licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.

NUT GRADING

**§ 107.75 Classification; statement.**

Whenever the type or grade or other class of nuts is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with § 107.77.

**§ 107.76 Grades based on inspection and sample.**

Whenever the grade or other class of nuts is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be based upon a correct and representative sample of the nuts and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade or other class.

**§ 107.77 Standards to be used.**

Official Nut Grading Standards of the United States are hereby adopted as the official nut grading standards of the Act and the regulations in this part; *Provided*, That, the grade of nuts for which no official nut standards of the United States are in effect, shall be stated: (a) In accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the nut trade generally in the locality in which the warehouse is located, subject to the approval of the Service, or (b) in the absence of the standards mentioned in (a) of this section, in accordance with any standards approved for the purpose by the Service.

**§ 107.78 Conditions and procedure for appeal of grades or other class.**

(a) If a question arises as to whether the kind, grade or other class, or condition of nuts was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the nuts involved may, after reasonable notice to the other party, submit the question to the Administrator, who may appoint a committee to make a determination. The decision of the committee shall be final unless the Administrator shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade or other class or condition of any identifiable lot was not correctly stated, a new receipt or certificate embodying therein the statement of kind, grade or other class or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense shall be prorated between the parties.

**§ 107.79 Publications.**

Publications under the Act and the regulations in this part, shall be made in such media as deemed proper by the Administrator.

**§ 107.80 Information of violations.**

Every person licensed under the Act shall immediately furnish the Administrator any information which comes to the knowledge of such persons tending to show that any provision of the Act or the regulations in this part has been violated.

**§ 107.81 Procedure in hearings.**

For the purpose of hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations, the licensee involved shall be allowed a reasonable time within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by an official authorized by the Secretary. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by such official from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the official before whom the hearing is held. Every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. At the end of the oral hearing, the parties shall be afforded an opportunity to file proposed findings of the fact, conclusions of law, and orders, after which the official before whom the hearing is held shall prepare his report including his recommended findings of fact, conclusions of law, and order, which shall be served upon the parties, who may file exceptions thereto within a time specified by such official. After the expiration of such time, such report together with any proposed findings of fact, conclusions of law, and orders, and exceptions filed by the parties shall be transmitted to the Secretary for consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.

**§ 107.82 One document and one license to cover several products.**

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

**§ 107.83 Bond, assets, and fees for combination warehouse.**

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

**§ 107.84 Amendments.**

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.

NOTE.—The reporting and/or record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[FR Doc.76-21667 Filed 7-26-76;8:45 am]

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## CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. 14]

## PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

### Miscellaneous Amendments

Regulations governing the Special Milk Program for Children are amended to implement Pub. L. 94-105, enacted October 7, 1975, and Federal Management Circular 74-7 (34 CFR Part 256) which prescribes uniform administrative requirements for Federal grants-in-aid, and for other purposes.

Pub. L. 94-105 amended section 3 of the Child Nutrition Act of 1966 to make Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands eligible for the Special Milk Program for Children. In addition, a new provision was added to the Act to prohibit the use of a minimum rate of reimbursement for each half pint of milk served to children which would exceed the cost of the milk to the school or institution. These two changes affect § 215.2(y) and § 215.8(b)(1), respectively.

On July 24, 1975, changes in the regulations governing the National School Lunch, School Breakfast, and Nonfood Assistance Programs and State Administrative Expenses became effective as a result of the implementation of Federal Management Circular 74-7. These changes, where applicable, are being incorporated into the Special Milk Program for Children regulations and they are highlighted below:

(1) State agencies will be responsible for prescribing the accounting records relating to their use of the Federal grants

made to them under this part. Such records must be accurate and current.

(2) State agencies will be allowed to specify the data items on the application form and on the claim form used to reimburse School Food Authorities and child-care institutions.

(3) The provision dealing with Program termination is rewritten in accordance with the grant closeout procedures contained in Attachment L of Federal Management Circular 74–7 (34 CFR Part 256).

(4) Record retention requirements are modified to permit State agencies to maintain records in their original form or on microfilm.

(5) State agencies will use their own procedures to disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution that was not properly payable under this part.

As a result of this amendment, many specific details of program administration will be left to State agency discretion. The Department's role in these areas will be to provide guidance rather than to dictate procedures. In this connection, the requirements now removed from these regulations may be viewed as acceptable practices which State agencies may modify to meet their own needs. The Department will provide appropriate guidance materials to State agencies to aid them in developing their own procedures.

In addition, the free milk provisions applicable to child-care institutions in Part 244—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Child-Care Institutions, are now incorporated into this part. Part 245 continues to be the applicable regulation for determining eligibility for free milk in schools.

There are several changes of significance under definitions including a new definition for "adults" and "milk" and adding a definition for "children".

Other minor changes are made for clarification.

Considering the fact that the changes to the regulations implement Pub. L. 94–105 and considering the fact that changes in definitions and those resulting from implementation of Federal Management Circular 74–7 have already been published for public comment and have been placed into effect under the other child nutrition programs, it is determined that proposed rule making and public participation procedures thereon are impracticable and unnecessary.

Accordingly, Part 215 is amended as set forth below:

**§ 215.1 [Amended]**

1. In § 215.1, the quoted statute is amended by inserting immediately after "Guam" in the second sentence the following: "the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands,"; and by adding at the end thereof the following: "Notwithstanding any other provisions of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children."

