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through 51.1538); the term *purplish color* shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 28, 1978), and the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term *diameter* means the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit.

(e) The term *Prunes* means all varieties of plums, classified botanically as *Prunus domestica*, except those of the President variety.

(f) The term *importation* means release from custody of the United States Customs Service.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such fresh prunes borne by the importer.

(i) It is determined that fresh prunes imported into the United States shall meet the same minimum grade, size and quality requirements as those established for fresh prunes under Marketing Order No. 924 (7 CFR part 924).

[61 FR 40959, Aug. 7, 1996]

EFFECTIVE DATE NOTE: At 71 FR 26821, May 9, 2006, §944.700 was suspended indefinitely, effective May 10, 2006.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Subpart A—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601–674.

Subpart A—Order Regulating Handling

SOURCE: 23 FR 5709, July 30, 1958, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 945.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 945.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

§ 945.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

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§ 945.4 Production area.

Production area means all territory included within Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south thereof.

§ 945.5 Potatoes.

Potatoes means all varieties of Irish potatoes grown within the aforesaid production area.

§ 945.6 Varieties.

Varieties means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 945.7 Certified seed potatoes.

Certified seed potatoes means and includes all potatoes officially certified and tagged, marked, or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State in which the potatoes are grown, or other seed certification agencies which the Secretary may designate.

§ 945.8 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes.

§ 945.9 Ship or handle.

Ship or handle means to pack, sell, consign, transport or in any other way to place potatoes grown in the production area, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided*, That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

[60 FR 29726, June 5, 1995]

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§ 945.10 Producer.

Producer means any person engaged in the production of potatoes for market.

§ 945.11 Committee.

Committee means the administrative committee, called the Idaho-Eastern Oregon Potato Committee, established pursuant to § 945.20.

§ 945.12 Fiscal period.

Fiscal period means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 945.13 Grade and size.

Grade means any one of the officially established grades of potatoes, and *size* means any one of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1556 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(b) The United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture (§§ 51.1575 to 51.1587 of this title), or amendments thereto, or modifications thereof, or variations based thereon; or

(c) Standards for potatoes issued by the State from which the potatoes are shipped, or amendments thereto, or modifications thereof, or variations based thereon.

§ 945.14 Export.

Export means shipment of potatoes beyond the boundaries of continental United States.

§ 945.15 Pack.

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

§ 945.16 Container.

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

§ 945.17 District.

District means each of the geographical divisions of the production area established pursuant to § 945.22 or as reestablished pursuant to § 945.23.

ADMINISTRATIVE COMMITTEE

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall currently be producers of potatoes for the fresh market who produced such potatoes during at least three of the last five years; at least one member shall be a producer predominately of potatoes for seed during a similar period; and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and/or handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

(b) Each person selected as a committee member or alternate to represent producers shall be an individual who is a producer in the district for which selected or an officer or employee of a producer in such district, and shall be a resident thereof. A producer who handles potatoes other than of his own production shall qualify as a producer under this section, and §§ 945.24, 945.25, 945.27, and 945.29, only if the potatoes of his own production constituted 51 percent or more of the total quantity of potatoes handled by him during the portion of the then current season preceding his nomination.

(c) Each person selected as a committee member or alternate to represent handlers shall be an individual who is a handler or an officer or employee of a handler, and shall be a resident of the production area.

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(d) At least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 60 FR 29726, June 5, 1995]

§ 945.21 Term of office.

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be for two years beginning June 1 or such other date as recommended by the committee and approved by the Secretary. The term of office of members and alternates shall be so determined that approximately one-half of the total producer and handler committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified. Beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms: *Provided*, That an alternate member may serve up to three consecutive terms and then serve as a member for up to three consecutive terms without a break in service. Members serving three consecutive terms could again become eligible to serve on the committee by not serving for one full term as either member or alternate member: *Provided*, That in the event a position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve, the Secretary may authorize a member or alternate member to serve more than three full consecutive terms.

[53 FR 3188, Feb. 4, 1988]

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided*, That these districts may be changed as provided in § 945.23.

