

Federal Regulations, Part 32, and are effective through October 18, 1970.

C. EDWARD CARLSON,
Regional Director, Bureau of
Sport Fisheries and Wildlife.

AUGUST 26, 1970.

[F.R. Doc. 70-11701; Filed, Sept. 3, 1970;
8:46 a.m.]

PART 32—HUNTING

De Soto National Wildlife Refuge, Iowa

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

IOWA

DE SOTO NATIONAL WILDLIFE REFUGE

Public hunting of deer on the De Soto National Wildlife Refuge, Iowa, is permitted only on the area designated by signs as open to hunting. This open area comprising 660 acres is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all State regulations governing the hunting of deer with bow and arrow and shall be permitted only during the regular Iowa archery deer season, September 26, 1970 to November 26, 1970, both dates inclusive.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 26, 1970.

JAMES W. SALYER,
Refuge Manager, De Soto National Wildlife Refuge, Missouri Valley, Iowa.

AUGUST 27, 1970.

[F.R. Doc. 70-11745; Filed, Sept. 3, 1970;
8:49 a.m.]

PART 32—HUNTING

Carolina Sandhills National Wildlife Refuge, S.C.

The following regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

SOUTH CAROLINA

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Public hunting of white-tailed deer is permitted on 97 percent of the Carolina Sandhills National Wildlife Refuge. This open area is designated by signs as open to hunting and delineated on a map available from refuge headquarters, McBee, S.C., and from the Regional Director, Bureau of Sport Fisheries and Wildlife,

Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations and subject to the following special conditions:

(1) Season: October 26-31, 1970 and November 5-7, 1970.

(2) Hunters may not enter hunting area prior to 5 a.m., e.s.t. and must leave by 6:30 p.m., e.s.t.

(3) Weapons: Same as allowed for deer hunting on State Game Management Areas. Pistols are not permitted.

(4) Only male deer with visible antlers may be taken. Illegal to shoot or pursue white (albino) deer.

(5) Deer drives permitted only on designated areas.

(6) Each hunter must sign a register at refuge headquarters or at the Lake Bee Recreation Area each day before he hunts.

(7) Individuals under 18 years of age must be accompanied by a responsible adult.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 7, 1970.

C. EDWARD CARLSON,
Regional Director, Bureau of
Sport Fisheries and Wildlife.

AUGUST 27, 1970.

[F.R. Doc. 70-11702; Filed, Sept. 3, 1970;
8:46 a.m.]

PART 32—HUNTING

Tennessee National Wildlife Refuge, Tenn.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

TENNESSEE

TENNESSEE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Tennessee National Wildlife Refuge, Tenn. is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 1,700 acres for bow hunting only, and 3,300 acres for gun and bow hunting are delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of deer subject to the following special conditions:

(1) The open season for archery hunting of deer on the Refuge extends from October 3 through October 10, 1970.

(2) The open season for gun hunting of deer on the Refuge is December 23, 24, 26, and 27, 1970.

(3) The bag limit is one deer of either sex per hunter.

(4) The use of dogs is not permitted.

(5) Camping on the area is not permitted.

(6) Bobcats, gray foxes, woodchucks, and crows may be taken.

(7) Driving of deer is prohibited.

(8) Hunters may enter public hunting area at sunrise and must be out of area by 1 hour after sunset.

(9) Bow hunters desiring to hunt Britton Ford Peninsula opening day will be required to possess a refuge permit. Permits will be issued to the first 300 written requests marked "Archery Deer Hunt" and submitted to the refuge office, Bureau of Sport Fisheries and Wildlife, Box 849, Paris, Tenn. 38242, and received postmarked on or after August 5, 1970. Permits will be free and transferable. Only one permit will be furnished each of the first 300 requests. No permit is required to bow hunt the other archery areas and no permit is required on any area open for bow hunting after opening day, during the archery hunt.

(10) Hunters must check in and out of the designated checking station.

(11) Hunters desiring to hunt deer in the area open to gun hunting will require a refuge permit. Hunters under 18 years of age must be accompanied by an adult. Applications may be secured from the refuge office, Bureau of Sport Fisheries and Wildlife, Box 849, Paris, Tenn. 38242, during the period August 1 through September 11, 1970.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 1, 1971.

C. EDWARD CARLSON,
Regional Director, Bureau of
Sport Fisheries and Wildlife.

AUGUST 27, 1970.

[F.R. Doc. 70-11703; Filed, Sept. 3, 1970;
8:46 a.m.]

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspection, Marketing Practices) Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PROD- UCTS THEREOF AND CERTAIN OTHER PROCESSED FOOD PROD- UCTS

Subpart—Regulations Governing Inspection and Certification

ISSUANCE OF CERTIFICATES

The Agricultural Marketing Act of 1946 authorizes official inspection and certification of processed fruits and vegetables and related products. Such inspection and certification is voluntary and is made available only upon the request of financially interested parties and upon payment of a fee to cover the cost of the service.

Statement of Considerations leading to Amendment of Regulations Governing the Inspection of Processed Products. The regulations now require that each official certificate issued to be signed by the inspector who performed the inspection. However, another employee of the Inspection Service is authorized under these regulations to affix the inspector's name to an inspection certificate only when given power of attorney by the inspector, and provided the certificate is prepared in accordance with the inspector's findings.

The amendment (relating solely to agency practice and personnel) will in addition allow persons acting in a supervisory capacity to sign and issue the official certificate, provided it is properly prepared. This would provide for prompt issuance of certificates where no power of attorney has been given and the inspector is absent or located some distance away from the office where the official certificate is prepared.

The amendment further provides that whenever a certificate issued is signed by a person given power of attorney by the inspector, that person's signature must appear along with the name of the inspector.

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624), § 52.2 *Terms defined* and § 52.18(a) *Issuance of certificates* of the subpart—Regulations governing Inspection and Certification of Processed Fruits and vegetables and Related Products, are hereby each amended respectively as follows:

A. Section 52.2 *Terms defined* is amended by inserting immediately following the paragraph captioned *Inspector*, the following:

Inspector in Charge. "Inspector in Charge" means any inspector designated in a plant or field office laboratory as the inspector in charge of the inspection work when authorized by the Administrator to act in that capacity.

B. Paragraph (a) of § 52.18 *Issuance of certificates* is amended to read as follows:

(a) The person signing and issuing the certificate shall be one of the following:

- (1) The inspector who performed the inspection.
- (2) Another employee of the Inspection Service who has been given power of attorney by the inspector who performed the inspection and authorized by the Administrator to affix the inspector's signature to an inspection certificate.
- (3) An inspector designated as the "inspector in charge," when the certificate represents composite inspection of several persons.

In all cases the inspection certificate shall be prepared in accordance with the facts set forth in the official memoranda made by the inspector or inspectors in connection with the inspection. Whenever a certificate is signed by a person under a power of attorney the certificate should so indicate. The signature of the holder of the power shall appear under the name of the inspector who personally

inspected the product, and whenever a certificate issued is signed by an inspector in charge that title must appear in connection with the signature.

(Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624)

Dated August 31, 1970, to become effective upon date of publication in the FEDERAL REGISTER.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-11759; Filed, Sept. 3, 1970; 8:50 a.m.]

Chapter II—Food and Nutrition Service, Department of Agriculture

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Miscellaneous Amendments

On July 17, 1970, there was published in the FEDERAL REGISTER (35 F.R. 11510) a notice of proposed rule making to amend the regulations governing the National School Lunch Program (35 F.R. 753, as amended, 35 F.R. 3900) for the purpose of incorporating applicable requirements of Public Law 91-248, approved May 14, 1970. Interested persons were given 20 days in which to submit comments, suggestions or objections regarding the proposed regulations.

Numerous communications were received. The comments, suggestions, and objections made in such communications have been considered and a number of changes from the proposed regulations have been made.

In order that the amendments to the regulations may become effective as soon as possible, in view of the beginning of the 1970-71 school year, they are hereby issued without an analysis of the comments, suggestions and objections received. Such an analysis will be issued and published at an early date.

Regulations are hereby amended to make changes in the operation of the general cash-for-food assistance and the special cash assistance phases of the National School Lunch Act, as amended (42 U.S.C. 1751-1760), particularly as they relate to the service of free and reduced price lunches, and to prescribe regulations for schools receiving only donated commodities.

1. The table of contents for Part 210, Chapter II, of Title 7 of the Code of Federal Regulations (35 F.R. 753) is revised to read as follows:

Sec.	
210.1	General purpose and scope.
210.2	Definitions.
210.3	Administration.
210.4	Apportionment of funds to States.
210.4a	State Plan of Child Nutrition Operations.
210.5	Payments to States.
210.5a	Transfer of funds.
210.6	Matching of funds.
210.7	Use of funds.
210.8	Requirements for participation.
210.9	Free and reduced price lunches.
210.10	Requirement for lunches.
210.11	Reimbursement payments.
210.12	Effective date for reimbursement.

Sec.	
210.13	Reimbursement procedure.
210.14	Special responsibilities of State agencies.
210.15	Review of operating balances.
210.15a	Commodity only schools.
210.15b	Competitive food services.
210.16	Claims against School Food Authorities.
210.17	Administrative analyses and audits.
210.18	Prohibitions.
210.19	Miscellaneous provisions.
210.20	Program information.

2. The authority citation for Part 210 is revised to read as follows:

AUTHORITY: The provisions of this Part 210 issued under secs. 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1760, 1779.

