

Title 7: Agriculture

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

Source: 17 FR 2912, Apr. 4, 1952, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Definitions

§ 946.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer, or member of the United States Department of Agriculture, who is, or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 946.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and 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.).

§ 946.3 Person.

Person means an individual, partnership, corporation, association, legal representative, or any organized group or business unit.

§ 946.4 Production area.

Production area means all territory included within the boundaries of the State of Washington.

§ 946.5 Potatoes.

Potatoes means all varieties of Irish potatoes grown within the State of Washington.

§ 946.6 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes or causes potatoes to be handled.

[37 FR 10916, June 1, 1972]

§ 946.7 Handle.

Handle is synonymous with *ship* and means to transport, sell, or in any other way to place potatoes grown in the State of Washington, 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, or from any

point in the adjoining States of Oregon and Idaho to any other point: *Provided*, That, the definition of "handle" shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards pursuant to §946.55 with respect to such potatoes.

[37 FR 10916, June 1, 1972]

§ 946.8 Producer.

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

§ 946.9 Fiscal period.

Fiscal period means the period beginning on July 1 of each year and ending June 30 of the following year, or such other period as the Secretary may establish pursuant to recommendation of the committee.

[37 FR 10916, June 1, 1972]

§ 946.10 Committee.

Committee means the administrative committee, called the State of Washington Potato Committee, established pursuant to §946.22.

§ 946.11 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.

§ 946.12 Seed potatoes.

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 of Washington or other seed certification agencies which the Secretary may recognize.

§ 946.13 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 U.S. Standards for Potatoes issued by the U.S. Department of Agriculture (§§51.1540 to 51.1566 of this title), or amendments thereto or modifications thereof, or variations based thereon;

(b) U.S. Standards for Grades of Potatoes for Processing as issued by the U.S. Department of Agriculture (§§51.3410 to 51.3424 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(c) U.S. Standards for Grades of Peeled Potatoes (§§52.2421 to 52.2433 of this title), or amendments thereto or modifications thereof, or variations based thereon; and

(d) State of Washington Standards for Potatoes issued by the State of Washington Director of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon.

[37 FR 10916, June 1, 1972]

§ 946.14 Grading.

Grading is synonymous with *preparing for market* which means the sorting or separating of potatoes into grades and sizes for market purposes.

[37 FR 10916, June 1, 1972]

§ 946.15 Export.

Export means shipment of potatoes beyond the boundaries of the 48 contiguous States of the United States, or the District of Columbia.

[37 FR 10916, June 1, 1972]

§ 946.16 District.

District means each one of the geographical divisions of the production area established pursuant to §946.31.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and further redesignated at 37 FR 10916, June 1, 1972]

§ 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.

[70 FR 41133, July 18, 2005]

§ 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.

[70 FR 41133, July 18, 2005]

Administrative Committee

§ 946.22 Establishment and membership.

(a) The State of Washington Potato Committee consisting of fifteen members, of whom ten shall be producers and five shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(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.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961 as amended at 70 FR 41133, July 18, 2005]

§ 946.23 Alternate members.

(a) 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. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

(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.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961 as amended at 70 FR 41133, July 18, 2005]

§ 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.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961 as amended at 70 FR 41133, July 18, 2005]

§ 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) Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers in the State of Washington, or officers or employees of a corporate handler in the aforesaid State, and such persons shall be residents of the State of Washington.

(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.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 37 FR 10916, June 1, 1972; 52 FR 13070, Apr. 21, 1987; 70 FR 41133, July 18, 2005]

§ 946.26 Acceptance.

Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 946.27 Term of office.

(a) The term of office of committee members and alternates shall be for 3 years beginning on the 1st day of July and continuing until their successors are selected and have qualified: *Provided, however,* That the terms of office of the initial committee under the amended order shall be determined by the Secretary so that the terms of office of one-third of the initial members and alternates shall be for 1 year, one-third for 2 years, and one-third for 3 years.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the term of office and continuing until the end thereof, and until their successors are selected and have qualified.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 37 FR 10916, June 1, 1972]

§ 946.28 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.

