

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

Proposal No. 7

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: October 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV03-946-1 PR]

Irish Potatoes Grown in Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on nine proposed amendments to Marketing Agreement and Order No. 946, which regulate the handling of Irish potatoes grown in Washington. Seven amendments are proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These are: adding the authority to establish container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; incorporating language currently existing in the Rules and Regulations subpart pertaining to selection and establishment of districts; requiring Committee nominees to submit a signed acceptance letter prior

to appointment by the Agricultural Marketing Service (AMS); allowing for nominations to be held at large industry meetings; adding the authority to change the size of the Committee; and adding the authority to allow for additional alternates to serve when a Committee member and that member's alternate are unable to serve. AMS proposed two additional amendments to establish tenure limitations for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order.

DATES: The hearing will begin at 9 a.m. in Moses Lake, Washington, on November 20, 2003.

ADDRESSES: The hearing will be held at the Best Western Hallmark Inn, 3000 Marina Drive, Moses Lake, Washington, 98837, (866)-603-9330.

FOR FURTHER INFORMATION CONTACT:

Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. 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 the 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committee proposes the following amendments as summarized below.

1. Amend the order to authorize container and marking regulations. This would encompass size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in packaging or handling of Irish potatoes grown in Washington.

2. Amend the order to add language to require production for the fresh market in at least 3 out of 5 years preceding nomination to the committee for all producer members.

3. Make administrative changes in § 946.25 "Selection" and § 946.31 "District" to incorporate language currently in the Rules and Regulation subpart.

4. Amend the order to add language requiring Committee nominees to submit a signed letter of acceptance prior to selection by AMS.

5. Allow for nominations to be held at any industry meeting rather than requiring separate meetings in each of the districts, as currently required by the order.

6. Amend the order to authorize the Committee to recommend changes in the number of Committee members and alternates. Such a recommendation would require an analysis of certain factors within the industry and approval by the Department.

7. Allow an alternate member of the same classification (producer or handler) to serve in a member's place and stead in the event a Committee member and that member's alternate are unable to attend a Committee meeting.