§ 210.1 [Amended]

3. In § 210.1, paragraph (c) is amended by deleting the phrase "special cash-for-food assistance" each time it appears in the paragraph and substituting in lieu thereof the phrase "special cash assistance". Paragraph (c) also is amended by adding the following sentence at the end thereof: "It also announces the policies and prescribes the regulations for commodity only schools."

4. In § 210.2, new paragraphs (c-1), (e-1), (h-1), and (i-1) are added; paragraphs (m) and (n) are revised; and new paragraphs (n-1) and (q-1) are added.

§ 210.2 Definitions.

(c-1) "Commodity only school" means a school which does not participate in the National School Lunch Program under this part, but which receives commodities donated under Part 250 of this chapter for a nonprofit lunch program.

(e-1) "Distributing agency" means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to Part 250 of this chapter.

(h-1) "Free lunch" means a lunch for which neither the child nor any member of his family pays or is required to work in the school or in the school's lunch program.

(i-1) "National School Lunch Program" means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to this part.

(m) "Participation rate" means a number equal to the number of lunches meeting the minimum requirements prescribed for a Type A lunch in § 210.10 of this part served in the fiscal year beginning 2 years immediately prior to the fiscal year for which the funds are appropriated, by schools participating in the Program as determined by the Secretary.

(n) "Program" means the National School Lunch Program.

(n-1) "Reduced price lunch" means a lunch which meets all of the following criteria: (1) The price shall be less than

the full price of the lunch; (2) the price shall be 20 cents or lower; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's lunch program.

(q-1) "Service institution" means a private, nonprofit institution or a public institution, such as a child day-care center, settlement house, or recreation center, which provides day care, or other child care where children are not maintained in residence, for children from areas in which poor economic conditions exist or areas in which there are high concentrations of working mothers. The term "service institution" includes a private, nonprofit institution or a public institution that develops a special summer program providing for children from such areas, food service similar to that available to children under the National School Lunch or School Breakfast programs during the school year, and includes a private, nonprofit institution or public institution providing day care services for handicapped children.

5. In § 210.4, paragraphs (d) and (e) are revised and paragraphs (f) and (g) are revoked.

§ 210.4 Apportionment of funds to States.

(d) Any Federal funds made available for special cash assistance for any fiscal year shall be apportioned among the States in accordance with section 11 of the act. Three percent of any such funds shall be apportioned to Puerto Rico, the Virgin Islands, Guam, and American Samoa. The apportionment to each of these States shall be in an amount which bears the same ratio to the total of such funds as the number of children aged 3 to 17, inclusive, in such State bears to the total number of such children in all such States. Any such funds so apportioned to any of such States which cannot be used for special cash assistance shall be further apportioned, on the same basis as the initial apportionment, to any such States which justify the need for additional funds on the basis of operating experience. The remaining amount of such special cash assistance funds for any fiscal year shall be apportioned among the States, other than Puerto Rico, the Virgin Islands, Guam, and American Samoa. The amount apportioned to each such State shall bear the same ratio to such remaining funds as the number of children in such State aged 3 to 17, inclusive, in households with incomes less than \$4,000 per annum bears to the total number of such children in all such States. Any such funds so apportioned to any of such States which cannot be used for special cash assistance shall be further apportioned, on the same basis as the initial apportionment, to any of such States which justify need for additional funds on the basis of operating experience.

(e) A share of the special cash assistance funds apportioned to any State shall be withheld by FNS for the non-

profit private schools of that State if the State agency does not administer the program with respect to such schools. The funds so withheld by FNS shall be an amount which bears the same ratio to the special cash assistance funds apportioned to the State as the number of free and reduced-price lunches served in accordance with § 210.10 in the fiscal year beginning 2 years immediately prior to the fiscal year for which funds are appropriated, by all nonprofit private schools participating in the program in the State, bears to the number of free and reduced-price lunches so served during the year by all schools participating in the program in the State.

(f) [Revoked]

(g) [Revoked]

6. A new § 210.4a is added to read as follows:

§ 210.4a State Plan of Child Nutrition Operations.

(a) Not later than January 1 of each fiscal year, each State agency shall submit to FNS for approval a State plan of child nutrition operations for the following fiscal year. Approval of the plan by FNS shall be a prerequisite to the payment of cash assistance funds to the State agency under the act or the Child Nutrition Act of 1966, as amended, or to the donation by the Department of any commodities under part 250 of this chapter for use in schools and service institutions.

(b) A State plan of child nutrition operations, as a minimum, shall include the following information: (1) the number of schools not participating in the program, together with the average daily attendance in such schools; (2) an estimate of the number of schools needing, but not participating in, the school breakfast program under part 220 of this chapter, together with the average daily attendance in such schools; (3) an estimate of the number of service institutions needing a special food service program for children under part 225 of this chapter, on a year-round basis and on a summer basis only, together with an estimate of potential participation; (4) estimated funds, other than Federal funds, available to and under the control of the State agency for use in financing the programs under the act and the Child Nutrition Act of 1966, as amended; and (5) the detailed action program the State agency proposes to undertake to use the Federal funds provided under this act and the Child Nutrition Act of 1966, as amended, and other funds available to and under the control of the State agency to: (i) furnish a free or reduced-price lunch to every needy child; (ii) extend the program to every school within the State, giving priority to schools in areas with a high concentration of needy children; and (iii) extend the benefits of the school breakfast program and the special food service program for children to children in need of such benefits.

(c) Each State plan of child nutrition operations submitted for approval after the initial plan shall report accomplishments achieved under the plan for the

prior fiscal year and shall set forth the progress being made under the plan for the then current fiscal year.

(d) The State agency may submit for approval a revised plan of child nutrition operations, or amendments to its approved plan, at any time.

(e) State agencies may require school food authorities to submit for their approval similar plans for child nutrition operations for the schools under the jurisdiction of such school-food authorities.

7. In § 210.5, paragraph (b) is revised; paragraph (c) is revoked; and paragraph (d) is revised.

§ 210.5 Payments to States.

(b) The special cash assistance funds apportioned to any State for any fiscal year shall be made available in accordance with the method set forth in this section for general cash-for-food assistance funds and, to the extent practicable, shall be in accordance with the same schedules.

(c) [Revoked]

(d) The State agency shall release to FNS any Federal funds made available to it under the Program which are unobligated at the end of each fiscal year. Any such funds shall remain available to FNS for the purpose of the Program until expended. Release of funds by the State agency shall be made as soon as practicable but in any event not later than 30 days following demand by FNSRO and shall be reflected by a related adjustment in the State agency's letter of credit.

8. A new § 210.5a is added to read as follows:

§ 210.5a Transfer of funds.

A State agency may request FNS to approve the transfer of funds apportioned to it for any fiscal year under the Act and the Child Nutrition Act of 1966, as amended, among the programs authorized under such acts. Such request shall be accompanied by a justification showing how such transfers will better accomplish the purposes of such acts. Except for the fiscal year 1971, such justification shall also state how the requested transfer will better carry out the action program proposed in the State's plan of child nutrition operations for the applicable fiscal year. If the transfer is approved by FNS, related apportionments of funds and letters of credit shall be amended by FNS accordingly.

§ 210.6 [Amended]

9. In § 210.6, new paragraphs (b-1) and (b-2) are added and paragraph (d) is amended.

(b-1) For the fiscal year beginning July 1, 1971, and the fiscal year beginning July 1, 1972, State revenue (other than revenues derived from the Program) appropriated or specifically utilized for Program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 4 per centum of the matching requirement required of a State in subsection (a) of this section; for each of the two succeeding fiscal years, at least

6 per centum of such matching requirement; for each of the subsequent two fiscal years, at least 8 per centum of such matching requirement; and for each fiscal year thereafter, at least 10 per centum of such matching requirement.

(b-2) The State revenues made available pursuant to the preceding subsection shall be disbursed to schools, to the extent the State deems practicable, in such manner that each school receives the same proportionate share of such revenues as it receives of funds apportioned to the State for the same year under sections 4 and 11 of the Act and sections 4 and 5 of the Child Nutrition Act of 1966, as amended. The expenditure of such State revenues to finance the cost (other than salaries and administrative expenses at the State, as distinguished from local, level) of the intrastate distribution to schools in the Program of commodities donated under Part 250 of this chapter shall be considered to be in compliance with the provisions of this paragraph.

In paragraph (d), after the word "match" insert the phrase "in accordance with the requirements of this section".

§ 210.7 [Amended]

10. In § 210.7, paragraph (a) is amended by inserting after the phrase "cash-for-food assistance" the phrase "and special cash assistance".

11. In § 210.7, paragraph (b) is amended by deleting the phrase "automotive equipment" and substituting in lieu thereof the phrase "passenger automobiles".

§ 210.8 [Amended]

12. In § 210.8, paragraph (a) is amended by adding the following sentence to the end thereof: "The school food authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with Part 245 of this chapter."

13. In § 210.8, paragraph (c)(2) is amended to read as follows:

(2) Schools shall be selected for participation in the special cash assistance phase of the Program on the basis of the need of such schools for assistance in the serving of free or reduced price lunches to children unable to pay the full price of the lunch.

14. In § 210.8, paragraph (e)(1) is amended by inserting the following phrase before the semicolon at the end thereof: "and on any competitive food service set forth in § 210.15b of this part."