§ 946.29 Duties.

It shall be the duty of the committee:

- (a) At the beginning of each fiscal year, to meet and organize, 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;
- (b) To act as intermediary between the Secretary and any producer or handler;
- (c) To furnish to the Secretary such available information as he may request;
- (d) 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;
- (e) 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;
- (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;
- (h) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, 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 year, 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 with the other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ 946.30 Expenses and compensation.

Committee members and their respective alternates when acting on committee business 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. In addition, they may receive reasonable compensation at a rate recommended by the committee and approved by the Secretary.

[37 FR 10916, June 1, 1972]

§ 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.

[70 FR 41134, July 18, 2005]

§ 946.32 Nomination.

The Secretary may select the members of the State of Washington Potato Committee and their respective alternates from nominations which may be made in the following manner, or from among such other qualified persons:

(a) Nominations for Committee members and alternate members shall be made at a meeting or meetings of producers and handlers 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.

(b) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following July 1;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than June 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in designating handler nominees. Any person who operates in more than one district or is engaged in producing and handling potatoes, shall elect the classification (i.e., producer or handler), and the district within which he desires to participate in designating nominees;

(e) 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. 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; and

(f) If nominations are not made within the time and in the manner specified in this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

[37 FR 10916, June 1, 1972, as amended at 70 FR 41134, July 18, 2005]

§ 946.33 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 §946.32, or the Secretary may select such committee member or 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 this subpart.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and further redesignated at 37 FR 10917, June 1, 1972]

Expenses and Assessments

§ 946.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning, and for such other purposes as the Secretary, pursuant to this subpart, determines to be appropriate. The committee shall submit to the Secretary a budget for each fiscal period, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such fiscal period.

[37 FR 10917, June 1, 1972]

§ 946.41 Assessments.

Each handler shall pay to the committee upon demand, his pro rata share of the expenses authorized by the Secretary for each fiscal period. Each handler's pro rata share shall be the rate of assessment per hundredweight fixed by the Secretary times the quantity of potatoes which he handles as the first handler thereof. At any time during or after a fiscal period, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be

applicable to all potatoes handled during the given fiscal period. The payment of expenses for the maintenance and functioning of the committee may be required during periods when no regulations are in effect. If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the committee with the approval of the Secretary.

[37 FR 10917, June 1, 1972]

§ 946.42 Accounting.

(a) *Excess funds.* At the end of a fiscal period, funds in excess of the year's expenses shall be placed in an operating reserve not to exceed approximately two fiscal periods' operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to §946.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers. Each handler's share of such excess shall be the amount of assessments he paid in excess of his pro rata share of the actual expenses of the committee and the addition, if any, to the operating reserve.

(b) *Accounting of funds upon termination of order.* Any money collected as assessments pursuant to this subpart and remaining unexpended in the possession of the committee after termination of this part shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[37 FR 10917, June 1, 1972]

§ 946.43 Funds.

All funds received by the committee pursuant to any provisions of this subpart shall be used solely for the purposes specified in this subpart and shall be accounted for in the following manner:

(a) The Secretary may at any time require the committee and its members to account for all receipts and disbursements; and

(b) Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member or alternate.

Regulation

§ 946.50 Marketing policy.

(a) Prior to each marketing season, the committee shall consider and prepare a policy statement 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 considerations to the following:

(1) Market prices of potatoes, including prices by grade, size, quality, and maturity in different packs of fresh potatoes and of the various forms of processed potatoes;

(2) Supplies of potatoes by grade, size, quality, and maturity in the production area and in other production areas, of fresh potatoes, and the supplies of various forms of processed potatoes;

(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.

(b) In the event it becomes advisable to deviate from such marketing policy because of changed supply and demand conditions, the committee shall formulate a revised marketing policy statement in accordance with the appropriate considerations in paragraph (a) of this section.

(c) The committee shall submit a report to the Secretary setting forth such marketing policy. Notice of each such marketing policy and any revision thereof shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be available for examination at the committee office to all interested parties.

