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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

7 CFR Part 1207

[Document Number AMS-FV-13-0027]

**Potato Research and Promotion Plan; Amend the Administrative Committee Structure and Delete the Board's Mailing Address**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the structure of the Administrative Committee (Committee) of the U.S. Potato Board (Board) and deletes the Board's mailing address from the Potato Research and Promotion Plan. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). Under the Plan, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine. This change is intended to facilitate increased involvement in the Board's leadership opportunities. Further, the Board's office has been relocated and the address must be changed in the regulations. The deletion of the Board's mailing address from the regulations will require no further amendment to the regulations if the Board's office is relocated again.

**EFFECTIVE DATE:** [INSERT DATE ONE DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (301) 334-2891; toll free (888) 720-9917; facsimile (202) 205-2800; or electronic mail: Patricia.Petrella@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Potato Research and Promotion Plan (Plan) (7 CFR part 1207). The Plan is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611-2627).

**Executive Order 12866 and Executive Order 13563**

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA 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 request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided that a complaint is filed not later than 20 days after date of the entry of the ruling.

### **Background**

This rule amends the structure of the Committee of the Board and deletes the Board's mailing address from the regulations. The Plan is administered by the Board with oversight by USDA. Under the Plan, assessments are collected from handlers and importers and used for projects to promote potatoes and potato products.

This rule modifies the structure of the Board's Administrative Committee as prescribed in the Plan by increasing the number of Vice-Chairperson positions on the Committee from seven to nine. These additional positions would be allocated, as provided in the Board's bylaws, to the Northwest and North Central caucuses. The Northwest district includes Alaska, Idaho, Montana, Oregon and Washington. The North Central district includes Illinois, Indiana, Iowa, Michigan, Missouri, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin. With this action, Board representation at the executive level for potato producers in the Northwest district increases from 28.5 percent to 33 percent and in the North Central district from 14 percent to 22 percent.

Section 1207.327(b) of the regulations provides the authority to the Board to make rules and regulations, with USDA approval, to effectuate the terms and conditions of the Plan. Section 1207.328(a) of the Plan provides the authority to the Board to select from its members such officers as may be necessary and to adopt such rules for the conduct of its business as the Board may deem advisable.

Section 1207.507(a) of the Plan's administrative rules delineates the structure of the Board's Administrative Committee. The Committee is selected from among Board members, and is composed mostly of producer members, with one or more importer member(s), and the public member. The Board, through the

adoption of its bylaws, may prescribe the manner of selection and the number of members; except that the regulations mandate that the Committee shall include a Chairperson and a fixed number of Vice-Chairpersons. The change is intended to facilitate increased involvement in the Board's leadership opportunities from the Northwest and North Central caucuses and possibly increase diversity at higher positions on the Board.

Prior to this change, the Plan provided for seven Vice-Chairperson positions on the Committee. Vice-Chairperson positions are allocated in the Board's bylaws to represent production districts as determined by the Board. This action increases the number of Vice-Chairperson positions to nine. The additional Vice-Chairpersons would be allocated to the Northwest and North Central caucuses, which historically have been the caucuses with the greatest production.

The second change will delete the Board's mailing address from the Plan's rules and regulations. Section 1207.501 of the Plan specifies that all communications in connection with the Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado, 80231. The Board moved to a new location within Denver, Colorado. Therefore, this section would need to be amended. However, USDA is recommending that this section be deleted so no further amendment would be required if the Board moves its office in the future. Interested persons wanting to contact the Board can

reach them through their website, Facebook, or smartphone application.

### **Board Recommendation**

The Board met on March 14, 2013, and unanimously recommended amending the Committee structure of the Board and amending the Board's mailing address from the Plan. This action would contribute to effective administration of the program.

### **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

According to the Board, it is estimated that in 2013 there are about 2,500 producers, 1,030 handlers and 240 importers of potatoes and potato products who are subject to the provisions of the Plan.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (domestic handlers and importers) as those having annual receipts of no more than \$7.0 million. Under these definitions, the majority of

the handlers, producers and importers that would be affected by this rule would be considered small entities.

This rule amends the structure of the Administrative Committee of the Board and deletes the Board's mailing address from the regulations. The Plan is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). As provided for in the regulations, there are seven Committee Vice-Chairperson positions. The Board has recommended that these positions be increased to nine Vice-Chairpersons. This change is intended to facilitate increased involvement in the Board's leadership opportunities. The deletion of the Board's mailing address will require no further amendment to the regulations if the Board's office is relocated. The Board's office is being relocated without the amendment to the regulations made in this final rule. A change to the regulations would be necessary.

