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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[FV–96–703FR]

Potato Research and Promotion Plan; Suspension of Portions of the Plan; Amendments of the Regulations Regarding Importers' Votes; and Clarification of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA or the Department) is adopting without modification as a final rule an interim final rule which suspended portions of the Potato Research and Promotion Plan (Plan) that required National Potato Promotion Board (Board) members to be nominated at meetings, suspended obsolete provisions in the Plan, amended the rules and regulations issued under the Plan to provide for mail balloting as an alternative means of selecting nominees for appointment, permitted importer members of the Board to vote on the basis of the volume of imported potatoes, and provided in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another designated handler.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free).

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan (Plan) [7 CFR Part 1207]. The Plan is authorized by the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627], hereinafter referred to as the Act.

Executive Order 12988

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act, a person subject to a plan may file a petition with the Secretary of Agriculture (Secretary) stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] (RFA), the Agency has examined the impact of this rule on small entities. Accordingly, we have performed this final regulatory flexibility analysis.

According to data from the 1992 Census of Agriculture, published by the Department of Commerce, there are approximately 6,744 potato producers who grow potatoes on 5 or more acres and are thus subject to the provisions of the Plan. Of these, approximately 4,817 potato producers may be classified as small agricultural producers. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. Therefore, the majority of potato producers may be classified as small entities.

According to data from the Board, there are an estimated 1,511 potato handlers, 334 importers of potatoes and potato products for human consumption, and 27 importers of seed potatoes who are subject to the provisions of the Plan. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5 million. For the purpose of this analysis, it is concluded that the majority of potato handlers and importers are small entities.

The 1997 U.S. potato crop is at 46.6 billion pounds, down 8 percent or approximately 3.9 billion pounds from 1996. For 1997, Idaho leads in the production of potatoes with 29 percent of the total, followed by Washington (19 percent). Colorado, Oregon, and Wisconsin each produced 6 percent of the 1997 crop, and North Dakota contributed 5 percent to the total. Other major producing states in 1997 were Minnesota, Maine and California (4 percent each), and Michigan (3 percent). Nebraska, New York, and Florida each produced approximately 2 percent of the U.S. total; all other states produced less than 1 percent each. Per capita consumption of potatoes in the United States has increased from 125.2 pounds in 1976 to 142.4 pounds in 1997.

Using preliminary data from NASS that shows an average U.S. farm price for potatoes in 1997 was $5.68 per cwt., the value of the 1997 U.S. potato crop is estimated at $2.60 billion.

Exports of all types of potatoes and potato products during 1997 totaled approximately 4.3 billion pounds on a fresh weight basis. East Asia and Pacific Rim countries are the largest markets for frozen potatoes and frozen french fries, while Canada is the largest market for exports of U.S. tablestock and seed potatoes.

Imports of tablestock, seed potatoes, and processed potatoes (frozen, canned, chips, etc.) for 1997 totaled 2.7 billion pounds on a fresh weight basis. Tablestock, seed potatoes, and frozen potato products accounted for about 94 percent of the total value of potato imports, and over 99 percent of these items came from Canada. Starch for

human consumption accounted for about 4 percent of the total value of potato imports. Nearly all imports of potato starch for human consumption came from Europe, with The Netherlands accounting for 57 percent, and Germany 34 percent of the total tonnage. The remaining two percent of the value of total potato imports was from flour, flakes, granules, and chips.

The Board administers a national program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position and to maintain and expand domestic and foreign markets for potatoes and potato products. The program is financed by assessments on producers of 5 or more acres of potatoes (collected by the first handler) and on all imported fresh or processed potatoes for human consumption and seed potatoes (collected by the U.S. Customs Service). The Secretary has oversight responsibility for the Board's activities. There are currently 107 Board members—102 producers; 4 importers; and 1 public member—who are appointed by the Secretary to serve a 3-year term on the Board. Approximately one third of the members' terms of office expire each year on the last day of February.

On September 2, 1997 [62 FR 46175], an interim final rule suspended portions of the Plan and amended the rules and regulations issued under the Plan.