[37 FR 10917, June 1, 1972]

§ 946.51 Recommendation for regulations.

The committee shall recommend to the Secretary regulations, or amendments, modifications, suspension, or termination thereof, whenever it finds that such regulations as provided in §946.52 are in accordance with the marketing policy established pursuant to §946.50 and that such regulations will tend to effectuate the declared policy of the act.

[37 FR 10917, June 1, 1972]

§ 946.52 Issuance of regulations.

(a) The Secretary shall limit the shipment of potatoes as set forth in this subpart whenever he finds from the recommendation and information submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of the act:

(1) To regulate, in any or all portions of the production area the handling of particular grades, sizes, qualities or maturity of any or all varieties of potatoes during any period;

(2) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties of potatoes, or for any combination of the foregoing during any period in the States of Oregon and Idaho which have been shipped from the production area to specified locations therein for grading or storage pursuant to §946.54;

(3) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties differently for: Different portions of the production area, different uses or outlets, different packs or for any combination of the foregoing, during any period;

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

(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.

(b) The Secretary may amend any regulation issued under this subpart whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(c) The Secretary shall notify the committee of any such regulation issued pursuant to this section and the committee shall give reasonable notice thereof to handlers.

[37 FR 10917, June 1, 1972, as amended at 70 FR 41134, July 18, 2005]

§ 946.53 Minimum quantities.

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 pursuant to this part.

[37 FR 10918, June 1, 1972]

§ 946.54 Shipments for specified purposes.

(a) 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 any or all regulations issued pursuant to this part in order to facilitate shipments of potatoes for the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Export;

(4) Seed;

(5) Prepeeling;

(6) Such other purposes as may be specified by the committee with the approval of the Secretary; and

(7) Grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon.

(b) The Secretary shall give prompt notice to the committee of any modification, suspension, or termination of regulations pursuant to this section, or of any approval issued by him under the provisions of this section.

[37 FR 10918, June 1, 1972]

§ 946.55 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to §946.54 from entering channels of trade and other outlets for other than the specific purposes authorized therefor, and the transportation of potatoes for grading and storing to points outside the production area.

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

(1) Shall obtain the inspection required by §946.60 or pay the assessment provided by §946.41, or both, in connection with the potato shipments effected in accordance with §946.54, and

(2) Shall obtain a special purpose certificate from the committee for shipments of potatoes effected or to be effected under provisions of §946.54.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of the special purpose certificate.

(d) The committee may rescind, or deny to any handler the special purpose certificate if proof satisfactory to the committee is obtained that potatoes shipped by him for the purpose stated in §946.54 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.

[37 FR 10918, June 1, 1972]

Inspection and Certification

§ 946.60 Inspection and certification.

(a) During any period in which the Secretary regulates the shipment of potatoes pursuant to the provisions of this subpart, each handler who first ships potatoes shall, prior to making shipment, cause each shipment to be inspected by an authorized representative of the Federal-State inspection service or such other inspection service as the Secretary shall designate. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section in circumstances under which such requirements would create an undue hardship on growers or shippers: *Provided*, That all such shipments shall comply with all regulations in effect: *And provided further*, That proper safeguards to assure compliance are adopted.

(b) Each such handler shall make arrangements with the inspecting agency to forward promptly to the committee a copy of such inspection certificate: *Provided, however*, That (1) each handler making shipments of potatoes during such period shall prior to making such shipment, determine if such shipment has been inspected and if such shipment has not been so inspected and is not covered by an inspection certificate, each handler making such determinations shall have such

potatoes inspected and shall arrange for a copy of the inspection certificate to be forwarded to the committee as aforesaid, and (2) each handler who first ships potatoes after such potatoes are regraded, resorted, or repacked, or in any other way further prepared for market shall have each shipment of such potatoes inspected as provided in this section.

[17 FR 2912, Apr. 14, 1952. Redesignated at 26 FR 12751. Dec. 30, 1961, and further redesignated and amended at 37 FR 10918, June 1, 1972]

Effective Time and Termination

§ 946.62 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.

§ 946.63 Termination.

