

Subpart—Potato Research and Promotion Plan

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

§ 1207.302 Act.

Act means the Potato Research and Promotion Act, Title III of Public Law 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041, as amended.

[56 FR 40229, Aug. 14, 1991]

§ 1207.303 Plan.

Plan means this potato research and promotion plan issued by the Secretary pursuant to the act.

§ 1207.304 Person.

Person means any individual, partnership, corporation, association, or other entity.

§ 1207.305 Producer.

Producer means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

[56 FR 40229, Aug. 14, 1991]

§ 1207.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

§ 1207.308 Handler.

Handler means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

§ 1207.309 Board.

Board means the National Potato Promotion Board, hereinafter established pursuant to §1207.320.

§ 1207.310 Fiscal period and marketing year.

Fiscal period and marketing year mean the 12-month period from July 1 through June 30 of the following year or such other period which may be approved by the Secretary.

§ 1207.311 Programs and projects.

(a) The term of office of Board members shall be 3 years, beginning July 1, or such other beginning date as may be approved pursuant to regulations.

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve for more than two full successive terms of office.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40229, Aug. 14, 1991]

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

(a) A meeting or meetings of producers shall be held in each State to nominate producer members for the Board. For nominations to the initial Board the meetings shall be announced by the U.S. Department of Agriculture. The Department may call upon other organizations to assist in conducting the meetings such as State and national organizations of potato producers. Such nomination meetings shall be held not later than 60 days after the issuance of this subpart. Any organization designated to hold such nomination meetings shall give adequate notice of such meetings to the potato producers affected; also to the Secretary so that a representative of the Secretary, if available, may conduct such meetings or act as secretary of such nomination meetings.

(b) After the establishment of the initial Board, the nominations for subsequent Board producer members shall be made by producers at meetings in the producing sections or States. The Board shall hold such meetings, or cause them to be held, in accordance with rules established pursuant to recommendation of the Board.

(c) Only producers may participate in designating producer nominees. Each producer is entitled to one vote only on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives for each position for which nominations are being held. If a producer is engaged in producing potatoes in more than one State, he shall elect the State in which he shall vote. In no event shall he vote in nominations in more than one meeting.

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

- (1) How many importers belong to the association;
- (2) What percentage of the total number of importers is represented by the association;
- (3) Is the association representative of the potato, potato product, and seed potato import industry;
- (4) Does the association speak for potato, potato product, and seed potato importers; and
- (5) Other relevant information as may be warranted.

- (c) To receive, investigate, and report to the Secretary complaints of violations of this plan; and
- (d) To recommend to the Secretary amendments to this plan.

§ 1207.328 Duties.

The Board shall, among other things, have the following duties:

- (a) To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of Board members to nominate the public member; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members;
- (b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;
- (c) At the beginning of each fiscal period, to prepare and submit to the Secretary for his approval a budget on a fiscal period basis of the anticipated expenses in the administration of this plan including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;
- (d) To develop programs and projects and to enter into contracts or agreements for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this plan;
- (e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;
- (f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;
- (g) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;
- (h) To act as intermediary between the Secretary and any producer, handler, or importer;
- (i) To furnish the Secretary such information as he may request.
- (j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40230, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

Research and Promotion

§ 1207.335 Research and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

- (a) The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products: *Provided, however,* That any such program or project shall be directed toward increasing the general demand for potatoes and potato products;

§ 1207.343 [Reserved]

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

§ 1207.350 Reports.

(a) Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties under this part. Such reports may include, but shall not be limited to, the following:

- (1) Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;
- (2) Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments, and
- (3) Name and address of each person from whom he collected an assessment, the amount collected from each person, and the date such collection was made.

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person; or

(b) The publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

Unless otherwise expressly provided by the Secretary, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment 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 plan or any regulation issued thereunder, or (b) release or extinguish any violation of this plan or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1207.365 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes, or other acts, either of commission or omission, as such member except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

Source: 37 FR 17379, Aug. 26, 1972, unless otherwise noted.

Definitions

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

(b) *Processor.* *Processor* means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

(c) *Imported frozen or processed potatoes for ultimate consumption by humans.* *Imported frozen or processed potatoes for ultimate consumption by humans* means products which are imported into the United States which the Secretary determines contain a substantial amount of potato.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40231, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

General

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado 80231.

[59 FR 44036, Aug. 26, 1994]

§ 1207.502 Determination of membership.

(a) Pursuant to §1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

§ 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 seven Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to §1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to §1207.513(d).

(2) [Reserved]

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of and in the name of the Board in all administrative matters.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985; 56 FR 40231, Aug. 14, 1991; 59 FR 44036, Aug. 26, 1994; 71 FR 76901, Dec. 22, 2006]

§ 1207.508 USDA costs.

Pursuant to §1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

[49 FR 26202, June 27, 1984]

Assessments

§ 1207.510 Levy of assessments.

(a) *Domestic assessments.* (1) An assessment rate of 3 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States.

(2) No assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(b) *Assessments on imports.* (1) An assessment rate of 3 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 3 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the board through the U.S. Customs Service and Border Protection at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

(2) The following conversion factors shall be used to determine the fresh weight equivalents of frozen and processed potato products:

(c) Potatoes and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of §1207.515 of this subpart.

(d) No more than one such assessment shall be made on any potatoes or potato products.

[57 FR 40083, Sept. 2, 1992, as amended at 58 FR 3359, Jan. 8, 1993; 59 FR 44036, Aug. 26, 1994; 71 FR 11296, Mar. 7, 2006; 71 FR 50330, Aug. 25, 2006; 74 FR 63543, Dec. 4, 2009]

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth.

(a) Unless otherwise provided in paragraphs (a)(8), (b), and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce; there is no designated handler in this instance since the potatoes have not been

- (i) Date of report (which is also date of payment to the Board).
- (ii) The name and address of the designated handler;
- (iii) The period potatoes were handled;
- (iv) The total quantity of potatoes determined to be assessable during the period potatoes were handled, pursuant to §1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts or pay the assessment themselves shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such settlement sheets contain all the information listed above.

(ii) The words "final report" shall be shown on the last report at the close of his marketing season or at the end of each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of §1207.352 *Confidential treatment*, of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

(2) [Reserved]

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997]

§ 1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least 2 years beyond the end of the marketing year of their applicability:

- (a) One copy of each report made to the Board; and
- (b) Such records as are necessary to verify such reports.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

[56 FR 40232, Aug. 14, 1991]

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581-0093.

[49 FR 23826, June 8, 1984]

Confidential Information

1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in §1207.352 of the Plan.

[56 FR 40232, Aug. 14, 1991]

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.