15. In § 210.8, paragraph (e)(5) is amended by deleting the phrase "local school authorities" and inserting in lieu thereof the phrase "the school food authority", and by adding the following phrase before the semicolon at the end thereof: "in accordance with the free and reduced price policy statement approved under Part 245 of this chapter";

16. In § 210.8, subparagraph (e)(6) is amended by adding the following phrase before the semicolon at the end thereof: "in accordance with such approved free and reduced price policy statement".

17. In § 210.8, subdivision (e)(13)(i)(b) is revised to read as follows: "Daily number of lunches served free and the daily number of lunches served at reduced prices, to children meeting the school's approved eligibility standards for such lunches;"

18. In § 210.8, a new subdivision (e)(13)(i)(d) is added to read as follows: "(d) Estimates, as of October 1 and March 1 of each year, of the number of children in the school who are eligible for free and reduced price lunches under the school's approved eligibility standards for such lunches. The data used to make each such estimate shall be maintained as part of the records to be maintained by school food authorities."

19. In § 210.8, a new subdivision (e)(13)(v) is added to read as follows: "(v) Applications from families. The individual applications for free and reduced price lunches submitted by families."

20. In § 210.8, subparagraph (e)(15) is amended by inserting a period after the phrase "(7 CFR 15)" and deleting the remainder of the sentence.

21. § 210.9 is revised to read as follows:

§ 210.9 Free and reduced price lunches.

The determination of children to whom free and reduced price lunches are to be served because of inability to pay the full price thereof, and the serving of the lunches to such children shall be effected in accordance with Part 245 of this Chapter.

22. § 210.11 is revised to read as follows:

§ 210.11 Reimbursement payments.

(a) Reimbursement shall be made only in connection with lunches meeting the requirements of § 210.10. General cash-for-food assistance shall be used to reimburse schools in connection with the cost of obtaining food. Special cash assistance funds may be used to reimburse schools in connection with the cost of operating a nonprofit lunch program in such schools, including the cost of obtaining, preparing and serving food.

(b) The maximum rate of reimbursement to be paid from general cash-for-food assistance shall be 12 cents for a Type A lunch and 2 cents for a Type C lunch. In assigning rates of reimbursement for the particular lunch type, the State agency, or FNSRO where applicable, shall assign the same rate of reimbursement for the lunches sold in the school to children at the full price and for lunches provided to children free or at a reduced price. Any variation between schools in the assigned rates for the particular type lunch shall reflect the relative needs of such schools as determined by the State agency or FNSRO where applicable.

(c) Any school participating in the Program may be reimbursed from special cash assistance funds for Type A lunches served free or at a reduced price to children meeting the school's approved eligibility standard for such lunches. Except as provided in paragraph (d) of this section, the maximum rate of reimbursement to be paid from special cash assistance shall be 30 cents for each such Type A lunch. In assigning such

rates of reimbursement for Type A lunches, the State agency, or FNSRO where applicable, shall base the rate assigned to a school on the school's need for special cash assistance in meeting the need for free and reduced price Type A lunches in such school.

(d) If a school is financially unable to meet its need for free and reduced price lunches with a maximum 30-cent rate of reimbursement from special cash assistance funds, the school may apply to the State agency, or FNSRO where applicable, for a higher rate of reimbursement from such funds. If the State agency, or FNSRO where applicable, determines that such additional assistance is necessary, first it shall provide general cash-for-food assistance at the maximum rate of 12 cents for all lunches served in the school, maximize assistance from State funds available for Program purposes, and insure that donated commodities are being utilized to the full extent practicable. After these actions, it may then assign a rate of reimbursement from special cash assistance funds which is in excess of 30 cents for the Type A lunches served free or at a reduced price to children meeting the school's approved eligibility standards for such lunches and, which, together with the income available from other sources, including general cash-for-food assistance, will finance up to 100 percent of the cost of operating the school's nonprofit lunch program: *Provided, however*, That the total reimbursement from general cash-for-food assistance funds and special cash assistance shall not exceed 60 cents (12 cents from general cash-for-food assistance and 48 cents from special cash assistance) for each Type A lunch served free or at a reduced price to children meeting the school's approved eligibility standards for such lunches.

(e) Assigned rates of reimbursement from general cash-for-food assistance and special cash assistance can be changed at any time by the State agency, or FNSRO where applicable. Notice of any change shall be given to the school-food authority.

(f) The last claim of each fiscal year for general cash-for-food assistance submitted by school-food authorities for a school may be paid at a rate in excess of the assigned rate for that school or in excess of the maximum rate of 12 cents: *Provided, however*, That the total reimbursement to a school for general cash-for-food assistance during any fiscal year shall not exceed the lesser of (1) an amount equal to the number of lunches served to children during the fiscal year times 12 cents; or (2) the cost of obtaining food for the school's nonprofit lunch program during the fiscal year.

(g) The last claim of each fiscal year for special cash assistance submitted by school food authorities for a school which had an assigned rate of 30 cents or less prior to the submission of the last claim may be paid at a rate in excess of the assigned rate or in excess of 30 cents: *Provided, however*, That the total special cash assistance reimbursement during the fiscal year to such a school shall not exceed the lesser of (1) the number of

free and reduced price lunches served to children meeting the school's approved eligibility standard for such lunches during the fiscal year times 30 cents; or (2) an amount which equals the cost of operating the school's nonprofit lunch program during the fiscal year minus the amount of general cash-for-food assistance reimbursement earned for the fiscal year. The last claim of each fiscal year for special cash assistance submitted by school food authorities for a school which had an assigned rate of reimbursement above 30 cents prior to the submission of the last claim may be paid at a rate in excess of the assigned rate or in excess of 48 cents: *Provided, however,* That the total special cash assistance reimbursement during the fiscal year to such a school shall not exceed the lesser of (1) the number of free and reduced price lunches served to children meeting the school's approved eligibility standard for such lunches during the fiscal year times 48 cents; or (2) the cost of operating the school's nonprofit lunch program during the fiscal year, minus the amount of general cash-for-food assistance reimbursement earned for the fiscal year.

23. § 210.13 is revised as follows:

§ 210.13 Reimbursement procedure.

(a) To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement, as set forth in paragraph (b) of this section, and other information concerning the operation of its nonprofit lunch program as set forth in paragraphs (c) and (d) of this section.

(b) The Claim for Reimbursement shall be filed with the State agency, or FNSRO where applicable, by the 10th day of the month following the month covered by such claim. As a minimum, the Claim for Reimbursement shall include the following information: (1) The month and year for which claim is made; (2) the name and address of the school food authority and of each school in which the Program was operated, and the following information with respect to each such school: (i) average daily attendance; (ii) the number of days that lunches were served; (iii) the total number of lunches sold to children at the full price; (iv) the total number of reduced price lunches served to children meeting the school's approved eligibility standards for such lunches; (v) the total number of free lunches served to children meeting the school's approved eligibility standards for such lunches; (vi) the amount of general cash-for-food assistance claimed; and (vii) the amount of special cash assistance claimed. In submitting a Claim for Reimbursement, each school food authority shall certify that the claim is true and correct; that records are available to support the claim; and that payment has not yet been received for the lunches included in such claim. Not more than 10 days of the beginning or ending month of Program operations in a fiscal year may be combined with the claim of the month im-

mediately following the beginning month, or preceding the ending month, but a claim combining the ending month of 1 fiscal year with the beginning month of the next fiscal year shall not be submitted.

(c) The Claim for Reimbursement covering operations for the months of October and March of each fiscal year shall be accompanied by an estimate of the number of children in each school that are eligible for free or reduced price lunches under the school's approved eligibility standards for such lunches.

(d) The Claim for Reimbursement covering operations for the month of December of each fiscal year shall be accompanied by the following information for each school included in such claim for the 6-month period, July-December, of such fiscal year: (1) Income (receipts) from children's payments; (2) income (receipts) from reimbursement; (3) all other income (receipts); (4) expenditures representing the cost of obtaining food; (5) all other expenditures; and (6) the value of donated goods and services, excluding the value of commodities donated under Part 250 of this chapter. The Claim for Reimbursement covering the final month of operations for each fiscal year shall be accompanied by the same information on income and expenditures for each school included in such claim for the period between January 1 and the end of the final month of operations for each fiscal year. State agencies, or FNSRO where applicable, may collect the information required in this paragraph more frequently than semiannually.

24. In § 210.14, new paragraphs (a-1), (a-2), (a-3), and (d-1) are added; paragraph (g) is revised; and a new paragraph (i) is added.

§ 210.14 Special responsibilities of State agencies.

(a-1) *Accounting procedures for schools.* Each State agency shall establish a system of accounting under which school food authorities shall report the information required in § 210.13(d) and the system established shall be such as to permit determination of the operating balances available to school food authorities.

(a-2) *Payment of claims.* A State agency may make full or partial reimbursement on a Claim for Reimbursement without prior administrative approval of the correctness of the claim but shall make any adjustments in such payment as are necessary following the administrative approval of such claim.

(a-3) *Extending agreements with school food authorities.* An agreement with a school food authority shall not be extended into the subsequent fiscal year until all the Claims for Reimbursement and the information required under § 210.13 (c) and (d) for the current fiscal year have been submitted by such authority.

(d-1) The State agency, from time to time, shall assess the needs of Pro-

gram schools and commodity only schools for commodities donated under Part 250 of this chapter, other than section 6 commodities, and shall notify the State distributing agency of the need of such schools for such commodity assistance and shall recommend variations in rates of distribution to meet variations in need.

