

**PART 947—IRISH POTATOES
GROWN IN MODOC AND
SISKIYOU COUNTIES, CALIF., AND
IN ALL COUNTIES IN OREGON,
EXCEPT MALHEUR COUNTY**

Subpart—Order Regulating Handling

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DEFINITIONS

§ 947.1 Secretary.

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

§ 947.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 907, 1047).

§ 947.3 Person.

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

§ 947.4 Production area.

Production area means and includes Modoc and Siskiyou Counties in the State of California, and all counties, except Malheur, in the State of Oregon.

§ 947.5 Potatoes.

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

§ 947.6 Handler.

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

[35 FR 10741, July 2, 1970]

§ 947.7 Handle.

Handle is synonymous with *ship* and means to sell, transport, or in any other way to place potatoes, or cause potatoes to be placed in the current of the commerce within the production area or between the production area

and any point outside thereof, or from any point in the adjoining States of Idaho and Washington and Malheur County, Oreg., to any other point: *Provided*, That the definition of “handle” shall not include the transportation of ungraded potatoes within the district where they were grown for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards, pursuant to § 947.55 with respect to such potatoes.

[35 FR 10741, July 2, 1970]

§ 947.8 Producer.

Producer is synonymous with *grower* and means any person engaged in a proprietary capacity in the production of potatoes for market.

[35 FR 10741, July 2, 1970]

§ 947.9 Fiscal period.

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

§ 947.10 Committee.

Committee means the administrative committee, called the Oregon-California Potato Committee, established pursuant to § 947.25.

§ 947.11 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.

§ 947.12 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 from which the potatoes are shipped, or other seed certification agencies which the Secretary may recognize.

§ 947.14 Pack.

Pack means a unit of potatoes in any type of container and which falls within specific weight limits or within specific grade limits recommended by the

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committee and approved by the Secretary.

§ 947.15 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 51.1556 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

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

(c) 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;

(d) 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

(e) Standards for potatoes issued by the State of Oregon or California, or amendments thereto, or modifications thereof, or variations based thereon.

[35 FR 10741, July 2, 1970]

§ 947.16 Grading.

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

§ 947.17 Export.

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

§ 947.18 District.

District means each one of the geographical divisions of the production area established pursuant to § 947.32.

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ADMINISTRATIVE COMMITTEE

§ 947.25 Establishment and membership.

(a) The Oregon-California Potato Committee consisting of 14 members, of whom nine 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) 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 for such member is selected and has qualified.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10741, July 2, 1970]

§ 947.26 Procedure.

(a) Nine members of the committee shall be necessary to constitute a quorum and nine concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication and any vote cast at such meeting shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10741, July 2, 1970]

§ 947.27 Selection.

(a) Persons selected as committee members or alternates to represent producers or handlers shall be producers or handlers, respectively, or officers or employees of a corporate producer or handler, respectively, in the district for which selected and shall be residents of such district.

(b) The Secretary shall select three producer members of the committee, with their respective alternates, from District No. 1; two producer members, with their respective alternates, from each of Districts No. 2 and No. 4; and one producer member, with his respective alternate, from each of Districts No. 3 and No. 5. The Secretary shall

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also select one handler member of the committee with his respective alternate, from each of Districts Nos. 1, 2, 3, 4, and 5.

(c) 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.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.28 Term of office.

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be 2 years beginning June 1 and ending May 31. The terms of office of members and alternates shall be so determined that approximately one-half of the total producer committee membership and approximately one-half of the total handler committee membership shall terminate each May 31.

(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 current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

(c) The initial producer member and his alternate for District No. 5 shall be selected for a period of 2 years beginning with the committee selected for the term of office beginning June 1, 1970, through May 31, 1972. The initial handler member and his alternate for District No. 5 shall be selected for a 1-year term of office beginning June 1, 1970, through May 31, 1971, and thereafter each term of office shall be for 2 years.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.29 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.

§ 947.30 Duties.

