMATION:**