(g) *Records and reports.* (1) Each State agency shall maintain current records on operations for schools in the Program and for commodity only schools and shall submit monthly reports to FNS on such operations on a form prescribed by FNS, which shall summarize the information submitted by the school food authorities in their Claims for Reimbursement. Such records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain.

(2) The monthly report required in subparagraph (1) of this paragraph shall contain for Program schools the following information: (i) the month and year being reported, (ii) the number of schools participating in the Program, (iii) the number of schools included in the report, (iv) the average number of days lunches were served, (v) the average daily attendance, (vi) the average daily participation, (vii) the total number of lunches sold to children at regular prices, (viii) the total number of reduced price lunches served to children meeting the school's approved eligibility standards, (ix) the total number of free lunches served to children meeting the school's approved eligibility standards, and (x) the amount of general cash-for-food assistance claimed and the amount of special cash assistance claimed. This report shall be submitted by each State agency by the 20th day of the month following the month covered by such report.

(3) The monthly reports covering operations for October and March of each year submitted in accordance with subparagraph (1) of this paragraph shall be accompanied by an estimate of the total number of children in the State who are eligible for a free or reduced price lunch, compiled from the estimates submitted by school food authorities with their Claims for Reimbursement covering operations for October and March of each year.

(4) For all the schools under its jurisdiction, the State agency shall submit, within 90 days after the end of each fiscal year, a summary report of the data obtained under §§ 210.13(d) and 210.15a(d).

(i) For commodity only schools the monthly report of the State agency required in paragraph (g) (1) of this section shall contain the following information on a form provided by FNS:

(1) The month and year being reported;

(2) The number of schools receiving commodities;

(3) The average number of days that lunches were served;

(4) The total number of lunches served which met the lunch type requirements of § 210.15a(b);

(5) The total number of reduced price lunches served to the children meeting the school's approved eligibility standards for such lunches; and

(6) The total number of free meals served to the children meeting the school's approved eligibility standards for such lunches.

The report shall be submitted by each State agency by the 20th day of the month following the month covered by such report.

25. A new § 210.15a is added to read as follows:

§ 210.15a Commodity only schools.

(a) Administration of this part in commodity only schools shall be in the same manner as set forth in § 210.3, and State agencies shall have the same responsibilities for commodity only schools as those for program schools.

(b) The school-food authority of a commodity-only school desiring to receive commodities donated under part 250 of this chapter shall enter into agreement with the State agency, or FNSRO where applicable. The agreements with commodity-only schools shall include the provisions set forth in § 210.8(e) except for subparagraphs (3), (4), (7), (8), (13) (ii) (b), (13) (iii) and (13) (iv). In lieu of the provisions of § 210.10, the agreements with commodity-only schools shall require such schools to serve well-balanced nutritious lunches, priced as a unit, that contain, as a minimum, food components from the four basic food groups as defined in the Department's Daily Food Guide (Leaflet No. 424 USDA).

(c) Commodity-only schools shall report each month to the State agency, or FNSRO where applicable, the following items:

(1) The month and year being reported;

(2) The name and address of the school-food authority and of each school under its jurisdiction that receives commodities, and the following information with respect to each such school:

(i) The number of days that lunches were served;

(ii) The total number of lunches served which met the lunch-type requirements of this subsection;

(iii) The total number of reduced-price lunches served the children meeting the school's approved eligibility standards for such lunches;

(iv) The total number of free lunches served to children meeting the school's approved eligibility standards for such lunches. Such reports shall be submitted by the 10th day of the month following the month covered by the report.

(d) The State agency, or FNSRO where applicable, shall require the submission by the school-food authorities of commodity-only schools of the following information for each such school under their jurisdiction for the 6-month period, July-December, of each fiscal year: (1) Income (receipts) from children's payments; (2) all other income (receipts);

(3) expenditures representing the cost of obtaining food; (4) all other expenditures; and (5) the value of donated goods and services, excluding the value of commodities donated under part 250 of this chapter. The same information on income and expenditures shall be submitted by the school-food authorities for the period between January 1 and the end of the final month of operations for each fiscal year. State agencies, or FNSRO where applicable, may collect the information required in this paragraph more frequently than semiannually.

26. A new § 210.15b is added to read as follows:

§ 210.15b Competitive food services.

(a) The sale of extra food items at the same time and place as the nonprofit lunch program is in operation in the school shall be restricted to those items recognized as making a contribution to, or permitted by the school to be served as part of, a type A lunch or a lunch meeting the requirements prescribed in § 210.15a(b) for commodity-only schools, and income from the sale of such food items shall be deposited to the account of the nonprofit lunch program.

(b) Food services operated for profit in the school, separate and apart from the nonprofit lunch program, shall not operate at such time or place as will constitute competition with the nonprofit lunch program.

Effective date. This amendment shall become effective on the date of publication in the FEDERAL REGISTER.

Dated: August 31, 1970.

RICHARD E. LYG, Assistant Secretary.

[F.R. Doc. 70-11732; Filed, Sept. 3, 1970; 8:48 a.m.]

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES

On July 17, 1970, there was published in the FEDERAL REGISTER (35 F.R. 11513) a notice of proposed rule making to revise the regulations on determining eligibility for free and reduced price meals (notice dated Oct. 18, 1968, 33 F.R. 15674) as to school lunch programs, for the purpose of incorporating applicable requirements of Public Law 91-248, approved May 14, 1970. Interested persons were given 20 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

Numerous communications were received. The comments, suggestions, and objections made in such communications have been considered and a number of changes from the proposed regulations have been made.

In order that the revisions of the regulations may become effective as soon as possible, in view of the beginning of the 1970-71 school year, they are hereby issued without an analysis of the comments, suggestions and objections received. Such an analysis will be issued and published at an early date.

The regulations with respect to determining eligibility for free and reduced-price meals, presently applicable to the national school lunch program, school breakfast program, and the special food service program for children (notice, dated Oct. 18, 1968, 33 F.R. 15674), are revised herewith for nonprofit lunch programs in schools.

Sec.	General purpose and scope.
245.1	Definitions.
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245.3	Priority for the neediest children.
245.4	Public announcement of the eligibility standards.
245.5	Applications for free and reduced-price lunches.
245.6	Hearing procedure for families and school-food authorities.
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245.8	Exemptions for certain nonprofit private schools.
245.9	Action by school-food authorities.
245.10	Action by State agencies and FNSRO.
245.11	Effective dates.
245.12	

AUTHORITY: The provisions of this Part 245 are issued under sections 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 207; 42 U.S.C. 1751-60, 1779.

§ 245.1 General purpose and scope.

Section 9 of the National School Lunch Act, as amended, requires that schools participating in the national school lunch program (7 CFR Part 210), and other schools utilizing commodities donated by the Department under section 32 of the act of August 24, 1935, as amended, under section 416 of the Agricultural Act of 1949, as amended, and under section 709 of the Food and Agricultural Act of 1965, as amended, shall (a) serve lunches free or at a reduced price to children who are determined by local school authorities to be unable to pay the full price of the lunches; (b) follow specified minimum criteria in making such determinations under a publicly announced plan; and (c) make no physical segregation of, or other discrimination against, any child because of his inability to pay the full price of the lunch. Section 9 also requires that, by January 1, 1971, any child who is a member of a family which has an annual income not above the applicable family size income level set forth in income poverty guidelines prescribed by the Secretary shall be served lunches free or at reduced price. It further provides that, in providing lunches free or at reduced price, school-food authorities shall give first priority to providing free meals to the neediest children. This part sets forth the responsibilities of State educational agencies, the Food and Nutrition Service regional offices, and school-food authorities with respect to the determination of eligibility of children for free and reduced-price lunches, the serving of free and reduced-price lunches to children, and assuring that there is no physical segregation of, or other discrimination against, children because of their inability to pay the full price for lunches.

The requirements of this part with respect to the amount charged for reduced-price lunches and to minimum eligibility criteria for free and reduced-price lunches shall not apply to any nonprofit private school which participates in the national school lunch program under an agreement with a Food and Nutrition Service regional office until it has been determined by such office that sufficient funds from sources other than children's payments are available to enable such school to meet such requirements.

§ 245.2 Definitions.

(a) "Commodity only school" means a school which does not participate in the national school lunch program under part 210 of this chapter, but which receives donated commodities under part 250 of this chapter for a nonprofit lunch program.

(b) "Family" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(c) "FNSRO where applicable" means the Food and Nutrition Service regional office when that agency administers the program under part 210 of this chapter with respect to nonprofit private schools.

(d) "Free lunch" means a lunch for which neither the child nor any member of his family pays or is required to work in the school or in the school's lunch program.

(e) "Income poverty guidelines" means the family size annual income levels prescribed by the Secretary for use by school-food authorities as the minimum annual family size income levels for establishing eligibility for free and reduced-price lunches.

(f) "Lunch" means a type A lunch, or lunch served in a commodity-only school, as each is prescribed in part 210 of this chapter.

(g) "Reduced price lunch" means a lunch which meets all of the following criteria: (1) The price shall be less than the full price of the lunch; (2) the price shall be 20 cents or lower; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's lunch program.

(h) "Service institution" shall have the meaning ascribed to it in part 225 of this chapter.

(i) "School", "school food authority", and other terms and abbreviations used in this part shall have the meanings ascribed to them in part 210 of this chapter.

§ 245.3 Eligibility standards for free and reduced price lunches.