(a) *District No. 1*: The counties of Bonnevill, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

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(b) *District No. 2*: The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3*: Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

[60 FR 29726, June 5, 1995]

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and/or handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between producer and handler members, including their alternates. At least every six years, the committee shall review committee size, composition and representation and recommend to the Secretary whether changes should be made. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) the importance of new potato production in its relation to existing districts;

(3) the equitable relationship between committee membership and districts;

(4) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation or such other representation as recommended by the committee and approved by the Secretary:

(1) Three producer members, including at least one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) One producer member and one handler member, with their respective alternates, from District No. 2; and

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(3) One producer member and one handler member, with their respective alternates, from District No. 3.

[60 FR 29727, June 5, 1995]

§ 945.24 Selection.

Members and alternates of the committee shall be selected by the Secretary on the basis specified in § 945.23 (b) from nominations made pursuant to § 945.25 or from other eligible persons.

[60 FR 29727, June 5, 1995]

§ 945.25 Nominations.

For the selection by the Secretary of the members and alternates of the Idaho-Eastern Oregon Potato Committee, nominations may be made in the manner indicated in this section. Nominations for members and alternates may be submitted by producers or handlers, as the case may be, or groups of either thereof, on an elective basis or otherwise.

(a) In order to provide nominations for producer and handler committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, or such other date as the Secretary may designate, one or more meetings of producers and of handlers in each district to nominate such members and alternates; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

(b) In arranging for such meetings, the committee may, if it deems it to be desirable, utilize the services and facilities of existing organizations and agencies, and may combine its meetings with others.

(c) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(d) Only producers may participate in designating nominees for producer members and alternates, and only handlers may participate in designating nominees for handler members and alternates.

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he will vote.

(f) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, in designating nominees for committee members and alternates. In the event a person is engaged in producing or handling potatoes in more than one district, such person shall elect the district within which he may participate, as aforesaid, in designating nominees. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote.

(g) Nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than May 1 of each year, or such other date as the Secretary may specify.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 53 FR 3188, Feb. 4, 1988]

§ 945.26 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 945.25, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation prescribed in this subpart.

§ 945.27 Acceptance.

Any person nominated to serve on the committee as a member or as an alternate shall qualify by filing a statement of willingness to serve with the Secretary.

[53 FR 3189, Feb. 4, 1988]

§ 945.28 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 945.25 or the Secretary may select such committee member or

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alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 945.24.

§ 945.29 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence and may perform such other duties as may be assigned or requested by the committee. In the event of the death, removal, resignation, or disqualification of a member his alternate shall act for him until a successor to such member is selected and has qualified. The committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. At any assembled meeting, all votes shall be cast in person.

(b) The committee may provide for meetings by telephone, telegraph or other means of communication and any vote cast at such meeting shall be confirmed promptly in writing.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 60 FR 29727, June 5, 1995]

§ 945.31 Expenses.

Committee members and alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate determined by the committee, and approved by the Secretary, for

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each day or portion thereof, spent in conducting committee business.

[53 FR 3189, Feb. 4, 1988]

§ 945.32 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 945.33 Duties.

It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(c) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(d) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary;

(e) To furnish to the Secretary such available information as he may request;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

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(h) At the beginning of each fiscal period to submit to the Secretary a budget of its expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate and exchange information when deemed desirable by the committee with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

BUDGET, EXPENSES AND ASSESSMENTS

§ 945.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share such expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during the same period.

§ 945.41 Budget.

At the beginning of each fiscal period, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenses as author-

ized in § 945.40. The committee shall present such budget promptly to the Secretary with an accompanying report showing the basis for its calculations.

§ 945.42 Assessments.

(a) The funds to cover the committee's expenses pursuant to § 945.40 shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who ships potatoes as the first handler thereof shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of such expenses.

(b) Assessments shall be levied upon handlers at a rate per hundredweight of potatoes or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

(c) At any time during or subsequent to a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes assessable under this part and handled by the first handler thereof during such fiscal period.

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against that handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short-term basis to provide funds for the administration of this part. Any

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such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 60 FR 29727, June 5, 1995; 88 FR 82234, Nov. 24, 2023]

§ 945.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, and records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, he shall account for all receipts, disbursements, funds, and property (including but not limited to books and other records) pertaining to the committee's activities for which he is responsible, and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, agency, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person or persons to act as trustee or trustees for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 945.44 Excess funds.

