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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 80

[Docket No. FV–97–80–02]

RIN 0581–AA93

Regulations Governing the Fresh Irish Potato Diversion Program, 1996 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, with changes, an interim final rule previously published in the **Federal Register** setting forth the Fresh Irish Potato Diversion Program (PDP) for the 1996 crop. This rule will allow the program to continue through August 27, 1997, to assist fresh Irish potato growers faced with oversupplies and low prices.

EFFECTIVE DATE: July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Acting Chief, Commodity Procurement Branch, Fruit and Vegetable Division, AMS, USDA, room 2548—South Building, 1400 Independence Avenue, S.W., Washington, DC 20250, (202) 720–6391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is ''not a significant action.''

Executive Order 12988

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12988, Civil Justice Reform. The provisions of the final rule do not preempt State law and are not retroactive. Before any judicial action may be brought regarding the provisions of this final rule, the appeal and mediation procedure in 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Information collection requirements contained in this part 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 number 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 of the scale of business subject to such actions in order that small businesses will not be unduly or disproportionally burdened. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having 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 growers 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

PDP 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 Information

On June 2, 1997, AMS issued an interim rule setting forth the terms for conducting PDP. See, 62 F.R. 29650 (June 2, 1997). PDP is authorized by clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32). Section 32 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.''

USDA statistics indicated that as of May 1, 1997, that the supply of fresh Irish potatoes stored in 15 states exceeded by 32 percent the amount of stocks held on May 1, 1996. Based on these statistics the Secretary determined that the 1996 fresh Irish potato crop was in surplus supply, and that the domestic consumption of such potatoes would be encouraged by using section 32 funds to divert fresh Irish potatoes from the normal channels of trade and commerce under a diversion program. PDP 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 PDP and concern about undue delay in conducting environmental analysis and impact studies on composting, PDP was limited to charitable institutions and livestock feed.

The price established for fresh Irish potatoes destined for animal feed included all costs, including transportation. The price established for fresh Irish potatoes destined for use by charitable institutions covered all costs except transportation. USDA arranged and paid for the transportation costs between the grower and the charitable institution because it believed that in most instances, it would be in a better position than the grower to match the grower efficiently and effectively with the charitable institutions already identified by USDA.

Summary of Comments

The public had until July 2, 1997, to comment on the interim rule. USDA received comments from four Irish potato producers, three potato processors, and one trade association. These comments are on file in room 2548—South Building, 1400 Independence Avenue, S.W., Washington, DC 20250.

Four comments opposed PDP on the grounds that such diversion purchases create more difficulties than they solve, distort market conditions, and only exacerbate negative economic conditions for most growers. Also, some growers felt that USDA should not provide price support for fresh Irish potatoes, and due to the late effective date of the program, many fresh Irish potatoes would not meet minimum grade for condition. Pursuant to Section 32, the Secretary found that establishment of the PDP would tend to benefit Irish potato producers given current supply and market conditions.

Four comments expressed concern that composting was not offered as a diversion outlet in the PDP, and recommended that it be allowed. As stated in the preamble to the interim rule, including composting would have required an environmental impact study, and because of the time required to conduct such a study, inclusion of composting would have resulted in an undue delay in the implementation of PDP, to the detriment of potato producers.

Four comments recommended that USDA make PDP retroactive to May 9, 1997, the date the Secretary of Agriculture announced his intent to offer a diversion program. USDA had considered this option, but concluded that it would be difficult to ensure compliance with the program's requirements retroactively, and that a retroactive initial effective date would not have provided equitable treatment to all producers.

One comment expressed concern that the PDP assists growers and not processors. The comment stated that no programs have been set up by USDA to address the hardships faced by fresh or refrigerated potato processors, and recommended that the final rule be revised to include a provision to assist this group. While USDA is sympathetic to these concerns, Section 32 is intended to assist only producers by diverting or purchasing surplus supplies of certain agricultural commodities. Therefore, no change is being made to the final rule based on this comment.

Three comments questioned the amount of funds allocated to each state for PDP and recommended additional funds be allocated to certain states. Although $8.5 million has been allocated to this program, and applications have been approved to divert product, as of July 21, 1997, only $1.4 million had actually been paid to potato producers. Since producers have additional time to complete their diversions, it is not yet known how much money will actually be spent on the PDP.

However, to further address these concerns, USDA has determined that potato producers need additional time to comply with the provisions of the PDP, including completing their diversions and submitting the required documentation to receive payment, and that additional changes are required to help ensure that PDP is available to as many producers as possible. These changes include placing deadlines on diversions and removing the packaging requirement. Accordingly, the provisions contained in the interim rule will remain in effect except for the following modifications:

(1) PDP is extended for an additional 30 days through August 27, 1997.

(2) All producers receiving the approved form, Potato Diversion Program Application for Participation (FSA–117) dated May 29 through July 11 must complete the diversion and submit all required documentation by July 28, 1997. Any of these producers who have not completed the diversion and submitted the required documentation by July 28 will no longer be eligible for payment. However the producer may again apply for program participation.

(3) All producers receiving approved FSA–117's dated July 14 through July 28 will have until August 13, 1997, to complete the diversion and submit all required documentation. After August 13, any unused allocation will no longer be available to those producers.

(4) Producers who receive FSA–117's from July 29 through August 27 must complete their diversions and submit all required documentation by August 27, when the program ends.

(5) Final dates to complete diversions and submit required 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) Producers who registered for diversion during the original program dates of May 29 through July 28 and whose FSA–117's were not approved in whole or part because of a lack of funding need not register again. Producers who previously were approved and did not divert potatoes may again register to participate in the program.