It shall be the duty of the committee:

(a) At the beginning of each fiscal period, 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;

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

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

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committee for inspection by producers and handlers;

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

(k) To establish, and pay the expenses of, advisory subcommittees for the purpose of consulting with Federal, State, and other appropriate agencies with respect to the establishment of marketing research and development projects pursuant to § 947.47.

§ 947.31 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.

[35 FR 10742, July 2, 1970]

§ 947.32 Districts.

(a) The following districts of the production area are hereby established as follows:

District No. 1: The counties of Crook, Deschutes, and Jefferson in the State of Oregon;

District No. 2: The counties of Klamath, Lake, Jackson, and Josephine in the State of Oregon;

District No. 3: The counties of Curry, Coos, Douglas, Lane, Lincoln, Benton, Linn, Polk, Marion, Yamhill, Tillamook, Washington, Clatsop, Columbia, Multnomah, Clackamas, and Hood River in the State of Oregon;

District No. 4: The counties of Modoc and Siskiyou in the State of California;

District No. 5: The counties of Wasco, Sherman, Gilliam, Morrow, Umatilla, Wallowa, Union, Baker, Grant, Wheeler, and Harney in the State of Oregon.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided*, That in recommending any such changes in districts or representation, the committee shall

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give consideration to (1) the relative importance of new areas of production, (2) changes in the relative position of existing districts with respect to production, (3) the geographic location of areas of production as they would affect the efficiency of administering this part, and (4) other relevant factors: *Provided, further*, That there shall be no change in the total number of committee members or in the total number of districts.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.33 Nominations.

The Secretary may select the members of the Oregon-California Potato Committee and their respective alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held by the committee in each district for which nominees are to be selected, not later than April 1 of each year, to designate nominees for members and alternates to the committee;

(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 June 1;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than May 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

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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.

[35 FR 10742, July 2, 1970]

§ 947.34 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 § 947.33, 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.

§ 947.35 Annual report.

The committee shall prepare and submit to the Secretary, within 2 months following the last day of each fiscal period, an annual report covering such fiscal period, and make a copy available to each handler and producer who requests it. This annual report shall contain at least:

(a) A complete review of the regulatory operations during the fiscal period;

(b) An appraisal of the effect of such regulatory operations upon the potato industry within the production area; and

(c) Any recommendations for changes.

[35 FR 10742, July 2, 1970]

EXPENSES AND ASSESSMENTS

§ 947.40 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 such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate and for the maintenance and functioning of the committee. 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.

[35 FR 10742, July 2, 1970]

§ 947.41 Assessments.

(a) 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. 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, at rates prescribed by the committee with the approval of the Secretary.

(b) *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 one fiscal period's 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 § 947.40. 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

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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.

(c) *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.

[35 FR 10742, July 2, 1970]

RESEARCH AND DEVELOPMENT

§ 947.47 Research and development.

The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes.

REGULATION

§ 947.50 Marketing policy.

(a) *Preparation.* Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of potatoes. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for potatoes, including prices by grade, size, quality, and maturity in different packs, or any other shipping unit;

(2) Supply of potatoes by grade, size, quality, and maturity in the production area and in other production areas;

(3) The trend and level of consumer income;

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

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

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary set-

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ting forth the aforesaid marketing policy and it shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare a new marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

§ 947.51 Recommendations for regulations.

The committee shall recommend to the Secretary grade, size, quality, and maturity regulations, or amendments thereto, or modifications thereof, whenever it finds that such regulations as provided in § 947.52 will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of potatoes for the purposes authorized in § 947.54. The committee may also recommend amendment, termination, or suspension of any regulation issued under this part.

§ 947.52 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 maturities of any or all varieties of potatoes, or any combination of the foregoing, during any period;

(2) To regulate the handling of particular grades, sizes, qualities, or maturities of any or all varieties of potatoes, or any combination of the foregoing during any period, in the States of Idaho and Washington and Malheur County in Oregon which had been shipped from the production area to specified locations therein for grading or storage pursuant to § 947.54.

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(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, for different uses or outlets, for potatoes for prepeeling to different markets, for different packs, or for any combination of the foregoing, during any period; and

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

(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.