The suspension of portions of the Plan eliminated the requirement that industry members be nominated for appointment to the Board only at meetings of producers or importers. The rules issued under the Plan are also being amended to provide mail balloting as an alternative means of selecting nominees for appointment.

At the time, the Plan required nominations for producer and importer members to be submitted to the Department of Agriculture (USDA or the Department) by November 1 of each year for appointments to be made by the Secretary by March 1 of the following year. In order to provide the largest number of producers an opportunity to participate, nomination meetings are typically held in conjunction with meetings of state or local potato or vegetable industry organizations, usually late in the fall after harvesting. However, in many cases, this places nomination meetings close to or after the November 1 deadline for submitting nominations to USDA. Additionally, in some states, potato production may be in widely separated locations, posing a hardship for growers to attend meetings. In some cases, growers must travel several hundred miles and incur the expense of an overnight stay in order to participate in a nomination meeting. In these cases, attendance at meetings has suffered.

In addition, all importers have had to fly to Denver to attend a 1-hour nomination meeting.

For several years, the Board discussed this problem with USDA. At its January 1997 meeting, the Board's Administrative Committee, acting on behalf of the Board, voted to recommend to USDA that action be taken to suspend portions of the Plan and to amend the rules and regulations to permit members of the potato industry the flexibility to choose the manner of nominating candidates for appointment. Providing the option of a mail ballot for nominating candidates provided an opportunity for a greater number of industry members to participate in the nomination process. In some cases, the burden and expense for producers to travel long distances to attend a nomination meeting has been eliminated. Permitting an optional means of nominating importers members also eliminated the time and expense currently incurred for importers to participate in these meetings. Additionally, nomination activity no longer has to be coupled with industry meetings, thus permitting the nomination process to take place early enough that the nominees' applications for appointment can be forwarded to USDA well before the November 1 deadline.

If these changes had not been made, producers and importers would have continued to incur financial and time loss to attend and participate in nomination meetings, and attendance at these meetings would have continued to suffer.

The second amendment to the rules and regulations permitted importer members of the Board to vote on the basis of the volume of imported potatoes, processed potato products, and seed potatoes in the same manner as producer members of the Board vote on the basis of domestic potato production. Since the program's inception, the Plan permitted producer members to call for a vote by the production of each State. In the 1990 Farm Bill, Congress amended the Act to include, along with other changes, imported potatoes and potato products for human consumption and seed potatoes under the program's provisions. When the Plan and rules and regulations were amended to conform with the amended Act, a provision permitting importers to vote on the basis of the volume of imported potatoes was inadvertently omitted. In production votes taken by the Board since imports were included in the program's provisions, importers have voted the volume of potato imports on a fresh-weight basis.

The interim final rule corrected the oversight and included provisions in the regulations to reflect the procedure currently in practice. Importers' votes carry the same proportional weight as producers' votes, resulting in equitable treatment of importers.

The third amendment made by the interim final rule specified in the rules and regulations that designated handlers of potatoes must report to the Board those potatoes of their own production for which the assessment has been paid by another first handler.

Previously, the regulations required designated handlers of potatoes to report and pay assessments on the potatoes of someone else's production that they handle. In some cases, designated handlers are also producers, and the assessment for their potato production may be paid by another designated handler. For example, a processor who purchases field-run potatoes is considered the designated handler and is responsible for reporting to the Board and paying assessments on those potatoes even though the producer may also be a designated handler who is also submitting reports and assessments to the Board. In order for the Board to assure that all handling has been reported and assessments have been paid and credited to the producer, the Board must be able to cross-reference the handling of potatoes on the reports of both designated handlers.

The authority for this information collection exists in § 1207.350 of the Plan. The rulemaking was necessary to provide in the text of the regulation concerning designated handlers' reporting responsibilities that designated handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another designated handler. The information collection burden and the form used to collect the information on handling of potatoes have been reviewed and approved by OMB under approval number 0581–0093. The 1-hour-per-response burden currently approved includes the time necessary for designated handlers to provide information on assessments paid by another designated handler on the reporting form submitted no more often than monthly. This information is readily available from the confirmation each designated handler is required to provide to producers on the amount of assessments paid on their behalf.