(7) Potatoes may also be shipped in bulk if the charitable institution agrees to accept bulk deliveries during the additional 30-day period. For diversions of potatoes to charitable institutions that are not in bags or cartons, USDA will pay the producer $0.75 per hundredweight. In the event the charitable institution does not agree to accept bulk deliveries, producers may have the option to divert deliveries to charitable institutions in 50 lb cartons or bags.

List of Subjects in 7 CFR Part 80

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

Accordingly, the interim final rule amending 7 CFR part 80 which was published at 62 FR 29649 on June 2, 1997, is adopted as a final rule with the following changes:

PART 80—FRESH IRISH POTATO DIVERSION PROGRAM

1. The authority citation for part 80 continues to read as follows:

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

2. In § 80.4, the date ''July 28'' is revised to read ''August 27,'' each time it appears and a new sentence is added at the end of the section to read as follows:

§ 80.4 Length of program.

* * * Application for charitable diversions as well as for livestock feed will be accepted until August 27, 1997.

3. In § 80.5, paragraph (a) is revised to read as follows:

§ 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.

* * * * *

4. In § 80.6, paragraph (a)(5) is revised to read as follows:

§ 80.6 Eligibility for payment.

(a) * * *

(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.

* * * * *

Dated: July 24, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–20091 Filed 7–25–97; 3:59 pm]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AC09

Prohibition Against Payment of Interest on Demand Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interpretive rule.

SUMMARY: The FDIC has amended an interpretive rule to provide an additional exception to the limitations on premiums that may be given in connection with demand deposits. Section 18(g) of the Federal Deposit Insurance Act (FDI Act) requires that the FDIC by regulation prohibit the payment of interest or dividends on demand deposits. 12 CFR part 329 implements this prohibition. As an exception to the prohibition, an interpretive rule permits premiums of up to $10 for deposits of less than $5000 and up to $20 for deposits of $5000 or more not more than twice per year. The interpretive rule also limits the timing of such premiums to the opening of a new account or an addition to an existing account.

The FDIC has amended the interpretive rule to provide an additional exception that permits premiums which are unrelated to the balance in a demand deposit account and the duration of the account balance. Therefore, insured nonmember banks and insured branches of foreign banks are now permitted to give premiums on demand deposits, without limitation as to the amount of the premium, provided that the premiums are not related to, or dependent upon, the balance in the account and the duration of the account balance. This amendment maintains substantial parity with Regulation Q, 12 CFR Part 217, as recently amended by the Board of Governors of the Federal Reserve System (FRB).

DATES: Effective July 30, 1997.

FOR FURTHER INFORMATION CONTACT: Marc Goldstrom, Counsel, Regulation and Legislation Section, Legal Division, (202–898–8807); Louise Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202–942–3599).

SUPPLEMENTARY INFORMATION:

Background

Section 18(g) of the FDI Act provides that the Board of Directors of the FDIC shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. (12 U.S.C. 1828(g)). Accordingly, the FDIC promulgated regulations prohibiting the payment of interest or dividends on demand deposits at 12 CFR part 329. The Board of Governors of the Federal Reserve System (FRB) has a corresponding prohibition for member banks at 12 CFR part 217 (Regulation Q). As an exception to the prohibition, the FDIC issued an interpretive rule that generally permits (1) premiums only at the time of the opening of a new account or an addition to, or renewal of, an existing account; (2) no more than two premiums per deposit in any twelve-month interval; and (3) that the value of the premiums does not exceed $10 for deposits of less than $5000 and $20 for deposits of $5000 or more. (12 CFR 329.103). The FRB has a corresponding exception for member banks at 12 CFR 217.101.

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB. (12 U.S.C. 1828(g)). The FRB has recently amended its interpretation to establish an additional exception with respect to member banks. The amendment permits member banks to give premiums on demand deposits, without regard to the amount of the premium, provided that the premiums are not related to, or dependent upon, the balance in an account and the duration of the account balance. (12 CFR 217.101(b)). The FDIC is now amending its interpretive rule to provide a similar exception for state nonmember banks and insured branches of foreign banks.

Premium limitations were first adopted by the FDIC and the FRB in 1970. These premium limitations originally applied to all types of deposits and were established in part to prevent evasion of interest rate ceilings at a time when interest rates were regulated. The Depository Institutions Deregulation and Monetary Control Act of 1980 deregulated interest rates on time and savings deposits (including NOW accounts). In 1980, the Depository Institutions Deregulation Committee adopted these premium limitations with respect to time and savings deposits in an effort to preserve a relatively level playing field during the period of deposit interest rate deregulation, which ended in 1986. Since then, banks have been permitted to offer premiums on interest-bearing accounts, including NOW, time, and savings accounts, without regard to the premium limitations. The premium limitations, therefore, have only applied to demand deposit accounts.

Because the preexisting exception is restricted to the opening of, addition to, or renewal of, a deposit account, it has constrained the ability of depository institutions to offer incentives to use their products, including the use of new services such as ATM or debit cards. In the past, the exception has prevented a bank from offering incentives to existing demand deposit customers who signed up for an ATM card because the incentives did not coincide with the opening of, addition to, or renewal of, an account. For the same reason the exception has prevented another bank from offering incentives to encourage deposit customers to use an ATM card more than three times per month. Premiums from the use of a debit card, which reduces the amount on deposit, would also constitute interest on the deposit under the preexisting exception, since they are also not paid upon the