[35 FR 10742, July 2, 1970]

§ 947.53 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.

[35 FR 10743, July 2, 1970]

§ 947.54 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) Canning and freezing;

(7) Processing into other products, including "other processing," pursuant to Public Law 91-196, 91st Cong., second session (Feb. 20, 1970);

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

(9) Grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Washington and Malheur County in the State of 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.

[35 FR 10743, July 2, 1970]

§ 947.55 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 947.54 from entering channels of trade and other outlets for other than the specific purpose authorized therefor.

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

(1) Shall obtain the inspection required by § 947.60 or pay the assessment provided by § 947.41 or both, in connection with the potato shipments effected in accordance with § 947.54, and

(2) Shall obtain a Special Purpose Certificate from the committee for shipments of potatoes effected or to be effected under provisions of § 947.54.

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

(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 the certificate were handled contrary to the provisions of the certificate and 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

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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.

[35 FR 10743, July 2, 1970]

INSPECTION AND CERTIFICATION

§ 947.60 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to § 947.42, § 947.52, or § 947.54, or any combination thereof, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 947.53 or § 947.54 or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided*, That such inspection requirements on regraded, resorted, or repacked potatoes may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

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

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EXEMPTIONS

§ 947.65 Procedure.

The committee may adopt, subject to approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 947.66 Granting exemptions.

(a) The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee: (1) That by reason of a regulation issued pursuant to § 947.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled by all producers in said applicant's immediate production area; and (2) that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of potatoes specified thereon. Such certificates shall be transferred with such potatoes at time of shipment.

(b) The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee: (1) That by reason of a regulation issued pursuant to § 947.52 he will be prevented from handling as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings handled by all handlers in said applicant's immediate shipping area; and (2) that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the handler to handle the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of shipment.

(c) The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

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§ 947.67 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 947.68 Review, records, and reports of exemptions.

(a) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 947.65, 947.66, 947.67, or any combination thereof.

(b) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied and the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

EFFECTIVE TIME AND TERMINATION

§ 947.70 Effective time.

(a) 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.

(b) All rules and regulations issued by the Secretary pursuant to this part (Order No. 947, as amended), which are

in effect immediately prior to the date of this amendment shall continue in effect under this subpart as originally issued, or subsequently modified, until such rules and regulations are changed, modified, or suspended in accordance with this subpart.

§ 947.71 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 period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of potatoes; *Provided*, That such majority has, during such period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before June 30 of the then current fiscal period.

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

§ 947.72 Proceedings after termination.

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

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on

hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(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.

§947.73 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 provision of this subpart or any regulation issued under this subpart; (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

§947.80 Reports.

(a) Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to authorized employees of the committee, in such manner, on such forms and at such time as the committee may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

(b) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of potatoes received by a handler; (2) the quan-

tities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such potatoes; and (4) identification of the inspection certificates relating to the potatoes which are handled pursuant to §947.52 or §947.54, or both.

(c) All such reports shall be kept in the custody and under the control of one or more employees of the committee so that the information contained therein, which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(d) Each handler shall maintain and make available on request for at least 2 succeeding years, following his handling of potatoes, such records and documents on potatoes received and potatoes disposed of by him as may be necessary to verify reports required to be submitted to the committee pursuant to this section.

[35 FR 10743, July 2, 1970]

§947.81 Compliance.

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

§947.82 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

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and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 947.83 Duration of immunities.

The benefits, privileges, and immunities conferred upon any persons 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.

§ 947.84 Agents.

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

§ 947.85 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.

§ 947.86 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 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.

§ 947.87 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.

§ 947.88 Amendments.

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

Subpart—Rules and Regulations

SOURCE: 22 FR 8176, Oct. 16, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 947.100 Communications.

Unless otherwise provided in the marketing agreement and order (§§ 947.1 to 947.88), or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection therewith shall be addressed to the committee at its principal office.

DEFINITIONS

§ 947.110 Order.

Order means Order No. 947, as amended (§§ 947.1 to 947.88), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California and in all Counties in Oregon, except Malheur County.

