

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 80

[Doc. No. FV-01-80-01]

RIN 0581-AC07

#### Regulations Governing the Fresh Russet Potato Diversion Program, 2000 Crop

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document finalizes procedures setting forth the terms of the Fresh Russet Potato Diversion Program for the 2000 crop. A proposed rule was published April 13, 2001.

**EFFECTIVE DATE:** November 23, 2001.

**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>

#### SUPPLEMENTARY INFORMATION:

##### 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).

##### Executive Order 12988

This 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 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 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

On April 13, 2001 (66 FR 19099), a proposed rule was published to provide for a Potato Diversion Program for 2000 crop Fresh Russet Potatoes. The program was developed because of market conditions existing at that time. Authority for the program is contained in Section 32 of the Act of August 24, 1935, is amended (7 U.S.C. 612c) clause "(2)" of that section allows for diversion and clause "(3)" provides for payments to help farmers. Both apply. Because of crop-driven deadlines, disposition and application deadlines were set for time periods that have now expired. Several commentors asked for an extended comment period and such an extension was published on May 16, 2001 (66 FR 27405). Other commentors asked for higher payments. Because of the applications received, the program's authorization was increased to \$12 million. Other commentors suggested that other varieties of potatoes be covered, that a particular diversion be authorized to a particular charitable organization, and that dehydrated potatoes be diverted. These comments were not adopted because of the particular market conditions that drove the development of the program and because the agency sought to avoid unduly limiting farmer flexibility in light of the statutory purposes at issue. Sections 80.3 through 80.16 have been removed because the deadlines for application and disposition have passed.

#### List of Subjects in 7 CFR Part 80

Administrative practice and procedures, Agriculture, Agricultural commodities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 chapter I is amended by revising part 80 to read as follows:

#### PART 80—FRESH RUSSET POTATO DIVERSION PROGRAM

##### Subpart A—Fresh Russet Potato Diversion Program

Sec.

- 80.1 Applicability and payments.
- 80.2 Administration and disputes.

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

**Subpart A—Fresh Russet Potato Diversion Program****§ 80.1 Applicability and payments.**

Payment be received or retained with respect to diversions of 2001 Fresh Russet potatoes as allowed by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA) using standards set out for consideration in the relevant **Federal Register** notice published on April 13, 2001 (66 FR 19099) except that total funding for the program may be an amount up to \$12 million. If a person has or will receive such a payment and there is a failure to comply with the conditions for payment or any condition for payment set out in the application, or that otherwise applies, all sums received by a person shall be returned with interest. No other claims for payment by producers or other persons under this part based upon their diversion of potatoes, shall be allowed except as approved by the Administrator of the Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA). In all cases, the Administrator may set such other conditions for payment as may be allowable and serve the accomplishment of the goals of the program.

**§ 80.2 Administration and disputes.**

Administration of this part shall be under the supervision of the Deputy Administrator, Fruit and Vegetable Programs, AMS, and implemented for AMS through the Farm Service Agency (FSA) of USDA. Disputes shall be resolved by FSA by using regulations found in 7 CFR part 780.

**Subpart B—[Reserved]**

Dated: November 15, 2001.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 01–29110 Filed 11–20–01; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 923**

[Docket Nos. 99AMS–FV–923–A1; FV00–923–1]

**Sweet Cherries Grown in Designated Counties in Washington; Order Amending Marketing Agreement and Order No. 923**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the marketing agreement and order (order) for Washington sweet cherries. The amendments were submitted by the Washington Cherry Marketing Committee (Committee), the agency responsible for local administration of the order. The changes will: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range and allow for special purpose shipments of cherries to packing operations outside the production area; Increase representation on the Committee by adding an additional handler member; Provide for late payment and interest charges on delinquent assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a written acceptance of willingness to serve prior to selection. These changes were favored by sweet cherry growers in a mail referendum and will improve the operation and functioning of the Washington sweet cherry marketing order program. Proposed amendments to establish tenure requirements for Committee members and to require that continuance referenda be conducted every 6 years were not favored by sweet cherry growers in the mail referendum and are not being implemented.

**EFFECTIVE DATE:** December 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on November 3, 1999, and published in the November 8, 1999, issue of the **Federal Register** (64 FR 60733). Recommended Decision and Opportunity to File Written Exceptions issued on November 2, 2000, and published in the **Federal Register** on November 9, 2000 (65 FR 67584). USDA's Decision and Referendum Order issued March 1, 2001, and published in the **Federal Register** on March 6, 2001 (66 FR 13447).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

**Preliminary Statement**

This final rule was formulated on the record of a public hearing held in Yakima, Washington, on November 16, 1999, to consider the proposed amendment of Marketing Agreement and Order No. 923, regulating the handling of Washington sweet cherries, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the Committee and the U.S. Department of Agriculture.

The Committee's proposals were to: (1) Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; redefine the districts established under the order; and authorize special purpose shipments, with appropriate safeguards, to facilitate the movement of cherries to packing facilities outside the production area; (2) increase representation on the Committee by adding one additional handler member; (3) authorize the Committee, with USDA approval, to collect late payment and interest charges on delinquent assessments; (4) authorize the Committee, with USDA approval, to establish container marking requirements; and (5) authorize Committee nominees to qualify as a