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DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 80

[FV-97-80-01]

Regulation Governing the Fresh Irish Potato Diversion Program, 1996 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim rule sets forth the terms of the Fresh Irish Potato Diversion Program for the 1996 crop pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended. The program will assist fresh Irish potato growers faced with oversupplies and low prices by diverting potatoes to charitable institutions, and to livestock feed.

DATES: This rule is effective May 29, 1997. Comments must be received by July 2, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Susan Proden, Acting Chief, Commodity Procurement Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2548—South Building, Washington, DC 20090-6456. All written submissions made pursuant to this rule will be made available for public inspection in room 2548—South Building, USDA, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sandra Gardei, Assistant Branch Chief, room 2548—South Building, USDA or call (202) 720-6391.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim final rule has been reviewed under USDA procedures

established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "nonmajor". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) A major increase in costs or prices for consumers, individual industries, federal, state or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises in domestic or export markets.

Executive Order 12778

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12778 Civil Justice Reform. The provisions of the interim rule do not preempt state law and are not retroactive. Before any judicial action may be brought regarding the provisions of this interim rule the appeal and mediation procedure in 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Information collection requirements contained in this (part, subpart) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35, and have been assigned OMB control numbers 0560-0145.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$5,000,000. Because there is a preponderance of entities shipping fresh Irish potatoes that meet these gross revenue limitations it is anticipated that

the majority of the program participants could be classified as small entities without substantial regulatory restriction. Therefore the provisions of the RFA are not applicable and no Regulatory Flexibility analysis is required.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V. Published at 4 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because AMS is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Interested parties are invited to submit comments with respect to this action. However, pursuant to 5 U.S.C. 553, it is found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 calendar days after publication in the **Federal Register** because marketing is in process, the commodity is perishable, and program effectiveness would be adversely affected by undue delay. The crop is in the process of being sent to market and for a diversion to occur the rule must be made effective immediately. Written comments may be submitted within 30 calendar days of the publishing of the rule in the **Federal Register** and will be considered when the rule is made final.

Executive Order 12612

It has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) authorizes the Secretary of Agriculture to "encourage the domestic consumption of such [agricultural] commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce * * *." Section 32 also authorizes the Secretary to use section 32 funds "at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section." Furthermore, "determinations by the Secretary as to what constitutes diversion, and what constitutes normal channels of trade and commerce, and what constitutes normal production for domestic consumption shall be final."

According to crop storage reports, on May 1, 1997, fresh white Irish potatoes and russet potatoes stored in 15 states were 32 percent above the stocks on May 1, 1996. Storage reports for May 1, 1997, indicate that the production of fresh Irish potatoes is up 65 percent from the same period in 1996. Based on these statistics and other market factors, the Secretary has determined that the fresh Irish potato 1996 crops are in surplus supply and that the domestic consumption of such potatoes will be encouraged by using section 32 funds to divert the fresh Irish potatoes from the normal channels of trade and commerce under a Fresh Irish Potato Diversion Program. This fresh Irish potato diversion program encompasses all types and varieties of potatoes (except sweet potatoes) of U.S. Grade No. 2 (fairly clean) and U.S. Grade No. 2 Processing, including varieties commonly used for processing, chipping and table stock. Due to a need for expediency in implementing the Fresh Irish Potato Diversion Program and concern about undue delay in conducting environmental analysis and impact studies on composting, this program is limited to charitable institutions and livestock feed.

The price established for fresh Irish potatoes destined for animal feed will include all costs including transportation. The price established for fresh Irish potatoes destined for use by charitable institutions will cover all costs except transportation. USDA will arrange and pay for the transportation costs between the grower and the charitable institution because it is in a better position than the grower to efficiently and effectively match the

grower with the charitable institutions already identified by USDA.

List of Subjects in 7 CFR Part 80

Administrative practice and procedures, Agriculture, Agricultural commodities, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 80 is amended as follows:

1. In Part 80, Subpart A is revised to read as follows:

PART 80—FRESH IRISH POTATO DIVERSION PROGRAM

Subpart A—Fresh Irish Potato—Diversion Program

Sec.

- 80.1 Applicability.
- 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 assignment.
- 80.14 Appeals.

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

Subpart A—Fresh Irish Potato—Diversion Program

§ 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 July 28, 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 July 28, 1997.

§ 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. 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; be in a quantity of 40,000 pounds net or a multiple of 40,000 pounds net; be in 50 pound bags or cases and be palletized. 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.

§ 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 channels 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 after the date the Form FSA–117 is approved by USDA before July 28, 1997.

(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.

§ 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 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 hundredweight 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 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 two years after

date of audit of records by USDA as provided herein, whichever is the later.

§ 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.

Dated: May 28, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97-14273 Filed 5-29-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 275

[Amdt. No. 366]

RIN 0584-AB75

Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On June 23, 1995 the Department of Agriculture published proposed changes to Food Stamp Program regulations based on section 13951 of the Mickey Leland Childhood Hunger Relief Act. This final rule addresses significant comments received in response to the regulatory changes proposed in the rule published June 23, 1995, and finalizes regulatory changes to the quality control system of the Food Stamp Program in the following areas: timeframes for completion of all review activity, exclusion of variances resulting from the application of new regulations, the tolerance level for excessive error rates, the calculation of liability amounts, interest charges on liability amounts, good cause relief from liabilities, and the authority of the Administrative Law

Judges to determine good cause. These changes will enhance the efficiency and equity of the quality control system.

DATES: Effective Dates: Section 13971 of the Mickey Leland Childhood Hunger Relief Act sets effective dates for the various provisions of the Leland Act addressed in this rule. The amendment to 7 CFR 275.12(d)(2)(vii) was effective October 1, 1992. The amendments to 7 CFR 275.23(e)(4), and newly designated (e)(5), (e)(7), (e)(9), and (e)(10)(i) were effective October 1, 1991. The amendments to 7 CFR 272.1(g), 275.3(c) (Introductory text), 275.3(c)(1)(iii), 275.11(g), 275.23(d)(1)(iii), 275.23(e)(1), and newly designated 275.23(e)(8)(i)(D), 275.23(e)(8)(ii), 275.23(e)(8)(iii)(A), 275.23(e)(8)(iii)(B), and 275.23(e)(11)(iii) are effective July 2, 1997. The provisions of § 275.3(c)(4) will become effective after approval by OMB.

Implementation Dates: With the exception of the provisions contained in 7 CFR 275.3(c)(4) [Arbitration], 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], and newly designated 275.23(e)(7) [Good Cause], and 275.23(e)(9) [Timeframes], all provisions of this rule shall be implemented July 2, 1997. The provisions contained in §§ 275.3(c)(4), 275.23(e)(5), and newly designated 275.23(e)(7), and 275.23(e)(9) shall be implemented after approval of the provisions of §§ 275.3(c)(4) and newly designated 275.23(e)(7) by OMB under the Paperwork Reduction Act of 1995.

OMB Submissions: The provisions contained in 7 CFR 275.3(c)(4), and newly designated 275.23(e)(7) shall be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. FCS will publish a notice in the **Federal Register** announcing the effective and implementation dates, which will be dates occurring after the publication date of that notice. FCS can not issue billing letters for the review periods of Fiscal Years 1992 and beyond until such time as these provisions have been implemented by the publication of the notice.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305-2472.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the

Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR 3015, Subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Implementation" section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Sec. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The reporting and recordkeeping burden associated with the Food Stamp