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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AO-F&V-946-3; FV03-946-01 FR]

Irish Potatoes Grown in Washington; Order Amending Marketing Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order (order) for Irish potatoes grown in Washington. Irish potato growers, voting in a mail referendum held March 18 through April 8, 2005 voted on seven amendments proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order, and two amendments proposed by the Agricultural Marketing Service of USDA. Of the nine amendments proposed, seven were favored, including: Adding authority for 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; updating order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve; and, requiring continuance referenda to be conducted every six years. The two amendments that failed include: requiring Committee nominees to

submit a written background and acceptance statement prior to selection by USDA and establishing tenure limitations for Committee members.

DATES: This rule is effective July 19, 2005.

FOR FURTHER INFORMATION CONTACT:

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Small businesses may request information on this proceeding 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.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the *Federal Register* (68 FR 58638); Recommended Decision issued on November 19, 2004 and published in the November 26, 2004 issue of the *Federal Register* (69 FR 68819); and a Secretary's Decision and Referendum Order issued February 8, 2005, and published in the *Federal Register* on February 14, 2005 (70 FR 7437).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. Notice of the hearing was issued October 6, 2003 and published in the October 10, 2003 issue of the *Federal Register* (68 FR 58638). The hearing was held to consider the proposed amendment of Marketing Order No. 946, regulating the handling of Irish potatoes grown in the State of Washington, hereinafter referred to as the "order." The hearing was held

pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained seven proposals submitted by the Committee and two proposals by the Agricultural Marketing Committee (AMS).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 19, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 27, 2004. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were also due by November 4, 2004. No comments or exceptions were filed to either the Recommended Decision or the information collection requirements.

A Secretary's Decision and Referendum Order was issued on February 8, 2005 directing that a referendum be conducted during the period March 18 through April 8, 2005, among growers of Irish potatoes to determine whether they favored the proposed amendments to the order. The voters voting in the referendum favored six of the amendments proposed by the Committee and one of the amendments proposed by USDA.

The amendments favored by voters and included in this order will:

1. Add authority for the Committee to recommend container and marking regulations. Regulations could include specification of the size, capacity, weight, dimensions, pack, and marking or labeling of containers used in the packaging or handling of Irish potatoes grown in Washington. This amendment will also add two new definitions to the order: "Pack" and "container."

2. Require Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination.

3. Update order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts. This

amendment will incorporate language currently in the order's administrative rules and regulations into the language of the order.

4. Allow for nominations to be held at industry meetings or events in addition to or in place of meetings held in each of the five districts.

5. Add authority for the Committee to recommend changes in the size of the administrative committee. In recommending any such changes, the following will 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) equitable relationship between Committee apportionment and the various districts; and (4) other relevant factors.

6. Add authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve. Any designee must be a current Committee member alternate of the same classification (handler or producer) to serve in the absent Committee member's stead.

7. Require continuance referenda to be conducted every six years.

To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of Irish potatoes represented by voters voting in the referendum.

AMS also proposed to allow such changes as may be necessary to the order so that all of the order's provisions conform to the effectuated amendments. None were deemed necessary.

The amended marketing agreement was subsequently mailed to all Irish potato handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of Irish potatoes handled by all handlers during the representative period of July 1, 2003, through June 30, 2004.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own

benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$6,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Washington fresh potato industry.

The record indicates that there are about 39 fresh potato handlers currently regulated under the order. With total fresh sales valued at \$108 million, on average, these handlers each received \$2.8 million. In addition, there are about 160 producers of fresh potatoes in the production area. With total fresh sales at the producer level valued at \$58 million, each grower's average receipts would be \$362,500. Witnesses testified that about 76 percent of these producers are small businesses.

It is reasonable to conclude that a majority of the fresh Washington potato handlers and producers are small businesses.

Potato Industry Overview

Record evidence supplied by the Washington State Potato Commission indicates that there are approximately 323 potato producers in the State, of which approximately 160 (50 percent) are producers of fresh market potatoes. Approximately 76 percent of the fresh market potato producers are small entities, according to the SBA definition. Many of these farming operations also produce potatoes for the processing market. The Washington State potato industry also includes 39 handlers and 12 processing plants.