(a) The Secretary may, at any time, terminate the provisions 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 year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes: *Provided*, That such majority has during such year, 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 May 31 of the then current fiscal year.

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

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

[37 FR 10917, June 1, 1972, as amended at 70 FR 41134, July 18, 2005]

§ 946.64 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 trustee 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.

§ 946.65 Effect of termination or amendment.

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 (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

Miscellaneous Provisions

§ 946.70 Reports and records.

(a) Upon the request of the committee, with the 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 duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to potatoes received and potatoes disposed of by him as will substantiate the required reports.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee through its duly authorized employees, shall have access to such records.

(d) All reports and records furnished or submitted by handlers to, or obtained by the employees of, the committee which contain data for information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential, and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary, or his authorized agents. Compilations of general reports from data and information submitted by handlers is authorized subject to the prohibition of disclosure of individual handlers' identity or operations.

[37 FR 10918, June 1, 1972]

§ 946.71 Compliance.

Except as provided in this subpart, 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.

§ 946.72 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.

§ 946.73 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.

§ 946.74 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.

§ 946.75 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.

§ 946.76 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.

§ 946.77 Separability.

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

§ 946.78 Amendments.

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

Subpart—Rules and Regulations

Definitions

§ 946.100 Order.

Order means Order No. 946 (§§946.1 to 946.78), as amended, regulating the handling of Irish potatoes grown in the State of Washington.

[39 FR 1971, Jan. 16, 1974]

§ 946.101 Marketing agreement.

Marketing agreement means Marketing Agreement No. 113, as amended.

[39 FR 1972, Jan. 16, 1974]

§ 946.102 Terms.

Terms used in this subpart shall have the same meaning as set forth in said marketing agreement and order.

[22 FR 8177, Oct. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 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.

[72 FR 17795, Apr. 10, 2007]

§ 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.

[72 FR 17795, Apr. 10, 2007]

Special Purpose Certificates

§ 946.120 Application.

(a) Whenever shipments for special purposes pursuant to §946.54 are relieved in whole or in part from regulations issued under §946.52, each handler desiring to make shipments of potatoes for the following purposes shall submit an application to the committee, prior to initiating such shipments, for a special purpose certificate permitting such shipments:

(1) Charity: *Provided* , That handlers making shipments for charity of 1,000 pounds or less are exempt from these application requirements;

(2) Prepeeling;

(3) Canning, freezing, and “other processing”;

(4) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon; and

(5) Experimentation.

(b) Applications for special purpose shipment certificates shall be made on forms furnished by the committee. Such application shall contain the name and address of the handler, and such other information that the committee may require such as the estimated amount of potatoes to be shipped, the grades and sizes of potatoes to be shipped (when applicable), expected consignees and destinations, certification by applicant that statements are correct and that he will comply with disposition stated therein, and other information or documents as the committee may require in safeguarding against entry of such potatoes into trade channels other than those for which the special purpose certificate was granted.

[39 FR 1972, Jan. 16, 1974, as amended at 65 FR 70463, Nov. 24, 2000; 70 FR 44256, Aug. 2, 2005]

§ 946.121 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each applicant for a special purpose certificate. Upon approval of the application, a special purpose certificate shall be issued authorizing the applicant named therein to ship potatoes for a specified purpose for a specified period of time.

[39 FR 1972, Jan. 16, 1974]

§ 946.122 Reports.

Each handler shipping potatoes under and pursuant to a special purpose certificate shall supply to the committee, upon request, a report thereon showing the name and address of the shipper, car or truck number, Federal-State Inspection Certificate number (if such inspection is required by regulations in effect at the time of such shipment), loading point, destination and consignee.

[39 FR 1972, Jan. 16, 1974]

§ 946.123 Denial and appeals.

The committee may rescind a special purpose certificate issued to a handler for the purpose specified in §946.120(a), or deny such special purpose certificates to a handler, upon proof satisfactory to the committee that such handler has shipped potatoes contrary to those provisions. Such committee action denying or rescinding a special purpose certificate shall apply to and not exceed a reasonable period of time as determined by the committee. Any handler who has been denied a special purpose certificate or who has had a special purpose certificate rescinded may appeal to the committee for reconsideration. Such appeal shall be in writing.

