

(3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2006 of the free and restricted percentages proposed to be established by this rule (55 percent free and 45 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2006–2007 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2006–2007 crop. All written comments timely received will be considered before a final determination is made on this matter.

## List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.255 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

#### **§ 930.255 Final free and restricted percentages for the 2006–2007 crop year.**

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2006, which shall be free and restricted, respectively, are designated as follows: Free percentage, 55 percent and restricted percentage, 45 percent.

Dated: January 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–423 Filed 1–12–07; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 946**

[Docket No. AMS–FV–06–0177; FV06–946–1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on modifications to the administrative rules governing committee representation under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule would reestablish districts within the production area, reestablish the Committee with fewer members, and

reapportion members among districts. These changes would result in more efficient administration of the program while providing for more effective representation of the Washington fresh potato industry on the Committee.

**DATES:** Comments must be received by March 19, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

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

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

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

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

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

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

This rule invites comments on proposed modifications to the administrative rules governing committee representation under the Washington potato marketing order. This rule would reestablish districts within the production area, reestablish the Committee with fewer members, and reapportion members among the new districts. Specifically, this rule would reestablish the order's five districts as three districts; decrease Committee membership from fifteen members and fifteen alternate members to nine members and nine alternate members; and reapportion the members such that one handler member and alternate member, and two producer members and their respective alternate members would be elected from each of the three reestablished districts. These changes would result in more efficient administration of the program while providing for more effective representation of the fresh potato industry on the Committee. The Committee unanimously recommended these changes at a meeting held on June 6, 2006, with a request that they be made effective on July 1, 2007.

The order provides in § 946.22 that USDA, upon recommendation of the Committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the order requires that the Committee consider the following: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) the equitable relationship between

Committee apportionment and districts; and (4) other relevant factors.

As previously noted, the Committee currently has fifteen members, with membership apportioned among five districts. Sections 946.31 and 946.103 currently define the districts as follows:

District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

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

District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

District No. 5—All of the remaining counties in the State of Washington not included in Districts No. 1, 2, 3, and 4 of this section.

Further, §§ 946.25 and 946.104 currently provide in part that each of the five districts are represented as follows: District No. 1: Three producer members and one handler member; District No. 2: Two producer members and one handler member; District No. 3: Two producer members and one handler member; District No. 4: Two producer members and one handler member; District No. 5: One producer member and one handler member.

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

The Committee's districts were originally established using county boundaries, whereas the 1975 redistricting process reestablished the districts by utilizing existing county and township lines, as well as the three irrigation districts formed under the CBP. As a consequence, the Committee utilized the CBP irrigation district

boundaries in redistricting. At the time, the boundaries of the three irrigation districts were well known to producers in the area. However, as more producers installed wells to irrigate their potatoes, the CBP irrigation district boundaries became less relevant.

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

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

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

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

In determining how to appropriately divide the production area into three districts, as well as the correct apportionment of nine members in three new districts, the Committee reviewed the relative differences in fresh production and acreage estimates in

Washington's various potato producing counties. Using data from the USDA's National Agriculture Statistics Service (NASS), the Committee's research indicated that proposed District No. 1 would have 41 percent of the fresh potato producers, 36 percent of the fresh potato production, and 32 percent of the fresh potato acreage in the order's production area. Proposed District No. 2 would have 31 percent of the producers, 43 percent of the production, and 36 percent of the acreage. Finally, proposed District No. 3 would have 28 percent of the producers, 21 percent of the production, and 32 percent of the acreage.

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

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

#### Initial Regulatory Flexibility Analysis

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

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

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

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

In addition, based on information provided by NASS, the average producer price for Washington potatoes for the 2005 marketing year (the most recent period that final statistics are available) was \$5.60 per hundredweight. The average annual producer revenue for each of the 267 Washington potato producers is therefore calculated to be approximately \$220,562. In view of the foregoing, the majority of the handlers and producers of Washington potatoes may be classified as small entities.

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

The Committee believes that these proposed changes would not negatively impact handlers and producers in terms of cost. Costs for Committee meetings should actually decrease because of the reduction in the number of members and their respective alternates traveling

to meetings. Such savings could ultimately be passed on to handlers and producers in the form of reduced assessments. The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

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

Since this rule would modify the administrative rules governing committee representation by reestablishing districts, reestablishing the Committee, and reapportioning members among districts, additional reporting or recordkeeping requirements would not be imposed on either small or large potato handlers. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under No. 0581-0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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

The Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the February 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

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

#### PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 946.103 is revised to read as follows:

##### § 946.103 Reestablishment of districts.

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

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

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

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

3. Section 946.104 is revised to read as follows:

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

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

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

Dated: January 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–425 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 1207

[Docket No. AMS–FV–06–0219; FV–05–711]

##### Potato Research and Promotion Plan; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Potato Research and Promotion Program, under the criteria contained in Section 610 of the Regulatory Flexibility Act. Based upon its review, AMS has determined that the Potato Research and Promotion Plan should be continued without change.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915; Fax (202) 205–2800; or e-mail: [Daniel.Manzoni@usda.gov](mailto:Daniel.Manzoni@usda.gov).

##### FOR FURTHER INFORMATION CONTACT:

Sonia N. Jimenez, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634–S, Washington, DC 20250–0244; telephone: (888) 720–9917; fax: (202) 205–2800; or e-mail: [Sonia.Jimenez@usda.gov](mailto:Sonia.Jimenez@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Potato Research and Promotion Act of 1971, as amended, (7 U.S.C. 2611 *et seq.*) authorized the Potato Research and Promotion Program which is industry operated and funded, with oversight by USDA. The Program's objective is to carry out an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products.

The Program became effective on March 9, 1972, and was implemented