In addition, the interim final rule suspended obsolete provisions in the Plan referring to meetings, nomination of the initial Board, and references to importer organizations.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

This rule finalizes the action that permitted importer members of the Board to vote on the basis of the volume of imported potatoes. This revision does not affect the estimated burden on potato growers or designated handlers.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The changes contained in this action finalize the suspension of obsolete provisions in the Plan, provide for alternative means of nominating candidates for appointment to the Board, provide importer members a vote by volume at meetings, and clarify handlers' reporting requirements. These changes enhance the efficiency of the operation of the potato research and promotion program and reduce the financial burden on industry members when nominating candidates for appointment by the Secretary. Accordingly, we believe that these revisions are the best alternatives to facilitate the nomination process, provide for importer voting by production, and to clarify handlers' reporting requirements.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The information collection and recordkeeping requirements related to this action were previously approved by OMB under number 0581–0093.

Eliminating the requirement that industry members be nominated to serve on the Board at meetings and providing the alternative of mail balloting is less burdensome, overall, for potato producers and importers, but the information collection burden remains the same. When nominations are conducted by mail ballot rather than at a meeting, the nomination ballot will be completed and mailed instead of being turned in at a meeting.

The second amendment to the rules and regulations permits importer members of the Board to vote on the basis of the volume of imported potatoes, processed potato products, and seed potatoes in the same manner as producer members of the Board vote on the basis of domestic potato production. This amendment corrects an oversight and includes provisions in the regulations to reflect procedures currently in practice. Importers' votes carry the same proportional weight as producers' votes and will result in equitable treatment of importers. There is no burden associated with importers voting at Board meetings.

The third amendment provides in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another handler. The information collection burden and the form used to collect information on handling of potatoes have been reviewed and approved by the OMB under approval number 0581-0093. The 1-hour-per-response burden currently approved includes designated handlers providing information on assessments paid by another designated handler on the reporting form submitted no more often than monthly.

The form requires the minimum information necessary to effectively carry out the requirements of the program, and its use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion Board. The forms are simple, easy to understand, and place as small a burden as possible on the person required to file the information. This action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers.

Background

This action finalizes an interim final rule which suspended portions of the Plan and amended three sections of the rules and regulations issued under the Plan.

The suspension of portions of the Plan eliminated the requirement that industry members be nominated for appointment to the Board only at a meeting of producers or importers. Other obsolete provisions of the Plan were also suspended. The rules issued under the Plan were also amended to provide an alternative means of selecting nominees for appointment such as by a mail ballot of the industry.

Previously, the Plan required nominations for producer and importer members be submitted to USDA by November 1 of each year for appointments to be made by the Secretary by March 1 of the following year. In order to provide the largest number of producers an opportunity to participate, nomination meetings are typically held in conjunction with meetings of state or local potato or vegetable industry organizations, usually after harvesting. However, this places nomination meetings close to or after the November 1 deadline for submitting nominations to USDA. Additionally, in some states, potato production may be in widely separated locations, posing a hardship for a grower—in some cases traveling several hours and incurring the cost of an overnight trip—in order to participate in a nomination meeting.

In the case of importer nominations, the Plan provided that the Board could call upon organizations of potato, potato products, and/or seed potato importers to assist in nominating importers for appointment to the Board. This provision was intended to allow importers the opportunity to nominate importer members from their own membership. However, no such organizations have been found to exist, and the Board has conducted importer nomination meetings in Denver. Importers must therefore travel to Denver for nomination meetings.

For several years, the Board discussed this problem with USDA. At its January 1997 meeting, the Board's Administrative Committee, acting on behalf of the Board, voted to recommend to USDA that action be taken to suspend portions of the Plan and to amend the rules and regulations to permit members of the potato industry the flexibility to choose the manner of nominating candidates for appointment in a manner that would provide for the ability for a greater number of industry members to participate in the nomination process with less of a burden.