(a) Each school food authority shall serve lunches free or at a reduced price to all children whom it determines, in accordance with the requirements of this part, are unable to pay the full price of the lunch. The criteria used by the school food authority in making such determinations shall be included in standards of eligibility which shall be approved by the State agency, or FNSRO where applicable, as part of the policy statement

required under § 245.10, and shall be publicly announced in accordance with the provisions of § 245.5. Such standards shall specify the specific criteria to be used, respectively, for free lunches and for reduced price lunches; they shall be applicable to all schools under the jurisdiction of the school food authority; and they shall provide that all children from a family meeting the eligibility standards and attending any school under the jurisdiction of the school food authority shall be provided the same benefits.

(b) The criteria included in the standards of eligibility and used by school food authorities in determining those children who are unable to pay the full price of the lunch, as a minimum, shall include: (1) The level of family income, including welfare grants; (2) the number of individuals in the family; and (3) the number of children in the family attending school or service institutions. On and after January 1, 1971, the family size income criteria included in such standards and used by the school food authority shall be such that any child who is a member of a family which has an annual income not above the applicable family size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served lunches free or at a reduced price. Any criteria included by a school food authority in addition to the minimum criteria specified in this section shall relate to providing free or reduced price lunches to children who would not be eligible for such lunches under such minimum criteria. In no event shall any such additional criteria operate or be applied so as to deny free or reduced price lunches to children who qualify for such lunches under the minimum eligibility criteria required by this section. Each school food authority shall by express provision permit any family which does not meet the eligibility criteria established by the school food authority to apply for a free or reduced price lunch for its children, stating the reasons why, even though it does not meet such eligibility criteria, such family believes that its children are unable to pay the full price of the lunch. If the school food authority determines, on the basis of such application, or on the basis of such application and such additional information as may be presented, that the children of such family are unable to pay the full price of the lunch, a free or reduced price lunch shall be made available to such children.

§ 245.4 Priority for the neediest children.

In providing free or reduced price lunches to children meeting the eligibility standards for such lunches, school food authorities shall give first priority to providing free lunches to the neediest children in the schools under their jurisdiction.

§ 245.5 Public announcement of the eligibility standards.

Each school food authority of a school participating in the Program or of a commodity only school shall publicly announce the standards for determining

the eligibility of children for free and reduced price lunches in such school. The public announcement of such standards, as a minimum, shall include the following actions:

(a) A letter or notice shall be distributed, on or about the beginning of each school year, to the parents of children in attendance at the school. Such letter or notice shall contain complete information on (1) the eligibility standards, including all criteria, with respect to free lunches and with respect to reduced price lunches, respectively; (2) how a family may make application for a free or reduced price lunch for its children; and (3) how a family may appeal the decision of the school food authority with respect to such application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6. When a child enrolls in school after the beginning of the school year, the letter or notice shall then be distributed to his parents.

(b) A public release, containing the same information supplied to parents, shall be made available to the informational media in the area from which the school draws its attendance, on or about the beginning of each school year.

(c) Copies of the public release shall be made available upon request to any interested party. Any subsequent changes in a school's eligibility standards during the school year which are approved by the State agency, or FNSRO where applicable, shall be publicly announced in the same manner as the original standards were announced.

§ 245.6 Applications for free and reduced price lunches.

(a) Each school food authority of a school participating in the Program or of a commodity only school shall provide supplies of a form for use by families in making application for free or reduced price lunches for their children. The application shall be clear and simple in design and the information requested thereon shall be limited to that required to demonstrate that the family does, or does not, meet the criteria in the eligibility standards for free or reduced price lunches, respectively, issued by the school food authority. The information requested in the application with respect to the annual income of the family shall be limited to the type or types of such income, such as salary, wages, or commissions from employment; earnings from self-employment, including farming; welfare payments; payments from social security, pensions, retirement, or annuities; and other cash income; and the amount of income for the family in total or by type. The application shall include a statement immediately above the space for signature that the person signing the application certifies that all the information furnished in the application is true and correct to the best of his knowledge and belief. The application shall be signed by an adult member of the family. The application form shall contain clear instructions with respect to the submission of the completed

application to the official or officials designated by the school food authority to make eligibility determinations on its behalf. A family shall be permitted to file an application at any time during the school year.

(b) When the information furnished by a family in its application indicates that the family meets the eligibility standards for either a free or reduced-price lunch, the children from such a family shall be provided the free or reduced-price lunch to which such information indicates they are entitled. If a child transfers from one school to another school under the jurisdiction of the same school-food authority, his eligibility for a free or reduced-price lunch, if previously established, shall be transferred to, and honored by, the receiving school. If the school-food authority subsequently wishes to challenge the correctness of the information contained in an application, it shall do so under the hearing procedure established under § 245.7. During the pendency of any such challenge, the children of the family shall continue to receive the free or reduced-price lunch to which they are entitled based on the information contained in the application.

(c) In providing free or reduced-price lunches to eligible children, the school-food authority need not require the submission of an application if alternative methods will expedite eligibility determinations. The school-food authority may determine that the children, or certain categories of children, automatically meet the school's eligibility standards. In such latter event, it shall include information to this effect in the letter or notice to parents, distributed in accordance with § 245.5, and advise parents of such children that an application is not required.

(d) Any family whose children have been provided with a reduced-price lunch shall have an opportunity to make application for a less expensive reduced-price lunch, or a free lunch, setting forth the reasons why it is unable to pay for the reduced-price lunch offered to its children under the eligibility standards. Any family which does not meet the eligibility criteria established by the school-food authority for a free or reduced-price lunch shall have an opportunity, as provided in paragraph (b) of § 245.3, to make application for a free or reduced-price lunch, stating the reason why, even though it does not meet such eligibility criteria, it believes that its children are unable to pay the full price of the lunch.

§ 245.7 Hearing procedure for families and school food authorities.

(a) Each school food authority of a school participating in the Program or of a commodity only school shall establish a hearing procedure under which a family can appeal from a decision made by the school food authority with respect to an application the family has made for free or reduced price lunches for its children. Such hearing procedure shall provide:

(1) A simple, publicly announced method for a family to make an oral or written request for a hearing;

(2) An opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal;

(3) An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(4) That the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing;

(5) An opportunity for the family to present oral or documentary evidence and arguments supporting its position without undue interference;

(6) An opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(7) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal;

(8) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(9) That the family and any designated representative shall be notified in writing of the decision of the hearing official;

(10) That a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and

(11) That such written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the family or its representative at any reasonable time and place during such period.

(b) The hearing procedure prescribed under paragraph (a) of this section shall be followed when a school food authority challenges the continued eligibility of any child for a free or reduced price lunch. During the pendency of the challenge, the child shall continue to receive the free or reduced price lunch to which he is entitled under the eligibility standards announced by the school food authority based upon the information supplied in the application made by the family.

§ 245.8 Nondiscrimination practices for children eligible to receive free and reduced price lunches.

The school food authorities of schools participating in the Program or of commodity only schools shall take such actions as are necessary to assure that the names of children eligible to receive free or reduced price lunches shall not be published, posted, or announced in any manner and to assure that there shall be no overt identification of any such children by the use of special tokens or tickets, or by any other means. Children eligible for a free or reduced price lunch shall not be required to work for their

lunch, use a separate lunchroom, go through a separate serving line, enter the lunchroom through a separate entrance, eat lunch at a different time, or eat a different lunch from the lunch sold to children paying the full price of such a lunch.

§ 245.9 Exemption for certain nonprofit private schools.

The requirements of this part with respect to the amount charged for reduced price lunches and with respect to the minimum eligibility criteria for free or reduced price lunches shall not apply to any nonprofit private school participating in the Program under an agreement with FNSRO until FNSRO has determined and notified the school food authority of such school that sufficient funds are available from sources other than children's payments to finance the cost of meeting such requirements. The school food authority of any such nonprofit private school shall provide to FNSRO information, in such form and by such date as FNSRO shall request, which will be sufficient, together with other information available, for a determination to be made with respect to whether sufficient funds from sources other than children's payments are available to enable such school to meet the requirements of this part with respect to the amount charged for reduced price lunches and with respect to minimum eligibility criteria for free and reduced price lunches.

§ 245.10 Action by school food authorities.

(a) Each school food authority of a school desiring to participate in the Program or to become a commodity only school shall submit for approval to the State agency, or FNSRO where applicable, a free and reduced price policy statement. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the school food authority to make eligibility determinations on its behalf for free and reduced price lunches;

(2) The complete family size, income and other criteria which comprise the eligibility standards for free and reduced price lunches, respectively;

(3) The specific procedures the school-food authority will use in accepting applications from families for free and reduced-price lunches and any alternative methods it intends to use in making eligibility determinations in accordance with § 245.6(c).

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the lunch, or a reduced price, which will protect the anonymity of the children receiving a free or reduced-price lunch, and

(5) An assurance that the school will abide by the hearing procedure set forth in § 245.7 and the nondiscrimination practices set forth in § 245.8.

(b) The policy statement submitted by each school-food authority shall be accompanied by a copy of the application

form to be used by the school and of the proposed letter or notice to parents.

§ 245.11 Action by State agencies and FNSRO.

(a) State agencies, and FNSRO where applicable, shall issue such instructions as are necessary to assure that school-food authorities are fully informed of the provisions of this part and of the requirements for the filing and approval of free and reduced-price policy statements. Any State agency, or FNSRO where applicable, may require that school-food authorities under its jurisdiction establish the maximum price of a reduced-price lunch at a level below 20 cents or establish criteria for determining eligibility for free or reduced-price lunches containing family size income levels above those in the income poverty guidelines prescribed by the Secretary. Any such requirements made by FNSRO with respect to nonprofit private schools shall be developed by FNSRO after consultation with the State agency. Except to the extent that variations are justified by varying economic conditions within the State, any such requirements shall be applied uniformly to all school-food authorities under the jurisdiction of the State agency or FNSRO, respectively, subject to the exemption with respect to nonprofit private schools in § 245.9.