A 2001 publication of Washington State University (WSU) Extension estimated that total demand for potatoes produced in Washington State was \$495 million dollars. Of this total sales value figure for Washington potato producers, fresh market potato pack-out represented approximately 12 percent, with producer sales valued at \$58 million. The largest proportion of the crop (\$357 million or 72 percent) was represented by sales to the frozen potato product market, principally for French

fries. Other uses included seed potatoes, dehydration and potato chips.

The WSU report also explained that the supply of fresh market potatoes is handled by various potato packers (handlers) whose operations vary in size. These handlers supply the retail market, including supermarkets and grocery stores, as well as restaurants and other foodservice operations. Potatoes are prepared for the fresh market by cleaning, sorting, grading, and packaging before shipment is made to final destinations. Due to customer specifications about sizes, shapes, and blemishes, as well as the minimum quality, size, and maturity regulations of the order, about 42–43 percent of the potatoes delivered to handlers are graded out of the fresh market. Potatoes not meeting grade are generally delivered to processors for use in the frozen French fry and dehydrated potato markets. The total output of the fresh pack industry in terms of sales value is \$108 million.

Washington State acreage and production is second only to that of Idaho, but its yields per acre are the highest of any State in the United States. Produced on 165,000 acres, total potato production in Washington in 2002 was 92.4 million hundredweight, with an average yield of 560 hundredweight per acre. Over the last several years, Washington has produced about 21 percent of the total U.S. potato production on about 13 percent of the total acreage dedicated to potatoes. Washington's share of the total value has been about 17 percent of the nation's total. Fresh utilization has varied between 11 percent and 15 percent from 1993 through 2002. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS).

The record indicates that soil type, climate, and number of irrigated acres combine to make Washington an excellent area to grow potatoes. In 2000, Washington produced a record crop with 105 million hundredweight grown on 175,000 acres with a total industry value of \$555.2 million. This represents a substantial increase from 1949—the year in which the marketing order was established—in which producers harvested 29,000 acres with a yield of 6.4 million hundredweight of potatoes valued at \$14.8 million. According to testimony, the producer price per hundredweight of potatoes was \$2.30 in 1949 and \$5.40 in 2002.

Witnesses at the hearing explained that potato production is dependent on many factors over which they have little control, including water availability, weather, and pest and weed pressures.

For example, the potato crop may be of higher average quality one year, yielding an increased supply of U.S. No. 1 grade potatoes, and have an overall lower quality the next year with a preponderance of U.S. No. 2 grade potatoes.

According to testimony, U.S. No. 2 grade potatoes in Washington are generally diverted for use in making dehydrated potato products. In addition, U.S. No. 2 grade potatoes are occasionally in demand as "peelers" for use in soups and salads, or as "natural" fries. Regardless of the secondary products markets, witnesses explained, the fresh, table stock market is an important additional market for U.S. No. 2 grade potatoes. Witnesses explained that the Washington potato industry cannot currently take advantage of this market without container marking authority. Having the additional flexibility to pack U.S. No. 2 grade potatoes in labeled cartons will help the industry overall.

This final rule amends § 946.52, Issuance of regulations, to add authority for the Committee to recommend container and marking regulations to the USDA for subsequent implementation. This will be in addition to the existing authority for grade, size, quality and maturity requirements. Two new definitions, § 946.17, Pack, and § 946.18, Container, will be added to the order.

In testifying in support of this amendment, witnesses cited an example of how this authority could be used. They stated that the Committee wants to respond to customer demand for U.S. No. 2 grade potatoes packed in cartons, but at the same time it wants to ensure that such cartons will be properly labeled. Three people testified in favor of this proposal, and no one testified in opposition. The three witnesses covered similar themes in expressing their views on the proposal.

Each stated that the U.S. potato market is highly competitive and that the potato industry in Washington needs to be vigilant in responding to market needs so as not to lose market share to other states. Testimony indicated that the fresh market potato industry in Washington needs to ensure that their customers are receiving what they order, and must remain flexible and innovative. All three witnesses emphasized that offering appropriate packaging is a key element of being flexible and responsive to customers.

The witnesses offered an historical perspective by pointing out that 40 years ago, the industry standard for potato packaging was a 50- or 100-pound burlap bag. The passing of 30 years saw the phasing in of 50-pound

cartons and polyethylene (poly) bags. Now, potatoes are shipped in burlap, cartons, poly, mesh, cardboard bulk displays and baler bags. Container sizes can range from 2 pounds to 100 pounds. It was emphasized that the industry is constantly looking for new packaging and delivery methods.

Witnesses stated that as early as 1994, the Committee began receiving requests from retailers and wholesalers to pack U.S. No. 2 grade potatoes from Washington in 50 lb. cartons. These customers cited a number of reasons for wanting the U.S. No. 2 grade potatoes in cartons, including ease of handling and stacking in warehouses, improved worker safety, and better product protection (for example, less "greening" from exposure to light, and reduced bruising during transport.)

Although authority exists in the order for the Committee to recommend regulations to allow packing of U.S. No. 2 grade potatoes in cartons, witnesses explained that up until now the Committee has chosen not to permit this lower grade to be packed in cartons because of the inability to mandate labeling. The current handling regulations specify that only U.S. No. 1 or better grade potatoes may be packed in cartons, and as such, buyers of Washington potatoes have learned to expect this premium grade when purchasing potatoes in cartons. Adding this labeling authority will provide assurance to customers and to the industry that the product being shipped is properly identified. Mandatory labeling prevents handlers from misrepresenting the quality of the potatoes packed in the carton. Even one handler sending substandard product to customers can mar the reputation of the Washington State potato industry, according to witnesses.

Witnesses stated that upholding the integrity of the Washington State potato industry is as important to producers as meeting customer specifications. Mandating labeling will help ensure product integrity. The Committee has discussed that without the labeling authority, a customer could potentially receive U.S. No. 2 grade potatoes from a handler, thinking that they are of U.S. No. 1 grade quality. This could damage customer perceptions of the higher-grade potatoes coming out of Washington. Labeling authority will help alleviate consumer perception problems. Further, not only will it help verify that handlers are putting the right product into the right packaging, but it also will assure customers that they are actually receiving what they have ordered.

Witnesses also emphasized the minimal additional cost of implementing this proposal. They point out that handlers' facilities are already configured for packing potatoes in cartons, and for labeling those cartons, so there is no need for any equipment changes or additions. In the witnesses' view, any additional costs a handler would have in packing potatoes in cartons rather than sacks would be offset by the increased selling price.

Requiring labeling of cartons will help to improve market transactions between seller and buyer by assuring all concerned as to the exact content of such cartons. Washington producers and handlers will benefit from taking advantage of another market niche, with minimal additional cost.

Testimony and industry data together indicate that little to no differential impact between small versus large producers or handlers would result from the proposed amendment to authorize container and labeling requirements. Although not easily quantifiable, the USDA concurs that benefits to the potato industry appear to substantially outweigh the potential costs associated with implementing this proposal.

Remaining amendment proposals are administrative in nature and will impose no new regulatory burdens on Washington potato producers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

This final rule amends § 946.25, Selection, of the order to require that producer members of the Committee are current producers of fresh potatoes. The amendment will ensure that the Committee is representative of, and responsive to, those producers the program impacts most directly. No additional costs are anticipated.

This final rule amends § 946.31, Districts, by replacing obsolete order language pertaining to establishment of districts and allocation of Committee membership among those districts will simply update the order. To the extent updating order language simplifies the program and reduces confusion, it will benefit the industry.

This final rule amends § 946.32, Nomination, of the order to allow nominations of Committee members to be conducted through mail balloting or at meetings held in each of the five established districts. Allowing nominations to be made at larger, industry-wide meetings will provide the industry with an additional option. This option could result in the Committee reaching a larger audience of producers and handlers, thereby broadening

industry participation and facilitating the nomination process.

This final rule amends § 946.23, Alternate members, by adding authority to the marketing order that will allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve. It will also amend § 946.22, Establishment and membership, and § 946.24, Procedure, by adding authority to the marketing order to allow for changes in the size of the Committee. The Washington Potato Committee consists of 10 producers, 5 handlers, and their alternates. Changing the size of the Committee will allow the industry to adjust to changes in fresh potato production patterns and in the number of active industry participants.

An increase in Committee size could lead to marginally higher program costs because Committee members are reimbursed for expenses they incur in attending meetings and performing other duties under the order. A reduction in Committee size (deemed to be more likely according to the record) would likewise reduce program costs. Any recommendation to change the size of the Committee would be considered in terms of cost and the need to ensure appropriate representation of producers and handlers in Committee deliberations.