[39 FR 1972, Jan. 16, 1974]

Modification of Inspection Requirements

§ 946.130 Application.

Any handler whose packing facilities are located in an area where a Washington State Department of Agriculture, Plant Industry Division Office or Federal-State Inspector is not readily available to perform the inspection required by this part may, pursuant to §946.60(a), apply to the committee for a permit authorizing modification of inspection requirements. Applications shall be made on forms furnished by the committee and shall contain such information as the committee, with approval of the Secretary, may find necessary in making a determination regarding the issuance of such permit.

[39 FR 1972, Jan. 16, 1974]

§ 946.131 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each application for an inspection modification permit. Approval of an application shall be evidenced by the issuance of an applicable permit.

[39 FR 1972, Jan. 16, 1974]

§ 946.132 Reports.

Each handler shipping potatoes pursuant to an inspection modification permit shall report periodically as specified by the committee on forms furnished by the committee the following information on each shipment: quantity of potatoes, variety or varieties, grade, minimum size, type of container(s), date of shipment, carrier, destination, and name and address of receiver.

[39 FR 1972, Jan. 16, 1974]

§ 946.133 Cancellation.

Whenever the committee finds that shipments of potatoes pursuant to an inspection modification permit are not in accordance with the application provisions of the order, such inspection modification permit may be cancelled.

[39 FR 1972, Jan. 16, 1974]

§ 946.140 Handling potatoes for commercial processing into products.

Pursuant to §946.54(a)(6), shipments of potatoes for commercial processing into products may be made only in accordance with paragraphs (a) or (b) of this section.

(a) Shipments may be made to persons whose names are on the State of Washington Potato Committee's list of manufacturers of potato products. Such list may consist of firms actively engaged in the business of canning, freezing, or "other processing" as defined in the act.

(1) Persons desiring to have their name placed on the committee's list shall apply to the committee. Such application shall contain the following:

(i) Name and address of applicant;

(ii) Location and description of facilities for commercial processing into products;

(iii) Expected source of potatoes for commercial processing into products;

(iv) Such other information as the committee, with approval of the Secretary, may deem necessary.

(2) Upon receipt of an application for such listing, the State of Washington Potato Committee shall make such investigation as it deems necessary, and if it appears that the applicant may reasonably be expected to use potatoes covered by the application in accordance with the requirements of this section, it shall place the applicant's name on the State of Washington Potato Committee's list of manufacturers of potato products.

(b) For each shipment to a person whose name is not on the committee's list, the handler must provide evidence to the committee prior to shipment that the potatoes will be used only for processing into products. Further, he shall submit reports as prescribed by the committee and approved by the Secretary.

[39 FR 1972, Jan. 16, 1974]

§ 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within sixty (60) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 60 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

[73 FR 74348, Dec. 8, 2008]

§ 946.142 Operating reserve.

(a) The Committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as an operating reserve: *Provided*, That funds in the operating reserve may not exceed approximately two fiscal periods' expenses.

(b) The funds in said operating reserve may be used:

(1) To defray expenses incurred during any fiscal period prior to the time assessment income is sufficient to cover such expenses,

(2) To cover deficits incurred during any fiscal period when assessment income is less than expenses,

(3) To defray expenses incurred during any period when assessments are suspended or are inoperative and

(4) To cover necessary expenses of liquidation in the event of termination of this part.

(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 handlers from whom they were collected.

(d) Terms used in this section shall have the same meaning as when used in said marketing agreement and this part.

[32 FR 16199, Nov. 28, 1967. Redesignated at 44 FR 73012, Dec. 17, 1979; 60 FR 27683, May 25, 1995]

§ 946.248 Assessment rate.

On and after July 1, 2005, an assessment rate of \$0.0035 per hundredweight is established for Washington potatoes.

[70 FR 35165, June 17, 2005]

Subpart—Handling Regulations

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in §946.41.