This rule will amend section 1207.507(a) of the regulations by changing the number of Vice-Chairperson positions from seven to nine. Also, the Board's office address will be removed from § 1207.501 of the regulations.

Regarding the economic impact of this rule on affected entities, this action will impose no costs on producers, handlers, and importers as a result of this action. Both changes are administrative in nature; it would merely provide additional opportunities for increased involvement by producers in the

Board's leadership opportunities from the larger production areas.

Regarding alternatives, one option to the action would be to maintain the status quo and not change the Administrative Committee structure. This will not alleviate the concerns voiced by the Northwest and North Central caucuses for more representation and leadership opportunities. The Board also considered combining the Southwest caucus into the Northwest caucus. The Board concluded that this would cause the Southwest producers to lose their representation as there are more Northwest producers and the available seats could possibly be absorbed by all Northwest producers. Therefore, the recommendation was approved, as it will allow greater opportunity for producers from the Board's two largest caucus districts to become engaged in the Board's leadership structure. This action will also make the representation on the Board more equitable according to production.

A proposed rule concerning this action was published in the **Federal Register** on June 28, 2013 (78 FR 38846). The proposal was made available through the Internet by USDA, the Office of the Federal Register, and the Board. A 15-day comment period ending July 15, 2013, was provided to allow interested persons to submit comments.

#### **Analysis of Comment**

One comment was received in response to the proposed rule. The comment is addressed in the following paragraphs. The commenter raised a number of issues concerning the need for the program to spend American tax dollars and that another Federal bureaucracy is unnecessary; retaining the Board's address in the regulatory text; decreasing the number of Vice-Chairpersons to five; and conducting meetings by video or webinar.

One issue that the commenter raised was that there is no need for the program to spend American tax dollars and that another Federal bureaucracy is unnecessary. The program is paid for by the potato industry through assessments on domestic handlers and importers. Research and promotion programs overseen by USDA are self-help programs funded by their respective industry and do not receive taxpayer funds. The Potato Research and Promotion Program authorized by the Potato Research and Promotion Act and the Potato Research and Promotion Plan itself was established in March 1972.

Another issue stated by the commenter was that the Board's address should be retained in the regulatory text. The deletion of the Board's mailing address from the regulatory text will require no further amendments to the regulations. The Board can easily be contacted by using their website, Facebook or smartphone application. Further, the Board's website in addition to the USDA website contain the Board's address. In addition, deleting the address is a cost savings measure to the potato

industry since no further rulemaking will be necessary if the Board moves its offices in the future.

The commenter also recommended that the Vice- Chairpersons should be decreased to five instead of nine as proposed by the Board. The Board recommended this change and discussed it thoroughly at various meetings. The change will facilitate increased involvement in the Board's leadership opportunities from the Northwest and North Central caucuses and possibly increase diversity at higher positions on the Board. Decreasing the number of Vice-Chairpersons on the Board would not accomplish the intent of the change.

Finally, the commenter commented that Board meetings should be on the web and videoed for the public to view. The Board meets in person once a year and the Administrative Committee meets three times a year. During certain circumstances committees will meet by teleconference. All meetings of the Board are open to the public and minutes of all the meetings are available. Accordingly, based upon our consideration of the comment received no changes have been made to the regulatory text.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. This rule will not result in a change to the information collection and

recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on potato producers, handlers, and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, this action was discussed by the Board at meetings over the past year. Board members discussed the changes with their respective regions and received positive feedback. The Board met in March 2013 and unanimously made its recommendation. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the

declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Administrative Committee is meeting on October 21, 2013, and it would be appropriate that the additional Vice-Chairpersons should be able to participate in those meetings. In addition, the Board's office has already relocated so the address needs to be deleted promptly. Further, handlers, producers and importers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 1207**

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1207 is amended as follows:

**PART 1207—POTATO RESEARCH AND PROMOTION PLAN**

1. The authority citation for 7 CFR part 1207 continues to read as follows:

**Authority:** 7 U.S.C. 2611-2627 and 7 U.S.C. 7401.

**§ 1207.507 [Removed and Reserved]**

2. Section 1207.501 is removed and reserved.

3. Section 1207.507(a) is revised to read as follows:

**§ 1207.507 Administrative Committee.**

(a) The Board shall annually select from among its members an Administrative Committee composed of producer members as provided for in the Board's bylaws, one or more importer members, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and nine Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

\* \* \* \* \*

Dated: August 16, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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