(a) The funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over, with the approval of the Secretary, into following periods as a

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reserve. Such reserve shall be established at an amount not to exceed approximately one fiscal period's budgeted expenses. Funds in such reserve shall be available for use by the committee for expenses authorized under § 945.40.

(b) Funds in excess of those placed in the operating reserve shall be credited proportionately against a handler's operations of the following fiscal period, except that if the handler demands payment, such proportionate refund shall be paid to such handler.

(c) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 53 FR 3189, Feb. 4, 1988]

REGULATIONS

§ 945.50 Marketing policy.

(a) *Preparation.* Prior to or at the same time as recommendations are made pursuant to § 945.51, the committee shall consider, and prepare, a proposed policy for the marketing of potatoes. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for potatoes, including prices by grade, size, and quality, in different packs, and in different containers;

(2) Supplies of potatoes by grade, size, and quality in the production area and in other potato producing areas;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

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(b) *Reports.* (1) The committee shall promptly submit a report to the Secretary setting forth the aforesaid marketing policy and shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to deviate from such marketing policy because of changed supply and demand conditions, the committee shall formulate a new or revised marketing policy in the manner set forth in this section. The committee shall promptly submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the new or revised marketing policy.

§ 945.51 Recommendation for regulations.

Whenever the committee deems it advisable that the handling of potatoes be regulated pursuant to § 945.52, or § 945.53, or both, it shall recommend to the Secretary grade, size, quality, or maturity regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof, whenever it finds that such regulation, as provided in such sections, will tend to effectuate the declared policy of the act.

§ 945.52 Issuance of regulations.

(a) The Secretary shall limit the handling of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities, or any combination thereof, of any or all varieties of potatoes during any period; or

(2) Regulate the shipment of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for different portions of the production area, for different packs, for different containers, or for any combination of the foregoing, during any period; or

(3) Fix the size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which

may be used in the packaging or handling of potatoes, or both; or

(4) Regulate the shipment of potatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) [Reserved]

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 60 FR 29727, June 5, 1995]

§ 945.53 Shipments for specified purposes.

Whenever the Secretary finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, he shall modify, suspend, or terminate regulations under or pursuant to § 945.42, § 945.52, or § 945.65, or any combination thereof in order to facilitate shipments of potatoes for the following purposes:

(a) Export;

(b) Relief or charity;

(c) Livestock feed;

(d) Certified seed potatoes;

(e) Processing into specified products; and

(f) Such other purposes which may be specified by the Committee, with the approval of the Secretary.

§ 945.54 Minimum quantity exemption.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations issued or in effect pursuant to §§ 945.40 to 945.65, inclusive, or any combination thereof.

§ 945.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modifications, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 945.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 945.53 from entering channels of trade and other outlets for

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other than the specific purpose authorized therefor.

(b) Safeguards, provided by this section, may include, but shall not be limited to, requirements that handlers:

(1) Shall obtain the inspection required by § 945.65 or pay the assessment provided by § 945.42, or both, in connection with the potato shipments effected in accordance with § 945.53; and

(2) Shall obtain Certificates of Privilege from the committee for shipments of potatoes effected or to be effected under provisions of § 945.53.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of Certificates of Privilege.

(d) The committee may rescind, or deny to any handler, Certificates of Privilege if proof satisfactory to the committee is obtained that potatoes shipped by him for the purposes stated in § 945.53 were handled contrary to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications for such certificates, the number of such applications denied and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary.

INSPECTION AND CERTIFICATION

§ 945.65 Inspection and certification.

(a) During any period in which regulations are in effect pursuant to § 945.42, § 945.52, or § 945.53, or any combination thereof, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to recommendations by the committee and approved by the Secretary.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates covering such potatoes insofar as the requirements of this section are concerned. During any period in which shipments of potatoes are regulated, as

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aforesaid, no handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected and covered by a valid inspection certificate as required in paragraph (a) of this section.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate shall be valid may be established by the committee with the approval of the Secretary; and such length of time may be different for shipments for different purposes.

(d) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available promptly to the committee by the inspection service.

COMPLIANCE

§ 945.70 Compliance.

Except as provided in this part, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall ship potatoes except in conformity to the provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 945.80 Reports.

(a) Upon the request of the committee, with approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this subpart. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more

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designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least two succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section. The committee, with the approval of the Secretary, may prescribe rules and regulations issued pursuant to this section specifying handler records and reports which the committee may need to perform its functions.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 60 FR 29727, June 5, 1995]

§ 945.81 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 945.82 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in

one of the ways specified in this subpart.

§ 945.83 Termination.

(a) The Secretary may, at any time, terminate the provision of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of potatoes: *Provided*, That such majority has, during such period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before April 30 of the then current fiscal period.

(d) The Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by potato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Termination of the order shall be effective only if announced on or before July 1 of the then current fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[23 FR 5709, July 30, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 53 FR 3189, Feb. 4, 1988]

§ 945.84 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 945.85 Effect of termination or amendments.

(a) Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (1) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (2) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (3) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

(b) The persons who are committee members and alternates on the effective

date of this subpart shall continue in office until their successors have been selected and have qualified. All rules and regulations issued or approved by the Secretary pursuant to this part (Order No. 945, as amended) and not in conflict herewith, which are in effect immediately prior to the date of this amendment shall continue in effect under this subpart as originally issued, or subsequently modified, until such rules and regulations are changed, modified, or suspended in accordance with this subpart.

§ 945.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 945.87 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 945.88 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers, granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 945.89 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 945.90 Separability.

If any provision of this subpart is declared invalid, or the applicability

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thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 945.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart B—Administrative Requirements

SOURCE: 24 FR 8688, Oct. 27, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 945.100 Communications.

Unless otherwise provided by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order, both as amended, shall be addressed to the committee at its principal office.

DEFINITIONS

§ 945.110 Order.

Order means Order No. 945, as amended, effective September 1, 1958 (§§ 945.1 through 945.91) regulating the handling of Irish potatoes grown in Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south thereof.

§ 945.111 Fiscal period.

The fiscal period that began June 1, 1981, shall end July 31, 1982. Each year thereafter *fiscal period* shall mean the period beginning August 1 and ending the following July 31.

[47 FR 17272, Apr. 22, 1982]

§ 945.112 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order, both as amended.

CERTIFICATES OF PRIVILEGE

§ 945.120 General.

Whenever shipments of potatoes for special purposes pursuant to § 945.53 are relieved in whole or in part from grade and size regulations issued under § 945.52 the committee shall require information and evidence as to the manner, methods, and timing of such shipments as safeguards against the entry of any such potatoes into trade channels other than those for which intended. Such information and evidence shall include the requirements set forth below with respect to Certificates of Privilege.

§ 945.121 Qualification.

Before handling potatoes for special purposes which do not meet regulations issued pursuant to § 945.52 a handler must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle potatoes; (b) agree to comply with reporting and other requirements set forth in §§ 945.121 to 945.125, inclusive, with respect to such shipments; and (c) receive approval of the committee, or its duly authorized agents, to so handle potatoes. Such approval will be based upon evidence furnished in his application for a Certificate of Privilege, and other information available to the committee.

§ 945.122 Application.

(a) Application for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and variety of the potatoes to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the potatoes are to be used; a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purpose stated in § 945.120.

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(b) The committee may require each handler making shipments of potatoes for export to include with his application a copy of the Department of Commerce Shipper's Export Declaration Form No. 7525-V applicable to such shipment.

§ 945.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period, and specified qualities and quantities of potatoes to be sold or transported to the designated consignee for the purposes declared.

§ 945.124 Reports.

Each handler of potatoes shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee or its duly authorized agents showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 945.125 Disqualification.

The committee from time to time may conduct surveys of handling of potatoes for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a handler or consignee is failing to comply with requirements and regulations applicable to handling of potatoes in special outlets, and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and further certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee but in no event shall it extend beyond the end of

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the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

Subpart C—Assessment Rates

§ 945.249 Assessment rate.

On and after August 1, 2024, an assessment rate of \$0.003 per hundredweight is established for Idaho-Eastern Oregon potatoes.

[90 FR 45315, Sept. 22, 2025]

Subpart D—Handling Requirements

§ 945.341 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a) through (d) of this section, or unless such potatoes are handled in accordance with paragraphs (e) and (f), or (g) of this section.

(a) *Minimum quality requirements*—(1) *Grade*—All varieties. U.S. No. 2 or better grade.