In order to do this, the interim final rule suspended wording referring to meetings in § 1207.322 of the Plan. Paragraph (a) of § 1207.322 dealt only with nomination of the initial Board and was thus obsolete. Therefore, paragraph (a) was suspended in its entirety. References to meetings were suspended in paragraphs (b) and (c).

Also, because no organizations of potato importers exist, references to importer organizations are unnecessary and were suspended in § 1207.322(d).

In addition, references in § 1207.503 of the rules and regulations to meetings and importer organizations were removed and amendments made to this section to provide the option of mail balloting to nominate producers and importers for appointment to the Board.

A second amendment to the rules and regulations dealt with importers being able to vote on the basis of the volume of the fresh-weight equivalent of imported potatoes and potato products for human consumption and seed potatoes in the same manner that producer members can vote on the basis of potato production within each State.

One of the 1990 Farm Bill amendments to the Act [7 U.S.C. 2611 *et seq.*] extended the Act's coverage to imported potatoes, potato products, and seed potatoes and provided for importer representation on the Board. When the Plan and rules and regulations issued under the Plan were subsequently amended in 1991 to conform with the amended Act, a provision permitting importer members to vote on the basis of the volume of imported product was inadvertently overlooked. From the program's inception, § 1207.325 of the Plan authorized producer members of the Board to call for a production vote in which the Board members from each State are allocated votes based on that State's fresh potato production (i.e., one vote for each 1 million hundredweight of potatoes).

In production votes taken by the Board since imports were included in the program's provisions, importers have voted the volume of potato imports on a fresh-weight basis. At its March 1996 annual meeting, the Board voted to amend the rules and regulations to correct this oversight by amending § 1207.505 to provide the same voting rights as afforded to producer members.

The third amendment provided in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler.

Section 1207.350(a) of the Plan provides authority for the Board to prescribe in the regulations the information designated handlers must report in order for the Board to perform its duties, and this information is set forth in § 1207.513 of the regulations. Some designated handlers are also potato producers and, in some cases, the assessment for their potato production may be paid by another designated handler. For example, a processor who purchases field-run potatoes is considered the designated handler and is responsible for reporting to the Board and paying assessments on those potatoes even though the producer may also be a designated handler who is also submitting reports and paying assessments to the Board. In order for the Board to assure that all handling has been reported and assessments have been paid and credited to the producer, the Board must be able to cross-reference the handling of potatoes on the reports of both handlers. Since § 1207.513 of the regulations did not specifically state that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler, it was necessary to amend this section to provide that handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another first handler. Therefore, the interim final rule amended § 1207.513 of the regulations to provide for this reporting.

The interim final rule was issued on August 26, 1997, and published in the **Federal Register** [62 FR 46179] on September 2, 1997. The deadline for comments was November 3, 1997. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board, it is hereby found that the suspended sections of the Plan no longer tend to effectuate the declared policy of the Act. In addition, it is found that the amendments to the rules and regulations are necessary for the appropriate administration of the Plan and the rules and regulations and that they are consistent with the intention of the Act.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Accordingly, the interim final rule amending 7 CFR Part 1207 which was published at 62 FR 46175 on September 2, 1997, is adopted as a final rule without change.

Dated: September 30, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–26763 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 98–033–2]

Tuberculosis in Cattle, Bison, and Captive Cervids; Indemnity for Suspects

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning animals destroyed because of tuberculosis to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Animal and Plant Health Inspection Service that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. The interim rule also amended the regulations to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to the interim rule, owners of cattle, bison, and captive cervids could only receive Federal indemnity for affected and exposed animals destroyed because of tuberculosis, and animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. The interim rule was necessary to ensure continued progress toward eradicating tuberculosis in U.S. livestock.

EFFECTIVE DATE: The interim rule was effective on June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or e-mail: james.p.davis@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans,