

SUBCHAPTER D—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

PART 80—FRESH IRISH POTATOES

Subpart A—Fresh Irish Potato—Diversion Program

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Subpart B [Reserved]

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

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

Subpart A—Fresh Irish Potato—Diversion Program

SOURCE: 62 FR 29650, June 2, 1997, unless otherwise noted.

§ 80.1 Applicability.

In order to encourage the domestic consumption of the 1996 crop of fresh Irish 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) (Section 32), will make payment to producers who divert fresh Irish potatoes that they produced by donating them to charitable institutions for human consumption or by using such fresh Irish potatoes as livestock feed 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 Department of Agriculture (USDA), and will be implemented by the Farm Service Agency (FSA). AMS, FSA, or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart.

§ 80.3 Definitions.

Application means Form FSA-117.

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

Diversion means the delivery of potatoes to an eligible outlet.

Eligible outlet means charitable institutions or livestock feeding operations.

Fresh Irish potatoes means the 1996 crop of all types and varieties of potatoes (except sweet potatoes) fit for human consumption and produced and stored in the United States.

Invoice and certificate of inspection and diversion means Form FSA-118.

Producer means an individual, partnership, association, or corporation located in the United States who grows potatoes for market and is in possession of such potatoes as of the date of May 29, 1997, and whose Form FSA-117 has been approved by USDA.

§ 80.4 Length of program.

This program will be effective May 29, 1997, and will continue until August 27, 1997. Producers diverting potatoes to charitable institutions must file an application at the FSA office responsible for the county in which the farm is located for FSA purposes within the first ten Federal Government business days following the effective date of this program. Producers diverting potatoes to livestock feed must file an application at such office no later than August 27, 1997. Application for charitable diversions, as well as for livestock feed, will be accepted until August 27, 1997.

[62 FR 29650, June 2, 1997, as amended at 62 FR 40730, July 30, 1997]

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§ 80.5 Rate of payment.

(a) The rate of payment for potatoes for charitable institutions will be \$1.50 per hundredweight for fresh Irish potatoes if packed in bags or cartons, and will be \$0.75 if shipped in bulk. All eligible fresh Irish potatoes intended for donation to charitable institutions must: Meet U.S. Grade No. 2 (fairly clean) requirements as certified by the AMS or the Federal-State Inspection Service; and be in a quantity of 40,000 pounds net or a multiple of 40,000 pounds net. Only transportation costs associated with donations to charitable institutions may be arranged for and paid by USDA. USDA will make no other payment with respect to such potatoes.

(b) Livestock feed payments will be \$.75 per hundredweight for U.S. Grade No. 2 Processing potatoes when whole as certified by AMS or the Federal-State Inspection Service. Payment will not be made for any fractional part of a hundredweight not meeting grade requirements. All arrangements and costs for: U.S. grading and inspection; processing, and transportation, as well as identifying the livestock feed recipient will be included in the \$.75 per hundredweight payment. USDA will make no other payment with respect to such potatoes.

[62 FR 29650, June 2, 1997, as amended at 62 FR 40730, July 30, 1997]

§ 80.6 Eligibility for payment.

(a) To the extent applications for payment do not exceed \$9 million, payments will be made under this program to any producer of fresh Irish potatoes who:

(1) Provides fresh Irish potatoes that are free from any water damage and:

(i) If intended for human consumption, meet the requirements of 7 CFR 51.1540-51.3006 U.S. Grade No. 2 (fairly clean); or

(ii) If intended for livestock feed, meet the requirements of 7 CFR 51.3410-51.3418 U.S. Grade No. 2 Processing when whole, and are cut, chopped sliced, gouged, crushed, ensiled, or cooked to the degree that the potatoes are readily and obviously identifiable as having been rendered unsuitable to enter into normal chan-

nels of trade and commerce as determined by FSA or its representative;

(2) Executes and files Form FSA-117 with the FSA county office responsible for the county where the producer's farm is located for FSA program purposes;

(3) Receives approval for their application;

(4) Completes form FSA-118 and whose fresh Irish potatoes are shipped in accordance with this regulation;

(5) Diverts fresh Irish potatoes and submits required documentation by July 28, 1997, if Form FSA-117 is approved by USDA from May 29 through July 11, 1997; or diverts fresh Irish potatoes and submits required documentation by August 13, 1997, if Form FSA-117 is approved by USDA from July 14 through July 28, 1997; or diverts fresh Irish potatoes and submits required documentation by August 27, 1997, if Form FSA-117 is approved by USDA from July 29 through August 27, 1997. Allocations unused by the applicable date will no longer be available for that producer. Final dates to complete diversions and submit documentation may be waived by USDA if it is determined that severe weather conditions prevented the completion of the diversion during the allotted time period.