(2) *Size*—(i) *All varieties, except Russet types*. (A) 1 $\frac{1}{8}$ inches minimum diameter, unless otherwise specified on the container in connection with the grade.

(B) Size B (1 $\frac{1}{2}$ to 2 $\frac{1}{4}$ inches diameter).

(ii) *Russet types*. (A) 2 inches minimum diameter, or 4 ounces minimum weight: *Provided*, that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.

(B) Size B (1 $\frac{1}{2}$ to 2 $\frac{1}{4}$ inches diameter) if the potatoes otherwise meet requirements of U.S. No. 1 grade or better.

(iii) *All varieties, U.S. No. 1 grade or better*. Creamer ($\frac{3}{4}$ to 1 $\frac{5}{8}$ inches diameter).

(3) *Cleanness*—All varieties. “Fairly clean.”

(b) *Minimum maturity requirements*—(1) *White Rose and red skin varieties*. Each year from August 1 through December 31, “moderately skinned”; during other periods no maturity requirements.

(2) *All other varieties*. “Slightly skinned.”

(3) *Exceptions*. (i) Subject to compliance with paragraph (b)(3)(iii) of this

section, any lot of potatoes not exceeding a total of 50 hundredweight of such variety may be handled for any producer without regard to the foregoing maturity requirements.

(ii) If an officially inspected lot of potatoes meets the foregoing maturity requirements, but fails to meet the grade and size requirements, the lot may be regraded. If, after regrading, such lot then meets the grade and size requirements but fails to meet the maturity requirements, as indicated by the applicable Federal-State inspection certificate, such lot if not exceeding 100 hundredweight shall be exempt from the foregoing maturity requirements if the handler complies with paragraph (b)(3)(iii) of this section.

(iii) Prior to each shipment of potatoes exempt from the foregoing maturity requirements, the handler thereof shall report to the committee the name and address of the producer of such potatoes, and each such shipment shall be handled as an identifiable entity.

(c) *Pack and marking.* (1) When 50-pound containers (except master containers) of potatoes are marked with a count, size or similar designation, they must meet the count, average count and weight ranges for the count designation listed below.

Size	Range		
	Count	Average count ¹	Weight
Larger than 50	(²)	(³)	(⁴)
50	45–55	48–53	12–19
60	54–66	57–63	10–16
70	63–77	67–74	9–15
80	72–88	76–84	8–13
90	81–99	86–95	7–12
100	90–110	95–105	6–10
110	99–121	105–116	5–9
120	108–132	114–126	4–8
130	117–143	124–137	4–8
140	126–154	133–147	4–8
Smaller than 140	(²)	(³)	4–8

¹ Applicable to lots.

² 10 percent over or under.

³ 5 percent over or under.

⁴ 15 ounces or larger.

The following tolerances by weight, are provided for potatoes in any lot which fail to meet the weight range for the designated count:

(i) Not to exceed 5 percent for undersize; and

(ii) Not to exceed 10 percent for oversize.

(2) Potatoes packed in cartons (except when used as a master container) shall be either:

(i) U.S. No. 1 grade or better, except potatoes of U.S. Extra No. 1 shall be no smaller than 110 size nor larger than 60 size; or

(ii) U.S. No. 2 grade in 50-pound fiber-board cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade.

(3) Size shall be conspicuously marked on all cartons (except when used as a master container) consistent with § 51.1545 of the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566).

(d) *Inspection.* Except when relieved of such requirement pursuant to paragraphs (e) and (f), or (g) of this section:

(1) No handler shall handle potatoes unless such potatoes are inspected by either the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service and are covered and accompanied by a valid inspection certificate, numbered notesheet, or shipping clearance report: *Provided*, That a valid inspection certificate, numbered notesheet, or shipping clearance report is not required to accompany positive lot identified potatoes.

(2) Each lot shipped shall be accompanied by a copy of a valid inspection certificate, a numbered notesheet, shipping clearance report, or the lot must meet PLI requirements established by the Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service of the U.S. Department of Agriculture.