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

(2) *Size*: (i) At least 17/8 inches in diameter, except that all red, yellow fleshed, and white types may be 3/4 inch (19.1 mm) minimum diameter, if they otherwise meet the requirements of U.S. No. 1.

(ii) All Russet types, 2 inches (54.0 mm) minimum diameter, or 4 ounces minimum weight.

(iii) Any type of any size may be packed in a 3-pound or less container if the potatoes otherwise meet the requirements of U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances* —The tolerance for size contained in the U.S. Standards for Grades of Potatoes shall apply.

(3) *Cleanness*: All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—“not seriously damaged by dirt,” and U.S. No. 1—“fairly clean.”

(b) *Minimum maturity requirements* —(1) *Red, yellow fleshed and white types*: Not more than “moderately skinned.”

(2) *Russet types*: Not more than “slightly skinned.”

(c) *Pack and marking*:

(1) *Domestic*: Potatoes packed in cartons shall be either:

(i) U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped without regard to this requirement provided the lot contains no more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(ii) U.S. No. 2 grade, provided the cartons are permanently and conspicuously marked as to grade. This marking requirement does not apply to cartons containing potatoes meeting the requirements of (c)(1)(i).

(2) *Export*: Potatoes packed in cartons shall be U.S. No. 1 grade or better.

(d) *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 apply to shipments of potatoes for any of the following purposes:

(i) Livestock feed;

(ii) Charity;

(iii) Seed;

(iv) Prepeeling;

(v) Canning, freezing, and “other processing” as hereinafter defined;

(vi) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon;

(vii) Experimentation.

(2) Shipments of potatoes for the purposes specified in paragraphs (d)(1)(i) through (vii) of this section shall be exempt from the inspection requirements specified in paragraph (g) of this section, except that shipments pursuant to paragraph (d)(1)(vi) of this section shall comply with the inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d)(1)(i), (ii), (iii), (v) and (vii) of this section shall be exempt from assessment requirements as specified in §946.248 and established pursuant to §946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment, a copy of which must also accompany each shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

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

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

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

- (iii) Upon request by the committee, furnish reports, or cause reports to be furnished, for each shipment pursuant to the applicable Special Purpose Certificate;
 - (iv) Mail to the office of the committee a copy of the bill of lading for each Special Purpose Certificate shipment promptly after the date of shipment unless other arrangements are made;
 - (v) Bill each shipment directly to the applicable processor.
- (4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:
- (i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor 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 purpose and will not be placed in fresh market channels;
 - (iii) Report on shipments received as the committee may require and the Secretary approve.
- (5) Each handler desiring to make shipments of potatoes for experimentation shall:
- (i) First apply to the committee for and obtain a Special Purpose Certificate to make shipments for experimentation;
 - (ii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Special Purpose Certificate.
- (6) Handlers diverting potatoes to livestock feed are not required to apply for a Special Purpose Certificate nor report such shipments to the committee.
- (7) Each handler desiring to make shipments of potatoes for charity shall:
- (i) First apply to the committee for, and obtain, a Special Purpose Certificate for the purpose of making shipments for charity: *Provided*, That shipments for charity of 1,000 pounds or less are exempt from the application and reporting requirements: *And provided further* , That potatoes previously graded, assessed, and inspected in preparation for shipment to the fresh market are exempt from the application and reporting requirements.
 - (ii) Each handler shipping potatoes to charity must inform the recipient that the potatoes cannot be resold or otherwise placed in commercial market channels.
- (8) Each handler making shipments of seed potatoes shall furnish, at the request of the committee, reports on the total volume of seed potatoes handled.
- (f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 5 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 5 hundredweight of potatoes.
- (g) *Inspection.* (1) Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment.

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

(h) *Definitions.* The terms *U.S. No. 1*, *U.S. No. 2*, *not seriously damaged by dirt*, *fairly clean*, *slightly skinned*, and *moderately skinned* shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), including the tolerances set forth in it. The term *prepeeling* means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers 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 United States Standards for Grades of 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 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.” Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.