

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 80

[FV-01-80-01]

Regulations Governing the Fresh Russet Potato Diversion Program, 2000 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on the procedures setting forth the terms of the Fresh Russet Potato Diversion Program for the 2000 crop pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended. The proposed program will assist fresh Russet potato growers faced with oversupplies and low prices by diverting potatoes to charitable institutions, for livestock feed, to convert them to ethanol, and to render them nonmarketable and dispose of in accordance with federal, state and local regulations.

DATES: Comments received by May 13, 2001, will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Susan Proden, Chief, Commodity Procurement Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2546—South Building, Washington, D.C. 20090-6456; Fax: (202) 720-2782, or visit the website at: <http://www.ams.usda.gov/fv/fvcomm.htm>. All written submissions made pursuant to this rule will be made available for public inspection in Room 2546—South Building, USDA, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Branch Chief, Room 2546—South Building, USDA or call (202) 720-4517. Information may also

be obtained at the website: <http://www.ams.usda.gov/fv/fvcomm.htm>
For the Nearest Federal Inspection Offices Contact: 1-800-811-2373 or visit the website at: <http://www.ams.usda.gov/fv/fpboffices.html>

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This proposed 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 effect or competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for

State and local governments or the private sector of \$100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The 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. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

Information collection requirements required by this rule are not required before the regulations may be effective. However, the 30-day public comment period and OMB approval under the provisions of 44 U.S.C. Chapter 35 are still required after the rule is published, and the Information Collection Package and request for approval will be submitted to OMB.

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 procedures 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 Russet 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 48 FR 29115 (June 24, 1983).

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) ("section 32") authorizes the Secretary of Agriculture to "encourage the domestic consumption of such [agricultural] commodities of 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 by 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 to trade and commerce, and what constitutes normal production for domestic consumption shall be final".

According to crop storage reports, on March 1, 2001, all potatoes stored in 15 states were 17 percent above the stocks on March 1, 2000 (most recent data available). Storage reports for March 1, 2001, indicate that the production of russet potatoes is up 15 percent from a year earlier and up 9 percent from the prior record set in 1997. Based on these statistics and other market factors, the Secretary has determined that the russet potato 2000 crop is in surplus supply and that the domestic consumption of such potatoes will be encouraged by using section 32 funds to divert the russet potatoes from the normal channels of trade and commerce under a Russet Potato Diversion Program. This potato diversion program would encompass russet 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 and table stock. Due to a need for expediency in implementing the Russet Potato Diversion Program and concern about undue delay in conducting environmental analysis and impact studies on composting, this program would be limited to charitable institutions, animal feed, ethanol production, and rendering nonmarketable disposal through spraying, disking and/or burial.

The price established for russet potatoes destined for charitable institutions, animal feed ethanol production and nonmarketable disposal through spraying, disking, and/or burial would cover all costs, including transportation.

List of Subjects in 7 CFR Part 80

Administrative practice and procedures, Agriculture, Potatoes, Reporting and record keeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, it is proposed that Title 7 Chapter I be amended as follows:

1. In Subchapter D, Part 80 is revised to read as follows:

PART 80—FRESH RUSSET 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 certification 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, assignment, and prompt payment.
- 80.14 Appeals.
- 80.15 Refunds; joint and several liability.
- 80.16 Death, incompetency or disappearance.

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

§ 80.1 Applicability.

In order to encourage the domestic consumption of the 2000 crop of fresh Russet potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by Section 32, will make payment to producers who divert fresh russet potatoes that they produced, by donating them to charitable institutions

for human consumption or by using such fresh russet potatoes as livestock feed, converting them into ethanol or rendering them nonmarketable and disposing of them 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 Deputy Administrator, Fruit and Vegetable Programs, 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, livestock feeding operations, ethanol production or rendering them nonmarketable and disposed of in conformance with federal, state and local regulations.

Fresh Russet potatoes means the 2000 crop of all types and varieties of potatoes (except sweet potatoes) which meet the US standard for russets fit for human consumption and produced and stored in the United States.

Invoice and certification of inspection means Form FV-184 or FV-301.

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 April 13, 2001.

§ 80.4 Length of program.

This program is effective April 13, 2001. Producers diverting potatoes to charitable institutions, livestock feed, ethanol production, or rendering them nonmarketable must complete the diversion of the 2000 crop potatoes no later than May 13, 2001.

§ 80.5 Rate of payment.

(a) The rate of payment for potatoes for charitable institutions will be \$1.00 per hundredweight for fresh Russet potatoes. All eligible fresh Russet potatoes intended for donation to charitable institutions must meet U.S. Grade No. 2 (fairly clean) requirements as certified by the federal or federal-state inspection service.

(b) The rate of payments diverted for livestock feed, and those for ethanol production or for rendering nonmarketable will be \$1.00 per hundredweight for U.S. Grade No. 2 Processing potatoes when whole, as certified by the federal government.

(c) Payment under paragraphs (a) and (b) of this section will not be for any fractional part of a hundredweight or for any potatoes not meeting grade requirements. Producers who divert potatoes pursuant to this regulation are responsible for arrangements and costs for U.S. grading.

(d) The \$1.00 per hundredweight payment covers all costs, including but not limited to processing, transportation, and inspection costs. 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 \$10,250,000 in total, payments will be made under this program to any producer of fresh russet potatoes who:

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

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

(ii) If intended for livestock feed, ethanol production, or rendering nonmarketable, meet the requirements of 7 CFR 51.3410 through 51.3418 U.S. Grade No. 2 Processing when whole, and are cut, chopped, sliced, gouged, crushed, ensiled, frozen, 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) Completes Form FSA-117 by certifying to the diverted hundredweight at the county FSA office where the producer's farm is located for FSA program purposes;

(3) 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 \$10,250,000, less administrative funds, USDA will determine a uniform hundredweight deduction, if necessary, so that the total outlays will not exceed the \$10,250,000 in funds available under this program.