§ 947.111 Marketing agreement.

Marketing agreement means Marketing Agreement No. 114, as amended.

§ 947.112 Terms.

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

§ 947.113 Area determinations.

Immediate production area, and *immediate shipping area*, respectively, are each synonymous with *district*.

§ 947.114 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

[62 FR 27171, May 19, 1997]

EXEMPTIONS

§ 947.120 Hardship exemption.

Handlers seeking an exemption pursuant to the provisions of §§ 947.65–

§ 947.123

947.67 shall make application to the committee on forms furnished by it. All information and conditions relative to the application will be considered promptly. The decision of the committee shall be final subject to the appeal procedures prescribed in § 947.67.

[39 FR 2270, Jan. 18, 1974]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.120 was suspended indefinitely, effective July 1, 2000.

§ 947.123 Reports and records.

Any person handling potatoes under § 947.120 shall record and report shipments in such frequency as the committee may prescribe.

[39 FR 2270, Jan. 18, 1974]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.123 was suspended indefinitely, effective July 1, 2000.

SAFEGUARDS

§ 947.130 Special Purpose Certificates—application and issuance.

Each person handling potatoes for special purposes under safeguard requirements imposed pursuant to this part shall apply to the committee for a Special Purpose Certificate. The committee shall make available, on request, the forms for such application as well as such report forms as it may require under § 947.132.

[39 FR 2270, Jan. 18, 1974]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.130 was suspended indefinitely, effective July 1, 2000.

§ 947.132 Reports.

(a) *Immature potatoes.* The applicant shall identify the producer and the dates on which such potatoes will be handled in his application for a Special Purpose Certificate.

(b) *Certified seed.* A special purpose shipment report shall be required for each load of certified seed when shipped outside the district (§ 947.18) where grown. The shipper of such certified seed potatoes shall return the completed form to the committee within the time period prescribed on such forms.

(c) *Livestock feed.* (1) The committee may require the applicant to furnish information specifying the location

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where the potatoes are to be consumed, the anticipated quantity of potatoes to be so handled, the total acreage from which the feed will be derived and the approximate starting and ending dates for such shipments.

(2) Any person handling potatoes for this purpose shall record and report the volume handled at such intervals as the committee may prescribe.

[39 FR 2270, Jan. 18, 1974, as amended at 56 FR 55986, Oct. 31, 1991]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.132 was suspended indefinitely, effective July 1, 2000.

§ 947.133 Denial and appeals.

(a) The committee may suspend a handler's Special Purpose Certificate for a period of 30 days for failure to report as required by § 947.132.

(1) A handler who has had two or more certificates suspended or his certificate suspended twice within the preceding two year period may be refused a Special Purpose Certificate. The committee also may revoke for a period of up to one year the Special Purpose Certificate of any handler who has had his certificate suspended twice within a marketing season.

(2) [Reserved]

(b) Upon refusal, suspension or revocation of a Special Purpose Certificate, the handler may make a written appeal for reconsideration of the decision to the committee. The Chairman shall direct that the committee immediately reconsider the action.

[39 FR 2270, Jan. 18, 1974]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.133 was suspended indefinitely, effective July 1, 2000.

§ 947.134 Establishment of list of manufacturers of potato products.

(a) The committee shall establish and maintain in its office a list of firms who are manufacturers of potato products handled pursuant to § 947.54(a)(5)–(7) inclusive. Such list may consist of firms actively engaged in the business of canning, freezing, or “other processing” as defined in the act; or prepeeling as described in § 52.2422 United States Standards for Grades of Peeled Potatoes (§§ 52.2421–52.2433 of this title).

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(b) Persons who wish to be placed on the committee's list of manufacturers of potato products may apply to the committee and shall supply the following information:

(1) Name and address of applicant;

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

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

(4) Certification to the Secretary that potatoes received for processing will not be diverted to the fresh market,

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

Upon receipt of an application for such listing, the Oregon-California 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 and to comply with the requirements of this section, it shall place the person's name on the Oregon-California Potato Committee's list of manufacturers of potato products.