(b) State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) State agencies, and FNSRO where applicable, shall instruct school-food authorities that they may not alter or amend the eligibility standards set forth in an approved policy statement without advance approval of the State agency, or FNSRO where applicable.

(d) As promptly as possible after the Secretary's determination and announcement of the income poverty guidelines for each fiscal year, State agencies, or FNSRO where applicable, shall notify school-food authorities in writing of any amendment to their free and reduced-price policy statement necessary to bring the family size income criteria into conformance with such income poverty guidelines.

(e) Except as provided in § 245.12, the State agency, or FNSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department, to any school unless it has an approved free and reduced-price policy statement on file with the State agency, or FNSRO where applicable.

(f) State agencies, or FNSRO where applicable, shall review and evaluate the performance of school-food authorities and of schools under the provisions of

this part during the course of administrative reviews of nonprofit lunch programs and by other means. They shall instruct school-food authorities of any deficiencies found and any corrective actions required.

§ 245.12 Effective date.

(a) For the fiscal year beginning July 1, 1970, the school-food authorities of schools participating in the program or of commodity-only schools shall submit a free and reduced-price policy statement for approval to the State agency, or FNSRO where applicable, not later than the end of the first calendar month after the month in which it began the service of any lunch for which reimbursement is claimed or in which commodities donated by the Department were utilized: *Provided*, That schools serving such lunches between July 1, 1970, and September 1, 1970, for the purposes of this subsection, shall be deemed to have begun the service of such lunches on September 1, 1970. If the free and reduced-price policy statement submitted by any school-food authority to the State agency, or FNSRO when applicable, is determined to be out of compliance with the provision of this part, such school-food authority shall be required to submit a policy statement that does meet the provisions of this part within 30 calendar days. In no event, shall any school-food authority be reimbursed for any lunches served after December 31, 1970, nor shall any commodities donated by the Department be used in any school's nonprofit lunch program after such date, unless the school's free and reduced-price policy statement has been approved by the State agency, or FNSRO where applicable.

(b) Other provisions of this part shall be effective upon publication.

Dated: August 31, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70-11733; Filed, Sept. 3, 1970;
8:48 a.m.]

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment, Department of Agriculture)

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 7]

PART 724 — BURLEY, FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), CIGAR FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55), AND MARYLAND TOBACCO

Subpart—Tobacco Allotment and Marketing Quota Regulations, 1968-69 and Subsequent Marketing Years

MISCELLANEOUS AMENDMENTS

Basis and purpose. The amendments herein are issued pursuant to and in

accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), to make certain amendments to the regulations (33 F.R. 15521, as amended) in this subpart for establishing farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties and the records and reports incident thereto for burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar filler and binder (types 42, 43, 44, 53, 54, and 55), and Maryland tobacco.

There was published a notice of proposed rule making to issue an amendment to these regulations (35 F.R. 7738). Interested persons were given 15 days after publication of such notice in which to submit written data, views, and recommendations with respect to the proposed regulations. The data, views, and recommendations which were submitted pursuant to said notice were duly considered within the limits of the Agricultural Adjustment Act of 1938, as amended.

The proposals set forth in the notice were adopted. In addition, the following changes are also adopted:

(1) Provisions for applying the erroneous notice of allotment rule have been broadened.

(2) Revision in provisions for lease and transfer of allotments under Public Law 91-284 (approved June 19, 1970).

Briefly, the amendments provide the following:

(a) Section 724.66: Paragraph (b) is amended to authorize Kansas City Data Processing Center to print data on MQ-24, Notice of Allotment, as heretofore and to also print on the form the county office addresses, crop year, and date of mailing. County committeeman's signature would not be used. Provision has been made to display for public inspection a printout of allotment data rather than MQ-24. In paragraph (d) there is added a provision that the erroneous notice of allotment rule would also be applicable if the farm operator prior to planting the tobacco materially changes his position to enable him to produce the crop.

(b) Section 724.68: Includes new provisions for lease and transfer of allotments under Public Law 91-284. Approval of leases and transfers is reserved for the county committee only.

(c) Section 724.81: Provides for issuing in certification counties a marketing card eligible for price support if there is excess acreage above the farm allotment but within a specified tolerance and the acreage is not disposed of. In such instances the marketing card would also bear the converted rate of penalty for the farm.

(d) Sections 724.86, 724.91, 724.96, and 724.99: Changed as required due to elimination of sale memos from MQ-76, within quota card for dark air-cured, fire-cured, and Virginia sun-cured.

(e) Section 724.87(a): Clarifies that dealers are to enter nonauction sales data on burley cards.

(f) Section 724.89: Includes penalty rates applicable to marketings of 1970 crop excess tobacco.

(g) Section 724.91: Provides that if a dealer mixes different kinds of tobacco and has excess resales he will pay penalty at the highest rate for kinds included.

(h) Section 724.95(a): Provides that false acreage certifications in certification counties (defined in Part 718) shall subject the farm to a reduction in the allotment and provides procedure for determining the amount of reduction.

(i) Section 724.99: Clarifies that dealers having transactions after April 1, usual final reporting date, are also to make weekly reports.

(j) Section 724.109: Record retention time expanded from 2 to 3 years.

1. Section 724.66 (b) and (d) are amended to read as follows:

§ 724.66 Approval of allotments and marketing quotas and notice of farm acreage allotments.

(b) An official notice of the farm acreage allotment and marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all allotment notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing, or a printout summary of such data, shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm in respect to which the allotment is established.

(d) If the county committee determines with the approval of the State executive director that (1) the official written notice of the farm acreage allotment issued for any farm erroneously stated the acreage allotment to be larger than the correct allotment, and (2) the error was not so gross as to place the operator on notice thereof, and that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) has planted an acreage of tobacco in excess of the correct farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for all purposes in connection with the tobacco marketing quota program for the current year, except that in determining whether or not

75 percent of the allotment is planted, the provisions of § 724.55 shall be followed.

2. Section 724.68 (a), (b), (c), and (f) are amended to read as follows:

§ 724.68 Lease and transfer of tobacco acreage allotments.

(a) (1) For 1968 through 1970 crops of cigar-binder (types 51 and 52) or Maryland tobacco subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment for cigar-binder (types 51 and 52) or Maryland tobacco is established for the current year may lease and transfer all or any part of such allotment to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. (2) For the 1971 and subsequent crops of cigar-filler and binder (types 42, 43, 44, and 53) and cigar-binder (types 51 and 52) or Maryland tobacco subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment for cigar-filler and binder (types 42, 43, 44, and 53) and cigar-binder (types 51 and 52) or Maryland tobacco is established for the current year may lease and transfer all or any part of such allotment to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. (3) The allotment established for a farm as pooled allotment under Part 719 of this chapter may be leased and transferred during the 3-year life of the pooled allotment. The lease and transfer of allotment acreage shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) (1) Any lease for 1968 through 1970 shall be made on an annual basis and on such terms and conditions, except as otherwise provided in this section, as the parties thereto agree. (2) Any lease for the 1971 and subsequent crops shall be made for such term of years not to exceed 5 and on such other terms and conditions, except as otherwise provided in this section, as the parties thereto agree.

(c) The lease and transfer of any allotment or any part thereof shall not be effective until a copy of such lease is filed with and determined by the county committee to be in compliance with the provisions of this section. Such lease and transfer shall not be effective unless a copy of the lease is filed with the county committee not later than May 1 of the current year. In addition, the lease and transfer of an allotment shall be effective if the State executive director finds that a lease was timely agreed upon and the terms of the lease are reduced to writing and filed no later than July 31 of the current year. The approval herein required by the county committee shall not be redelegated.

(f) (1) For 1968 through 1970 crops of cigar-binder (types 51 and 52) or Maryland tobacco, the total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yields) shall not exceed 50 percent of the acreage of cropland in the farm. (2) For the 1971 and subsequent crops of cigar-filler and binder (types 42, 43, 44 and 53), cigar-binder (types 51 and 52), or Maryland tobacco, the total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yields) shall not exceed 50 percent of the acreage of cropland in the farm except in the case of cigar-filler (types 42, 43 and 44) transfers, the acreage shall be limited to the smaller of 10 acres or 50 percent of the acreage of cropland in the farm.

3. Section 724.81 (c) and (d) are amended to read as follows:

§ 724.81 Issuance of producer marketing cards.

(c) *Issuance of within quota and excess cards, except burley tobacco producer cards.*—(1) *Within quota marketing card.* (i) A within quota marketing card MQ-76 (eligible for price support), shall be issued for each kind of tobacco for which there is no excess tobacco available for marketing, or the percent excess is zero, except that an excess marketing card MQ-77, showing zero penalty, shall be issued if at the time of the issuance of the marketing card: (a) There is excess tobacco of another kind of tobacco which was produced on the same farm in the same current year; (b) (1) in noncertification counties, all excess tobacco and (2) in certification counties (defined in Part 718) all excess tobacco above the tolerance (larger of 0.03 acre or 5 percent of the farm allotment but not to exceed 1 acre), has been disposed of in accordance with § 724.80, and in compliance with the time of notification provisions of and in the manner prescribed in Part 718 of this chapter, but not before harvest, unless the county committee determines that the producer's failure to dispose of his excess tobacco prior to harvest was because of conditions beyond his control; or (c) any kind of tobacco produced on land owned by the Federal Government is within the allotment for the farm, but in violation of a lease restricting the production of tobacco.

