

## SUBCHAPTER D—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

### PART 80—FRESH IRISH POTATOES

#### Subpart A—Fresh Irish Round White Potatoes—Diversion Program

- Sec.
- 80.1 General statement.
  - 80.2 Administration.
  - 80.3 Definitions.
  - 80.4 Length of program.
  - 80.5 Rate of payment.
  - 80.6 Eligibility for payment.
  - 80.7 Application and approval for participation.
  - 80.8 Inspection and certificate of diversion.
  - 80.9 Claim for payment.
  - 80.10 Compliance with program provisions.
  - 80.11 Inspection of premises.
  - 80.12 Records and accounts.
  - 80.13 Offset and assignments.
  - 80.14 Appeals.

#### Subpart B—[Reserved]

AUTHORITY: 7 U.S.C. 612c.

SOURCE: 58 FR 29098, May 19, 1993, unless otherwise noted.

#### Subpart A—Fresh Irish Round White Potatoes—Diversion Program

##### § 80.1 General statement.

In order to encourage the domestic consumption of 1992 crop fresh Irish round white potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), offers to make payment to producers who divert potatoes that they produced by donating them to charitable institutions for human consumption or by using such potatoes as livestock feed or for compost purposes in accordance with the terms and conditions set forth herein.

##### § 80.2 Administration.

The program will be administered under the general direction and supervision of the Director, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), United States Depart-

ment of Agriculture (USDA), and will be carried out by the Agricultural Stabilization and Conservation Service (ASCS), USDA, through ASC state and county committees. The ASC county committees will authorize one or more employees to act as representatives of the USDA, to approve applications for participation. The ASC state or county committees or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart.

##### § 80.3 Definitions.

(a) *Charitable institutions* mean those organizations which offer food, housing, and other necessities to low income, homeless, or other persons in need of assistance in obtaining basic sustenance.

(b) *Diversion* means the delivery of potatoes to an eligible outlet.

(c) *Eligible outlet* means charitable institutions, livestock feeding operations, or compost users.

(d) *Potatoes* mean 1992 crop fresh Irish round white potatoes produced and stored in the United States which:

(1) If intended for human consumption, meet all the requirements of chapter 125, section V.A., "Processing Grade" as defined by the "Official Classifications, Grades and Standards for Potatoes Packed in Maine," which can be obtained from the local county Agricultural Stabilization and Conservation Service Office, unless modified by the, "Application for Participation in Fresh Irish Round White Potatoes Diversion Program" (Form ASCS-117); or

(2) If intended for use as livestock feed or for use as compost meet minimum standards for Maine "Processing Grade", which can be obtained from the local county Agricultural Stabilization and Conservation Service Office, and are cut, chopped, sliced, gouged, crushed, ensiled, or cooked to the degree that the general appearance of the potatoes has been damaged to such an extent that the potatoes are readily and obviously identifiable as having been rendered unsuitable to

enter into normal channels of trade and commerce as potatoes as determined by ASCS or its representative.

(e) *Producer* means an individual, partnership, association, or corporation located in the United States that grew for market and are in possession of such potatoes as of May 19, 1993 and whose Form ASCS-117 has been approved by USDA.

**§ 80.4 Length of program.**

This program will be effective May 19, 1993 and will continue for 45 calendar days.

**§ 80.5 Rate of payment.**

The rate of payment for potatoes, as defined in § 80.3(d), will be \$3.00 per hundredweight. Payment will not be made for any fractional part of hundredweight.

**§ 80.6 Eligibility for payment.**

Payments will be made under this program to any producer of potatoes:

- (a) Who executes and files Form ASCS-117.
- (b) Whose application is approved.
- (c) Who diverts potatoes after the date Form ASCS-117 is approved by USDA before the termination date of this subpart.
- (d) Who files a claim as provided in § 80.10.
- (e) Who complies with all other terms and conditions in this subpart.

**§ 80.7 Application and approval for participation.**

(a) Applicants must submit a completed and signed Form ASCS-117 to the local ASCS county office. The Form ASCS-117s will be considered by the ASC county committee in the order received by the ASCS county office and in accordance with the availability of funds.

(b) Applicants will be notified of the approval or rejection of the submitted forms. Approved Form ASCS-117s may be modified or amended with the consent of the applicant and the duly authorized representative of the ASC county committee provided that such modification or amendment does not conflict with the provisions of this subpart.

**§ 80.8 Inspection and certificate of diversion.**

Prior to diversion, the potatoes must be inspected by an inspector authorized or licensed by the county, state, or Federal government to inspect and certify the class, quality, and condition of potatoes. The producer will be responsible for requesting and arranging for inspection so that the inspector can be present to determine which potatoes meet the definition of potatoes as provided in § 80.3(d). The producer must furnish such scale tickets, weighing facilities, or volume measurements as determined by the inspector to be necessary for ascertaining the net weight of the potatoes being diverted. The cost of inspecting, verifying the quantity, certifying that diversion has been performed, and issuing certificates will be borne by the producer. Certificates must be prepared on "Invoice Certificate of Inspection and Diversion" (Form ASCS-118).

**§ 80.9 Claim for payment.**

In order to obtain payment, the producer must submit to the county ASCS office which approved his application a properly executed Form ASCS-118, and (except where the producer is the livestock feeder) a certification of receipt by the charitable institution, livestock feeder, or compost user. All such claims must be filed not later than one calendar month after the termination date specified in the applicable approved application. For those potatoes which fail to meet the definition of potatoes (§ 80.3(d)), payments will be based on the percentage of the potatoes meeting the definition.

**§ 80.10 Compliance with program provisions.**

If USDA determines that any provisions of the application or of these regulations has not been complied with whether by the producer or by charitable institution, livestock feeder, or compost user or that any quantity of potatoes diverted under this program was not used exclusively for donation to charitable institutions, livestock feeders, or for compost, whether such failure was caused directly by the producer or by any other person or persons, the producer will not be entitled

to diversion payments in connection with such potatoes, and must refund any USDA payment made in connection with such potatoes, and will be liable to USDA for any other damages incurred as a result of such failure to use the potatoes exclusively for donation to charitable institutions or for use as livestock feed or compost. The USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if USDA determines that:

(a) The producer has failed to use or caused to be used any quantity of potatoes diverted under this program exclusively for donation to charitable institutions, livestock feed, or compost, whether such failure was caused directly by the producer or by any other person or persons,

(b) The producer has not acted in good faith in connection with any transaction under this program, or

(c) The producer has failed to discharge fully any obligation assumed by him under this program.

**§ 80.11 Inspection of premises.**

The producer, charitable institution, livestock feeder, or compost user must permit authorized representatives of USDA, at any reasonable time, to have access to their premises to inspect and examine such potatoes as are being diverted or stored for diversion, and to inspect and examine the facilities for diverting potatoes to determine compliance with the provisions of this program.

**§ 80.12 Records and accounts.**

The producer, the charitable institution, livestock feeder, or compost user participating in this program must keep accurate records and accounts

showing the details relative to the diversion and disposition of the potatoes. The producer, charitable institution, livestock feeder, or compost user must permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with the provisions of this program. Such records and accounts must be retained for three years after date of last payment to the producer under the program or for two years after date of audit of records by USDA as provided herein, whichever is the later.

**§ 80.13 Offset and assignment.**

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under state law, and without regard to any claim or lien against the crop or proceeds thereof in favor of the owner or any other creditor except statutory liens belonging to agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 3 shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

**§ 80.14 Appeals.**

Appeals under this part will be in accordance with 7 CFR part 780.

Subpart B—[Reserved]

PART 81—[RESERVED]