(c) If shipment is to a person whose name is not on the committee's list of manufacturers, 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.

(d) The committee may remove from the list of manufacturers of potato products the name of any person who fails to comply with the safeguard requirements of this part.

[39 FR 2271, Jan. 18, 1974, as amended at 39 FR 31880, Sept. 3, 1974]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, §947.134 was suspended indefinitely, effective July 1, 2000.

§947.141 Late payment and interest charges.

The committee shall impose a late payment charge on any handler who fails to pay his or her assessment within thirty (30) days of the billing date shown on the handler's assessment statement received from the committee. The late payment charge shall,

after 30 days, be five percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount, plus the late payment charge, within 60 days following the billing date, an additional one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated 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.

[59 FR 48784, Sept. 23, 1994]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, §947.141 was suspended, effective July 1, 2000.

REESTABLISHMENT OF DISTRICTS

§947.150 Reestablishment of districts.

Pursuant to §947.32(b) and the recommendation of the Oregon-California Potato Committee, the counties of Jackson and Josephine in the State of Oregon (currently a portion of District No. 3) are reestablished as a part of District No. 2. Terms used in this section shall have the same meaning as when used in said marketing agreement and this part.

[33 FR 14229, Sept. 20, 1968]

§947.160 Reapportionment of committee membership.

(a) Pursuant to §947.32(b), the membership of the Oregon-California Potato Committee shall be apportioned among the districts so as to provide the following representation: (1) Producer membership—two members from each of Districts No. 2 and No. 5; three members from District No. 4; and one member from each of Districts No. 1 and No. 3; (2) Handler membership—one member from each of Districts No. 1, No. 2, No. 3, No. 4, and No. 5. The respective alternates shall be selected on the same basis of representation as the members.

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

[39 FR 30825, Aug. 26, 1974]

REPORTS

Subpart—Assessment Rates**§ 947.247 Assessment rate.**

On and after July 1, 1997, an assessment rate of \$0.004 per hundredweight is established for Oregon-California potatoes.

[61 FR 27248, May 31, 1996, as amended at 62 FR 27171, May 19, 1997]

EFFECTIVE DATE NOTE: At 65 FR 42278, July 10, 2000, § 947.247 was suspended, effective July 1, 2000.

Subpart—Handling Regulations**§ 947.340 Handling regulation.**

No person shall handle any variety of potatoes grown in the production area, except for non-white fleshed varieties of potatoes, unless such potatoes meet the requirements specified in paragraphs (a) through (f) of this section, or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* Such potatoes grade at least U.S. No. 2.

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure 1¾ inches in diameter or less may be shipped if such potatoes otherwise grade at least U.S. No. 1.

(c) *Cleanness requirements.* All varieties and grades—As required in the United States Standards for Grades of Potatoes, except that U.S. Commercial may be no more than “slightly dirty.”

(d) *Maturity (skinning) requirements.* (1) Round and White Rose varieties: not more than “moderately skinned.”

(2) Other Long Varieties (including but not limited to Russet Burbank and Norgold): not more than “slightly skinned.”

(3) Not to exceed a total of 100 hundredweight of potatoes may be handled during any seven day period without meeting these maturity requirements. Prior to shipment of potatoes exempt from the above maturity requirements, the handler shall obtain from the committee a Certificate of Privilege.

(e) *Pack.* Potatoes packed in cartons shall be either: (1) U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects; or (2) U.S. No. 2 potatoes weighing at least 10 ounces.

(f) *Inspection.* (1) Except when relieved by paragraphs (g) and (h), or (i) of this section and paragraph (f)(2) of this section, no person shall handle potatoes without first obtaining inspection from an authorized representative of the Federal-State Inspection Service.

(2) Handlers making shipments from facilities located in an area where inspection costs would otherwise exceed one and one-half times the current per-hundredweight inspection fee, are exempt from on-site inspection provided such handler has made application to the committee for inspection exemption on forms supplied by the committee, and provided further that such handler signs an agreement with the committee to report each shipment on a daily basis and pay the committee a sum equal to the current inspection fee.