(ii) A within quota marketing card (MQ-76) shall be issued to identify tobacco grown for experimental purposes only by a publicly owned experiment station.

(iii) In certification counties, if the farmer has excess tobacco within the tolerance (larger of 0.03 acre or 5 percent of the farm allotment but not to exceed 1 acre) an MQ-77 shall be issued and stamped or marked "Eligible for Price Support". Such card shall bear the converted rate of penalty.

(2) *Excess marketing card.* An excess marketing card, MQ-77 (ineligible for price support except an MQ-77 issued under subparagraph (1)(iii) of this paragraph), showing the converted rate of penalty shall be issued for each kind of tobacco for which there is excess tobacco available for marketing and the percent excess exceeds zero percent. The percent excess and the converted rate of penalty shall be determined in accordance with § 724.82, except that an excess marketing card showing the full rate of penalty shall be issued:

(i) For each kind of tobacco for which no farm acreage allotment was established, or for which an allotment was established and later cancelled, or,

(ii) For each kind of tobacco for which the farm operator or another producer on the farm prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on the farm.

(d) *Issuance of producer burley cards.*

(1) A Form MQ-76 (burley) shall be issued:

(i) (a) In noncertification counties, if there is no excess tobacco available for marketing, or the percent excess is zero and (b) in certification counties (defined in Part 718 of this chapter), if the excess tobacco is not greater than that authorized by the tolerance (larger of 0.03 acre or 5 percent of the farm allotment but not to exceed 1 acre). Cards issued under this subdivision (b) shall be eligible for price support and bear the converted penalty rate.

(ii) To identify tobacco grown for experimental purposes only by a public owned experiment station.

(2) Except for the price support eligibility card issued under paragraph (d)(1)(i)(b), a Form MQ-76 (burley) bearing the notation "No Price Support" shall be issued:

(i) Showing zero penalty, if at the time of the issuance of the marketing card: (a) There is excess tobacco of another kind of tobacco which was produced on the same farm in the same current year; or (b) all excess burley tobacco has been disposed of in accordance with § 724.80, and in compliance with the time of notification provisions of and in the manner prescribed in Part 718 of this chapter, but not before harvest unless the county committee determines the producer's failure to dispose of his excess tobacco prior to harvest was because of conditions beyond his control; or (c) any burley tobacco was produced on land owned by the Federal Government is within the allotment for the farm, but in violation of a lease restricting the production of tobacco.

(ii) Showing the converted rate of penalty, if the percent excess exceeds zero percent.

(iii) Showing the full rate of penalty if: (a) No burley farm acreage allotment was established or a burley allotment was established and later canceled, or (b) the farm operator or another producer on the farm prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on the farm.

The percent excess and the converted rate of penalty shall be determined in accordance with § 724.82.

4. In § 724.86, paragraphs (a), (b), (c), and (d) are amended to read as follows:

§ 724.86 Identification of marketings, excluding burley tobacco and cigar tobacco.

(a) *MQ-76 within quota card and MQ-77 excess marketing card.* Subject to paragraph (b) of this section, each marketing of tobacco from a farm shall be identified by the marketing card issued for the farm, either an MQ-76 or MQ-77 (including sale memo). In addition, each nonauction sale except sales through a hogshead warehouse, shall (i) for within quota farms be indicated by a check mark on the inside of MQ-76, and (ii) for excess farms for which an MQ-77 is issued be identified by an executed bill of nonauction sale, and such bills of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(b) *Suspended sales and sales without marketing cards.* Any suspended sale, which is not identified by an MQ-76 or MQ-77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ-82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ-82 shall be executed only by a marketing recorder or other representative of the State executive director.

(c) *Other persons authorized to execute MQ-76 or MQ-77 (including sale memos).* (1) A warehouseman or a hogshead warehouseman, who has been authorized during the current marketing year on MQ-78, Tobacco Warehouse Organization, may record the sale on MQ-76 and issue a sale memo from an MQ-77 to identify a sale by a farmer if a marketing recorder is not available at the warehouse when the marketing card is presented.

(2) In the case of Maryland tobacco, a tobacco dealer who buys tobacco direct from farmers, who resells such tobacco through a hogshead tobacco warehouse, and who has been authorized on MQ-78 Tobacco to prepare marketing cards (including sale memos from MQ-77), may issue the form covering a purchase of such tobacco. For nonauction sales the bill of nonauction sale must have been executed from excess cards.

(3) Any warehouseman, hogshead warehouseman, or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ-78, may for each purchase of scrap tobacco execute an MQ-76 or MQ-77 (including a sale memo if the bill of nonauction sale has been executed).

(d) *Verification of sales processed during absence of marketing recorder.* Any person authorized on MQ-78 to act as a marketing recorder shall promptly present to a marketing recorder for verification, each warehouse bill (floor sheet) processed and identified by an MQ-76 or MQ-77 (including any sale memos)

executed by him in the absence of a marketing recorder.

5. Section 724.87(a) is amended to read as follows:

§ 724.87 Identification of burley tobacco marketings.

(a) *Identification of producer marketings.* Each auction and nonauction marketing of burley tobacco from a farm in the current year shall be identified by a marketing card, Form MQ-76, issued for the farm. The reverse side of the marketing card shall show pounds sold and date of sale. Also, each producer sale at auction shall be recorded on Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on Form MQ-72-2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ-72-2 and shall enter the data on MQ-76. For producer sales at auction, Form MQ-72-1 and Form MQ-76 shall be executed only by the ASCS marketing recorder.

6. Section 724.89 is amended by adding paragraph (e) to read as follows:

§ 724.89 Rate of penalty.

(e) (1) *1969-70 average market price.* The average market price for the kinds of tobacco listed below as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture, for the 1969-70 marketing year was:

AVERAGE MARKET PRICE	
Kinds of tobacco:	Cents per pound
Burley	69.6
Fire-Cured (Type 21)	53.1
Fire-Cured (Types 22-24)	48.1
Dark Air-Cured	40.3
Virginia Sun-Cured	52.8
Cigar-Filler and Binder (Types 42-44 and 53-55)	39.8
Cigar-Binder (Types 51 and 52)	58.2

(2) *1970-71 rate of penalty per pound.* The penalty rate per pound for the kinds of tobacco listed below upon marketings of excess tobacco subject to marketing quotas during the 1970-71 marketing year shall be:

RATE OF PENALTY	
Kinds of tobacco:	Cents per pound
Burley	52
Fire-Cured (Type 21)	40
Fire-Cured (Types 22-24)	36
Dark Air-Cured	30
Virginia Sun-Cured	40
Cigar-Filler and Binder (Types 42-44 and 53-55)	30
Cigar-Binder (Types 51 and 52)	(¹)

¹ Quotas terminated for 1970 crop.

7. In § 724.91 subparagraphs (a)(1) and (b)(2) are amended and paragraph (k) is added to read as follows:

§ 724.91 Penalties considered to be due from warehousemen, hogshead warehousemen, dealers, buyers and others excluding the producer.

Any marketing of tobacco under any one of the following conditions shall be considered to be a marketing of excess tobacco:

(a) (1) *Auction sale without identification by MQ-76 or MQ-77 (including memo of sale) (not applicable to burley)*. Any warehouse sale of tobacco by a producer which is not identified by a valid marketing card, either MQ-76 or MQ-77 (including sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ-82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(b) (2) *Nonauction sale (not applicable to burley tobacco)*. Any nonauction sale of tobacco, except cigar tobacco and sales by producers of Maryland tobacco sold through the hoghead market, which (i) is not identified by an MQ-76 or MQ-77 (including a valid bill of non-auction sale); (ii) as to excess tobacco, is not also identified by a valid sale memo, and recorded on MQ-79, Dealer's Record, not later than the end of the calendar week in which the tobacco was purchased; or (iii) if purchased prior to the opening of the local auction market for the current year, is not identified by an MQ-76 or MQ-77 (including a valid sale memo) and recorded on MQ-79 not later than the end of the calendar week which includes the first day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(k) *Dealer's tobacco—Excess resale rule for mixed reporting of data*. If during any marketing year a warehouseman or a dealer has transactions in more than one kind of tobacco and his reports of marketings result in excess resales, penalty on such excess resales shall be due from such dealer at the highest rate of penalty applicable to any kind of tobacco reported or due to be reported under these regulations.

8. Section 724.95(a) is amended to read as follows:

§ 724.95 *Producer's records and reports.*

(a) *Report of tobacco acreage.* (1) The farm operator or any producer on the farm shall execute and file a report with the county ASCS office or a representative of the county office or a representative of the county committee on Form ASCS-578, Record of Measurement Service, or Report of Acreage, showing all fields of tobacco on the farm in the current year. If any producer on a farm files or aids or acquiesces in the filing of any false report with respect to the acreage of tobacco grown on the farm, even though the farm operator or his representative refuses to sign such report, the allotment next established for such farm and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the filing of, aiding, or acquiescing in the

filing of, such false report was not intentional on the part of any producer on the farm, and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false acreage report.