(3) Inspection certificates, numbered notesheets or shipping clearance reports for potatoes to be shipped must be issued within four days of such shipment. Otherwise, such potatoes, including lots that are positive lot identified, can only be shipped if a new inspection is performed to verify that the potatoes meet the requirements specified in paragraphs (a), (b), and (c) of this section. If the subsequent inspection verifies that the lot meets the requirements of paragraphs (a), (b), and (c) of this section, a new certificate, a new numbered notesheet, or a new shipping clearance report shall be issued and, if positive lot identified, shall reference the original PLI number, and a new

PLI number need not be applied to the lot. However, if upon subsequent inspection, the lot does not meet the requirements specified in either paragraphs (a), (b), or (c) of this section, the lot shall be reconditioned in the presence of an authorized representative of the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service prior to the close of the business day. If the lot is reconditioned prior to the close of the business day, a new certificate, a new numbered notesheet, or a new shipping clearance report must be issued, and either a new PLI number must be applied to the lot or the original PLI number must be modified. If the PLI numbered lot is not reconditioned prior to the close of the business day, all PLI numbers must be obliterated. Any inspection certificate, numbered notesheet, or shipping clearance report issued upon a subsequent inspection, including when a lot is reconditioned, must be issued within four days of shipment of the potatoes.

(4) Handlers shall provide the Committee with the destination zip codes of all potatoes handled by permitting the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service to review the bills of lading upon inspection to determine the destination zip codes. The destination zip codes shall be included on the inspection certificates. The destination zip codes and the quantity shall be provided by the handler to the Committee on lots which are positive lot identified, either orally or in writing. Whenever potatoes are diverted to a different destination, the handler shall notify the Committee of the new destination zip code and quantity orally or in writing as soon as practicable.

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of prepeeled potatoes as defined in paragraph (h) of this section or potatoes for any of the following purposes:

- (i) Charity;
- (ii) Certified seed;
- (iii) Experimentation; and
- (iv) Canning, freezing and "other processing" as hereinafter defined. Also, shipments of potatoes for the

purpose specified in this subdivision (iv) shall be exempt from inspection requirements specified in § 945.65 and paragraph (d) of this section and from assessment requirements specified in § 945.42.

(2) The minimum grade, size, cleanness, maturity and pack requirements set forth in paragraphs (a), (b), (c) and (d) of this section shall be applicable to shipment of potatoes for each of the following purposes:

(i) *Export:* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than U.S. No. 2; and

(ii) *Prepeeling:* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than Idaho Utility or Oregon Utility grade.

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, experimentation, or export pursuant to paragraph (e) of this section shall:

(i) First, apply to the committee for and obtain a Certificate of Privilege to make shipments for each purpose;

(ii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iii) At the time of applying to the committee for a Certificate of Privilege, or promptly thereafter, furnish the committee with a receiver's or buyer's certification that the potatoes so handled are to be used only for the purpose stated in the application and that such receiver will complete and return to the committee such periodic receiver's reports that the committee may require.

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment, unless other arrangements are made with the committee office;

(v) Bill each shipment directly to the applicable receiver.

(2) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (e) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's current list of manufacturers of potato products;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the committee's office a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment, unless other arrangements are made with the committee office;

(v) Bill each shipment directly to the applicable processor.

(3) Each receiver of potatoes for processing pursuant to paragraph (e) of this section shall:

(i) Complete and return an application form for listing as a manufacturer of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purposes and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(4) Each handler making shipments of certified seed potatoes pursuant to paragraph (e) of this section shall furnish, at the request of the committee, reports on the total volume of seed potatoes handled.

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

(h) *Definitions.* The terms *U.S. Extra No. 1*, *U.S. No. 1*, *U.S. No. 2*, *Size B*, *fairly clean*, *moderately skinned*, and *slightly skinned* shall have the same meaning as when used in the United States Standards for Potatoes (7 CFR 51.1540–51.1566), including the tolerances set forth therein. The term *prepeeling* means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling, or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of

peeled potatoes described in §52.2422 of the United States Standards for Peeled Potatoes (7 CFR 52.2421–52.2433). The term *other processing* has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." The terms *Idaho Utility* grade and *Oregon Utility* grade shall have the same meaning as when used in the standards for potatoes for the respective State. Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 98 and Order No. 945, both as amended.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

[47 FR 34355, Aug. 9, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §945.341, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

PART 948—IRISH POTATOES GROWN IN COLORADO

Subpart A—Order Regulating Handling

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