(3) For the purpose of operation under this part each required inspection certificate is hereby determined, pursuant to § 947.60(c) to be valid for a period of not to exceed 14 days following completion of inspection as shown on the certificate. The validity period of an inspection certificate covering inspected and certified potatoes that are stored in mechanically refrigerated storage within 14 days of the inspection shall be 14 days plus the number of days that the potatoes were held in refrigerated storage.

(4) Any lot of potatoes previously inspected pursuant to §947.60 and certified as meeting the requirements of this part is not required to have additional inspection under §947.60(b) after regrading, resorting, or repacking such potatoes, if the inspection certificate is valid at the time of regrading, resorting, or repacking of the potatoes.

(g) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, pack and inspection requirements set forth in paragraphs (a) through (f) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Certified seed, subject to applicable safeguard requirements of paragraph (h) of this section.

(2) Livestock feed: However, potatoes may not be handled for such purposes if destined to points outside of the production area, except that shipments to the counties of Benton, Franklin and Walla Walla in the State of Washington and to Malheur County, Oregon, may be made, subject to the safeguard provisions of paragraph (h) of this section.

(3) Planting in the district where grown: Further, potatoes for this purpose grown in District No. 2 or District No. 4 may be shipped between those two districts.

(4) Between districts within the production area for grading or storing. In addition, potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

(5) Charity: Except that shipments for charity may not be resold if they do not meet the requirements of the marketing order, and that shipments in excess of 5 hundredweight per charitable organization shall be subject to the safeguard provisions of paragraph (h) of this section.

(6) Starch manufacture.

(7) Canning, freezing, prepeeling, and "other processing" (except starch manufacturing) as hereinafter defined (including storage for such purposes).

(h) *Safeguards.* (1) Each handler making shipments of certified seed outside the district where grown pursuant to

paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on Special Purpose Shipment Report forms.

(2) Each handler making shipments of potatoes pursuant to paragraphs (g)(2) and (g)(5) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments on Special Purpose Shipment Report forms at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to paragraph (g)(7) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee pursuant to §947.134. Further, each handler making such shipments shall obtain a Certificate of Privilege from the committee and shall promptly report each shipment to the committee on Special Purpose Shipment Report forms.

(i) *Minimum quantity exemption.* Any person may handle not more than 19 hundredweight of potatoes on any day without regard to the inspection requirements of §947.60 and to the assessment requirements of §947.41 of this part except no potatoes may be handled pursuant to this exemption which do not meet the requirements of paragraphs (a), (b), (c), (d) and (e) of this section. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

(j) *Definitions.* (1) The terms *U.S. No. 1*, *U.S. Commercial*, *U.S. No. 2*, *Size B*, *moderately skinned* and *slightly 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 therein.

(2) The term *slightly dirty* means potatoes that are not damaged by dirt.

(3) The term *prepeeling* means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in §52.2422, United States

Standards for Grades of Peeled Potatoes (7 CFR 52.2421-52.2433).

(4) 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, or starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing."

(5) The term *non-white fleshed potatoes* means all colored fleshed varieties of potatoes other than white-fleshed varieties of potatoes.

(6) Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114, as amended, and this part.

[53 FR 2996, Feb. 3, 1988, as amended at 53 FR 49114, Dec. 6, 1988; 54 FR 46718, Nov. 7, 1989; 56 FR 55986, Oct. 31, 1991; 57 FR 24542, June 10, 1992; 58 FR 33019, June 15, 1993]

EFFECTIVE DATE NOTE: At 64 FR 34117, June 25, 1999, §947.340 was suspended, effective July 1, 1999, through June 30, 2000. At 65 FR 42278, July 10, 2000, §947.340 was further suspended, effective July 1, 2000.

EDITORIAL NOTE: After Jan. 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (i.e. sections .200 through .299) and "Handling" regulations (i.e. sections .300 through .399), which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 948—IRISH POTATOES GROWN IN COLORADO

Subpart—Order Regulating Handling

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