This final rule amends § 946.63, Termination, to require periodic continuance referenda to ascertain industry support for the program will allow producers the opportunity to vote on whether to continue the operation of the order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), any reporting and recordkeeping provision changes that would be generated by these amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for part 946 are approved by OMB under OMB number 0581-0178.

The Washington Potato Committee recommended amending producer eligibility requirements to require production of potatoes for the fresh market for 3 out of the 5 years of production prior to nomination. The Committee has also made recommendations that would streamline the nomination process and increase industry participation in nominations. In conformance with these recommendations, the confidential qualification and acceptance statement will be combined in the appointment of committee members. This form is based

on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee, and no change in the information collection burden or further OMB approval is necessary.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments to Marketing Order 946 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. When adopted, these amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 the Department 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 there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating Irish Potatoes Grown in Washington

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 946 (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Washington Irish potato industry. Immediate implementation of the amendments is necessary in order to make the amendments effective as specified.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping Irish potatoes covered by the order as hereby amended) who, during the period July 1, 2003, through June 30, 2004, handled 50 percent or more of the volume of such Irish potatoes covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such Irish potatoes, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of Irish potatoes in the production area.

Order Relative to Handling of Irish Potatoes Grown in Washington

It is therefore ordered. That on and after the effective date hereof, all handling of Irish potatoes grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on November 19, 2004, and published in the **Federal Register** on November 26, 2004, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

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

Authority: 7 U.S.C. 601–674.

■ 2. Add a new § 946.17 to read as follows:

§ 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.

■ 3. Add a new § 946.18 to read as follows:

§ 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.

■ 4. In § 946.22, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.22 Establishment and membership.

* * * * *

(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.

■ 5. In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.23 Alternate members.

* * * * *

(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.

■ 6. Section 946.24 is amended by:

■ A. Revising paragraph (a).

■ B. Redesignating paragraph (b) as paragraph (c).

■ C. Adding a new paragraph (b).

The revisions read as follows:

§ 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.

* * * * *

■ 7. Section 946.25 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (c).

The revisions read as follows:

§ 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.

* * * * *

(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.

■ 8. Revise § 946.31 to read as follows:

§ 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.

■ 9. Amend § 946.32 by revising paragraph (a) to read as follows:

§ 946.32 Nomination.

* * * * *

(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.

* * * * *

■ 10. Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

§ 946.52 Issuance of regulations.

(a) * * *

(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.

* * * * *

■ 11. In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 946.63 Termination.

* * * * *

(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.

* * * * *

Dated: July 11, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-14004 Filed 7-15-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA-2003-15682]

RIN 2120-AH81

Digital Flight Data Recorder Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the Federal Register on July 18, 2003 (68 FR 42932). That final rule amended appendices in 14 CFR parts 121, 125, and 135. In that final rule the FAA inadvertently did not make conforming amendments to two parts of Appendix M of part 121.

DATES: Effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division, AFS-201A, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8166; facsimile (202) 267-5229; e-mail gary.davis@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule on July 18, 2003, that made changes to recording specifications for digital flight data recorders required in 14 CFR parts 121, 125, and 135. Since that rulemaking, two editions of the Code of Federal Regulations have been

published (2004, 2005), and each new edition includes two small errors that we are correcting with this technical amendment. Both errors are found in Appendix M of part 121. This appendix lists airplane flight recorder specifications for all 88 parameters that are required for aircraft operating under the rules of part 121.

One error is found in parameter 12a, Pitch Control(s) (non fly-by-wire systems), and the other is found in parameter 19, Pitch trim surface position. These errors were brought to out attention in May 2005 and we are correcting them as quickly as possible. The first error lists a “%” sign under the “Accuracy (sensor input) for parameter 12a, but a “°” (for “degree”) sign should be listed. The second error is a spelling error in parameter 19. Parameter 19 currently reads, “Pitch trime,” when it should read “Pitch trim.”

Need for Correction

The two errors published in current versions of 14 CFR are very minor. It is possible that an operator subject to the requirements described in Appendix M, part 121, could be confused by what is published. It is unlikely that these errors will directly affect safety, but it is necessary for us to make sure that all information in the appendix is 100% accurate.

Technical Amendment

The technical amendment will correct parameters 12a and 19 in 14 CFR, part 121, Appendix M.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 121 is amended as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46105.

■ 2. Amend Appendix M to part 121 by revising parameter 12a and parameter 19 to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

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