(6) Files a claim as provided in § 80.10; and

(7) Complies with all other terms and conditions in this subpart.

(b) In the event applications for participation in the program authorized by this subpart exceed \$9 million, USDA shall, at its sole discretion, determine which applications to accept.

[62 FR 29650, June 2, 1997, as amended at 62 FR 40731, July 30, 1997]

§ 80.7 Application and approval for participation.

(a) The applications will be reviewed by the FSA in the order shown on the FSA register located at the respective FSA county office and will be approved taking into account the availability of funds, for each method of diversion;

(b) An approved Form FSA-117 may be modified or amended with the consent of the applicant and the duly authorized representative of AMS or FSA provided that such modification or

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amendment does not conflict with the provisions of this subpart; and

(c) Copies of the applicable U.S. grade standards and the application for participation in the Fresh Irish Potato Diversion Program can be obtained from the local county FSA office.

§ 80.8 Inspection and certificate of diversion.

Prior to diversion of potatoes to a charitable institution, the fresh Irish potatoes must be inspected by an inspector authorized or licensed by the USDA to inspect and certify the class, quality, and condition of fresh Irish potatoes. The producer will be responsible for requesting and arranging for inspection. For charitable institutions the product must be Positive Lot Identification (PLI) or certified by USDA grading personnel at time of loading. With respect to potatoes diverted for livestock feed, the producer must furnish to FSA 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.

§ 80.9 Claim for payment.

(a) In order to obtain payment for shipments to charitable institutions, the producer must submit to the county FSA office which approved the application: A properly executed Form FSA-118; a copy of the Notice to Deliver sent from FSA, Kansas City Commodity Office, Kansas City, Missouri; a bill of lading showing shipment was made. All such claims must be filed no later than 30 days after the termination date specified in the applicable approved application. For those potatoes which fail to meet the definition of fresh Irish potatoes provided in § 80.3 or the eligibility requirements of § 80.6, the producer may request an appeal inspection; however, payment of the truck detention and storage charges will be the responsibility of the producer.

(b) Livestock feed payments will be based on the percentage of the offered fresh Irish potatoes meeting U.S. Grade No. 2 Processing. In order to obtain payment the producer must submit to the county FSA office which approved the application a properly executed

FSA-118, and a livestock feed recipient delivery receipt indicating hundred-weight received, the date and name, address, and telephone number of the recipient.

§ 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, charitable institution, or livestock feeder, or that any quantity of fresh Irish potatoes diverted under this program was not used exclusively for donation to charitable institutions or livestock feeders (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 fresh Irish potatoes, must refund any USDA payment made in connection with such fresh Irish potatoes, and will also be liable to USDA for any other damages incurred as a result of such failure to use the fresh Irish potatoes exclusively for donation to charitable institutions or for use as livestock feed. 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 fresh Irish potatoes diverted under this program exclusively for donation to charitable institutions or livestock feed, 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, or livestock feeder must permit authorized representatives of USDA, at any reasonable time, to have access to their premises to inspect and examine such fresh Irish potatoes as are being diverted or stored for diversion, and to

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inspect and examine the facilities for diverting fresh Irish potatoes to determine compliance with the provisions of this program.

§ 80.12 Records and accounts.

The producer, charitable institution, or livestock feeder participating in this program must keep accurate records and accounts showing the details relative to the diversion and livestock feeding of the fresh Irish potatoes. The producer, charitable institution, or livestock feeder 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 provisions of this program; such records and accounts must be retained for three years after the date of last payment to the producer under the program, or for 2 years after date of audit of records by USDA as provided herein, whichever is the later.

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§ 80.13 Offset and assignment.

(a) Except as provided in paragraph (b) of this section, below, 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 for 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. Assignments will be done in accordance with Form FSA-117.

§ 80.14 Appeals.

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

Subpart B [Reserved]

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