§ 80.7 Application and approval for participation.

(a) The applications will be reviewed for program compliance and approved or disapproved by the county FSA office personnel;

(b) Copies of the applicable U.S. grade standards are accessible on the internet at <http://www.ams.usda.gov/standards> and the application for participation in the Fresh Russet Potato Diversion Program can be obtained from the internet at <http://www.sc.egov.usda.gov> and/or from the local county FSA office after the application period is announced.

§ 80.8 Inspection and certification of diversion.

Prior to diversion of potatoes to a charitable institution, the fresh Russet potatoes must be inspected by an inspector authorized or licensed by the USDA to inspect and certify the grade, quality, and condition of the potatoes. The producer will be responsible for requesting, arranging, and paying for this inspection. For charitable institutions, the product must be certified by federal or federal-state grading personnel upon arrival at destination. With respect to potatoes diverted for livestock feed, ethanol production, or rendering nonmarketable, point of origin inspections must be obtained. Certification will be reported on forms FV-184 or FV-301. The producer must furnish to FSA such scale tickets, weighing facilities, or volume measurements as determined by the federal or federal-state inspection service to be necessary for certifying 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 between May 14 and June 13, 2001, a certified FV-184 or FV-301 inspection certificate, a completed Form FSA-117, and a bill of lading showing shipment was made.

(b) To obtain payment for potatoes diverted to livestock feed, ethanol production or rendering nonmarketable the producer must submit to the county FSA office between May 14 and June 13, 2001, a properly executed Form FSA-117, an inspection certificate (FV-184 or FV-301), a livestock feed recipient, and an ethanol production or disposal delivery receipt (issued by livestock feed lot, ethanol plant or federal-state inspector) indicating hundredweight received, the date, 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, livestock feeder, ethanol producer, or disposal entity, or that any quantity of fresh Russet potatoes diverted under this program was not used exclusively for donation to charitable institutions or livestock feeders or ethanol production or acceptable disposal (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 Russet potatoes, must refund any USDA payment made in connection with such fresh Russet potatoes, and will also be liable to USDA for any other damages incurred as a result of such failure to use the fresh Russet potatoes exclusively for donation to charitable institutions or for use as livestock feed, ethanol production or acceptable disposal. 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 Russet potatoes diverted under this program exclusively for donation to charitable institutions or livestock feed ethanol production or acceptable disposal regardless of 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, ethanol producer, or acceptable disposal entity must permit authorized representatives of USDA, at any reasonable time, to have access to their premises to inspect and examine such fresh Russet potatoes as are being diverted or stored for diversion and to inspect and examine the facilities for diverting fresh Russet potatoes to determine compliance with the provisions of this program.

§ 80.12 Records and accounts.

(a) The producer, charitable institution, livestock feeder, ethanol producer, or acceptable disposal entity participating in this program must keep accurate records and accounts showing the details relative to the diversion and livestock feeding, ethanol production, or

acceptable disposal of the fresh Russet potatoes.

(b) The producer, charitable institution, livestock feeder, ethanol producer, or acceptable disposal entity 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 or audit of records by USDA as provided herein, whichever is the later.

§ 80.13 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this subpart shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the producer or any other creditors except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR Part 1403 shall not be applicable to this subpart.

(b) Payments which are earned by a producer under this program may be assigned in accordance with the provisions of 7 CFR part 1404.

(c) Prompt Payment Interest will not be applicable.

§ 80.14 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 80.15 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this subpart, and if any refund of a payment to FSA shall otherwise become due in connection with the application of this subpart, all payments made under this subpart to any producer shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided for in part 1403 of this title.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this subpart.

(c) Interest shall be applicable to refunds required of any producer under this subpart if FSA determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the producer when there was no intentional misaction on the part of the producer, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Producers must refund to FSA any excess payments, as determined by FSA, with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by the producer, the benefit must be repaid with any applicable interest.

§ 80.16 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a potato producer that is eligible to receive benefits in accordance with this subpart, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

Dated: April 10, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-9261 Filed 4-11-01; 10:14 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 303, 317, 318, 319, 320, 325, 331, 381, 417, and 430

[Docket No. 97-013N]

Performance Standards for the Production of Processed Meat and Poultry Products—Notice of Technical Conference and Public Meeting; Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of technical conference and public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a technical conference on May 8, 2001, in Washington, DC. The purpose of the conference is to discuss scientific research and new technologies relevant to the recently proposed regulatory requirements for processed meat and poultry products, "Performance Standards for the Production of Processed Meat and Poultry Products." FSIS is soliciting papers and presentations from government agencies, academia, consumer organizations, and other interested parties.

Additionally, on May 9 and 10, 2001, FSIS will hold a public meeting in Washington, DC, to provide information and receive public comments specific to the proposed regulations. FSIS is extending for an additional 30 days the comment period for the proposed regulations, previously scheduled to close on May 29, 2001. Comments now must be received by June 28, 2001. FSIS is extending the comment period to provide ample opportunity for the public to comment on issues raised at the technical conference and public meeting.

DATES: FSIS will hold the technical conference on May 8, 2001, and the public meeting on May 9-10, 2001. Comments on the proposed regulations published on February 27, 2001, at 66 FR 12590, must be received on or before June 28, 2001.

ADDRESSES: Both the technical conference and the public meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., (at Massachusetts Avenue and 14th Street), Washington, DC 20005.

Papers and presentations for the technical conference should be sent to: Matthew Michael, Regulation and Directive Development Staff, OPPDE, FSIS, USDA, Room 103 Cotton Annex,