(2) If a farm operator in a certification county (as defined in Part 718 of this chapter) files a certification of tobacco acreage on the farm and, after a farm visit and measurement of the acreage, it is determined by the county committee (with approval of the State committee) that the certification was false (either significantly under certification or significantly over certification by more than a tolerance of the larger of 0.03 acre or 5 percent of the farm allotment (not to exceed 1 acre)) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced.

(3) If the conditions in subdivision (i) and (ii) of this paragraph (a) are not applicable, the next established allotment shall be reduced on the basis of pounds computed as follows: The acreage falsely certified (difference between certified and measured acreage) shall, for the year of the violation, be multiplied by the farm's actual yield. Such method of determining the amount of allotment reduction also is provided for in paragraph (i) of this section.

9. In § 724.96, subparagraph (b) (3), paragraphs (c), (d), and paragraphs (g) (10), (11), and (12) are amended to read as follows:

§ 724.96 *Warehouseman's records and reports, except burley tobacco.*

(b) (3) *Marketing card cover.* The serial number of the warehouse bill (floor sheet) shall be recorded on the inside of the marketing card by the market recorder or warehouseman for each sale of tobacco by a producer.

(c) *Sale memo and bill of nonauction sale.* A record of sales (i) on MQ-76 and (ii) on MQ-77 or MQ-82, Sale Without Marketing Card (including sale memo from MQ-77 or MQ-82), shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through a warehouse and each nonauction sale of tobacco purchased by or for the warehouseman, including scrap tobacco obtained as result of providing curing space or stripping space for farmers. Each MQ-76 and MQ-77 (including sale memo) shall be executed as follows:

(1) *Auction sale.* An auction sale identified by MQ-76 shall show in the spaces provided therefor, the bill (floor sheet) number, checkmark to show the sale was by auction, a checkmark to show non-auction for purchases identified "NA" on the warehouse bill (floor sheet), pounds sold, name and address of warehouse, and date of sale. In addition, each

sale memo issued from MQ-77 to cover an auction sale shall show on the first page thereof in all of the spaces provided therefor, the warehouse bill number, pounds sold, amount of penalty due, name and address of warehouse, and date of sale.

(2) *Nonauction sale to a warehouseman who does not prepare a warehouse bill (floor sheet).* An MQ-76 used to cover a nonauction sale of tobacco to a warehouseman who does not prepare a warehouse bill (floor sheet) to cover the sale shall show, the bill (floor sheet) number, checkmark to show sale was by nonauction, pounds sold, name and address of the warehouse, and date of sale. When an MQ-77 is required to be used under this subparagraph a sale memo shall show on the reverse side the pounds sold and the amount of penalty due. The signature of the producer shall be obtained in the space provided on MQ-77.

(3) *Nonauction sale to a warehouseman who prepares a warehouse bill (floor sheet).* (i) Where a warehouseman purchases all the delivery of a producer's tobacco at a nonauction sale and prepares a warehouse bill (floor sheet) to cover the purchase, on MQ-76 there shall be shown the bill (floor sheet) number, checkmark to show nonauction purchases, pounds sold, name and address of warehouse, and date of sale. When an MQ-77 is required to be used under this subparagraph (3), the reverse side of a sale memo shall be completed as specified in subdivision (2) of this subparagraph and in addition, on the first page of a sale memo from MQ-77 the number of pounds purchased shall be shown in the spaces provided therefor, the amount of penalty due on a sale memo from MQ-77, name and address of warehouse, and date of sale. The signature of the producer shall be obtained in the space provided on MQ-77.

(ii) Where a warehouseman purchases at nonauction sale part of a delivery of tobacco by a producer and the remainder of the tobacco is sold at auction: The Record of Sales in MQ-76 shall be completed to show the warehouse bill (floor sheet) number, checkmark under both auction and nonauction, and the total number of pounds covered by the entire delivery under "Lbs. Sold", the name and address of the warehouse and date of sale, and the first sale memo from an MQ-77 shall be completed to show the warehouse bill(s) (floor sheet) number in the space provided therefor, the total number of pounds covered by the entire delivery under "Lbs. Sold," the amount of penalty due, name and address of the warehouse, and date of sale. The reverse side of a sale memo from MQ-77 shall show the number of pounds sold at nonauction sale in the space provided therefor.

(d) *Suspended sale record.* Any warehouse bills covering first marketing of farm tobacco which have not been identified by valid MQ-76 or MQ-77 at the end of the sale day shall be presented to a market recorder who shall stamp such bills "Suspended" and write thereon the serial number of the suspended sale, and record the bills on MQ-80, Daily Auction

Warehouse Report: *Provided*, That if a market recorder is not available, the auction warehouseman may stamp such bills "Suspended" and deliver them to a market recorder when one is available.

(g) *Daily report of auction warehouse business.*

(10) As to the information required to be entered on MQ-80, Daily Auction Warehouse Report, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) For each sale identified by an MQ-76 or MQ-77 (including sale memo) or MQ-82, Sale Without Marketing Card, the pounds sold; (ii) for each sale suspended, the warehouse bill(s) number and pounds sold; and (iii) for each sale cleared from suspension, the MQ-76 number or for MQ-77 or MQ-82 the sale memo number, and the date of clearance.

(11) Where a producer rejects the sale of a basket or a lot of tobacco, the warehouseman shall not change (i) the applicable entry on MQ-76 or for MQ-77 the sale memo, and (ii) the MQ-80 on which is reported the sale, if such tobacco has been billed out and the bills have been presented to the buyer.

(12) In balancing first sales (represented by marketing recorder's total) with computed first sales (bill-out total minus resales as reported by the warehouseman) the State executive director is authorized to approve reports with variance not to exceed one-half of 1 percent of such pounds.

10. In § 724.99, paragraph (c)(1) is amended and paragraph (g) is added to read as follows:

§ 724.99 Dealer's record and reports, excluding cigar tobacco buyers.

(c) *Nonauction sale (country purchase) to a dealer*—(1) *Fire-cured, dark air-cured, Virginia sun-cured, and Maryland tobacco.* Each purchase of tobacco by a dealer from a producer other than through an auction sale or hogshead warehouse sale, including farm scrap tobacco obtained from grading tobacco for farmers or as a result of furnishing farmers curing space or stripping space, shall be identified by an MQ-76 or MQ-77 (including a sale memo from the marketing card) issued for the farm on which the tobacco was produced. The producer's signature shall be obtained on the bill of nonauction sale on the reverse side of a sale memo from a form MQ-77. Any sale of producer's tobacco which is not identified by a marketing card (form MQ-76 or form MQ-77) shall be identified by a form MQ-82 executed by a marketing recorder or other representative of the State executive director. The dealer shall record or have a marketing recorder record each purchase of nonauction tobacco made by him on form MQ-79, Dealer's Record.

(g) *Delayed reports.* Notwithstanding the provision of paragraph (f), any

dealer having tobacco transactions after April 1 shall make reports on MQ-79 at the end of each week as provided in subparagraph (d)(2).

11. Section 724.109 is amended to read as follows:

§ 724.109 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director or the Director. (Secs. 313, 314, 316, 318, 375, 52 Stat. 47, as amended, 48, as amended, 80 Stat. 120, as amended, 52 Stat. 66, as amended, 84 Stat. 314; 7 U.S.C. 1313, 1314, 1314d, 1316, 1375)

Effective date: Thirty days after the date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C. on August 27, 1970.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 70-71756; Filed, Sept. 3, 1970; 8:50 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment, to be effective under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), was published in the FEDERAL REGISTER August 18, 1970 (35 F.R. 13135).

This marketing order program regulates the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit written data, views, or arguments pertaining thereto not later than 10 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were recommended by the Idaho-Eastern Oregon Potato Committee, established pursuant to said amended marketing agreement and order, it is hereby found and determined that:

§ 945.223 Expenses and rate of assessment.

(a) *Expenses.* The reasonable expenses that are likely to be incurred

during the fiscal period ending May 31, 1971, by the Idaho-Eastern Oregon Potato Committee, for its maintenance and functioning, and for such other purposes as the Secretary determines to be appropriate, will amount to \$33,000.00.

(b) *Rate of assessment.* The rate of assessment to be paid by each handler in accordance with the amended marketing agreement and this part, shall be twenty-six hundredths of one cent (\$0.0026) per hundredweight, or equivalent quantity, of potatoes handled by him as the first handler thereof during the fiscal period: *Provided*, That potatoes for canning, freezing, and "other processing" as defined in the recent amendment to the act (Public Law 91-196) shall be exempt.

(c) *Reserve.* Unexpended income in excess of expenses for the fiscal period ending May 31, 1971, may be carried over as a reserve.

(d) *Definition of terms.* Terms used in this section have the same meaning as when used in the said amended marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of the said marketing agreement and this part require that the rate of assessment for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period, and (2) the current fiscal period began on June 1, 1970, and the rate of assessment herein fixed will apply to all assessable potatoes beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 31, 1970.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-11730; Filed, Sept. 3, 1970; 8:48 a.m.]

[Area No. 2]

PART 948—IRISH POTATOES GROWN IN COLORADO

Limitation of Shipments and Import Requirements for Red Skinned Round Type Potatoes

Notice of rule making with respect to a proposed limitation of shipments regulation to be made effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in Area No. 2 (San Luis Valley, Colo.), was published in the FEDERAL REGISTER August 21, 1970 (35 F.R. 13370). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). Interested persons were afforded an opportunity to file written data, views, or arguments pertaining thereto not later than 5 days after publication. None was filed.