2. In § 215.2, paragraphs (c) and (x–1) are deleted; paragraphs (b), (e), (k), (l), (n), (r), (v), (y) and (z) are revised; and paragraphs (d), (e–1), (j), (j–1), (u–1) and (aa) are added, as follows:

**§ 215.2 Definitions.**

* * * * *

(b) "Adults" means those persons not included under the definition of children.

(c) [Reserved]

(d) "Child Care Food Program" means the program authorized by section 17 of the National School Lunch Act, as amended.

(e) "Child-care institution" means any nonprofit nursery school, child-care center, settlement house, summer camp, service institution participating in the Summer Food Program for Children pursuant to Part 225 of this chapter, institution participating in the Child Care Food Program pursuant to Part 226 of this chapter, or similar nonprofit institution devoted to the care and training of children. The term "child-care institution" also includes a nonprofit agency to which such institution has delegated authority for the operation of a milk program in the institution. It does not include any institution falling within the definition of "School" in paragraph (v) of this section.

(e–1) "Children" means persons under 19 chronological years of age in child-care institutions; or persons under 21 chronological years of age attending schools as defined in § 215.2(v)(2) and (3) of this part; or students of high school grade or under as determined by the State educational agency in schools as defined in § 215.2(v)(1) of this part.

* * * * *

(j) "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.

(j–1) "Free milk" means milk for which neither the child nor any member of his family pays or is required to work in the school or child-care institution or in its food service.

(k) "Fiscal year" means the period of 12 calendar months beginning July 1, 1975, and ending June 30, 1976; the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(l) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

* * * * *

(n) "Needy children" means: (1) Children who attend schools participating in the Program and who meet the School Food Authority's eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under Part 245 of this chapter; and (2) children who attend child-care institutions participating in the Program and who meet the eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under § 215.13a of this part.

* * * * *

(r) "Nonprofit" means exempt from income tax under the Internal Revenue Code, as amended.

* * * * *

(u–1) "Reimbursement" means financial assistance paid or payable to participating schools and child-care institutions for milk served to eligible children.

(v) "School" means (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade. (2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution, or any public or nonprofit private institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "institution" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. (3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

* * * * *

(x–1) [Reserved]

(y) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Trust Territory of the Pacific Islands.

(z) "State agency" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

(aa) "Summer Food Service Program for Children" means the program authorized by section 13 of the National School Lunch Act, as amended.

3. Section 215.3 is revised to read as follows:

**§ 215.3 Administration.**

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child-care institutions shall be in the educational agency of the State: *Provided, however,* That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as defined in § 215.2(v)(2) or § 215.2(v)(3) or in child-care institutions.

(c) FNSRO shall administer the Program in any school as defined in § 215.2(v)(1) or § 215.2(v)(2) or in any child-care institutions as defined in § 215.2(e) to which the State is not permitted by law to disburse the Program funds paid to it or wherein the State is otherwise unable to administer the Program. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program to such schools or child-care institutions within such State.

(d) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

4. Section 215.4 is revised to read as follows:

**§ 215.4 Payments of funds to States and FNSROs.**

(a) For each fiscal year, the Secretary shall make payments to each State agency, and allocate funds to FNSROs where applicable, at such times as he may determine from the funds appropriated for Program reimbursement. Such payments to any State agency or allocations to FNSROs where applicable, shall be in a total amount equal to the product obtained by multiplying the projected number of half pints of milk to be served under the Program during the fiscal year, to children in schools or child-care institutions with which such State agency or FNSRO has approved Program agreements, by the applicable rates.

(b) Each State agency shall be responsible for controlling Program reimbursement payments so as to keep within the funds made available to it, and for the timely reporting to FNS of the number of half pints of milk actually served. The Secretary shall increase or decrease the available level of funding by adjusting the State agency's Letter of Credit when appropriate; and a final adjustment will be made at such time as the total number of half pints actually served under the Program during the fiscal year is reported to FNS.

5. In § 215.5, paragraph (b) is deleted and reserved; and paragraph (a) is revised to read as follows:

**§ 215.5 Method of payment to States.**

(a) Funds to be paid to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall: (1) Obtain funds needed to reimburse School Food Authorities and child-care institutions through presentation by designated State officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (2) submit requests for funds only at such times and in such amounts as will permit prompt payment of claims; (3) use the funds received from such requests without delay for the purpose for which drawn. Notwithstanding the foregoing provisions, if funds are made available by Congress for the operation of the Program under a continuing resolution, Letters of Credit shall reflect only the amount available for the effective period of the resolution.

(b) [Reserved]

* * * * *

6. Section 215.6 is revised to read as follows:

**§ 215.6 Use of funds.**

Federal funds made available under the Program shall be used to encourage the consumption of milk through reimbursement payments to schools and child-care institutions in connection with the purchase and service of milk to children in accordance with the provisions of this part: *Provided, however,* That, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount equal to not more than 1 per centum of the Federal funds so made available for any fiscal year.

7. In § 215.7, paragraphs (b) and (c) are revised, and paragraph (d) is amended as follows:

**§ 215.7 Requirements for participation.**

* * * * *

(b) Each School Food Authority or child-care institution shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free milk policy statement which, if the application is for a school, shall be in accordance with Part 245 of this chapter or, if the application is for a child-care institution, shall be in accordance with § 215.13a of this part.

(c) The application shall include information in sufficient detail to enable the State agency, or FNSRO where applicable, to determine whether the School Food Authority or child-care institution is eligible to participate in the Program and extent of the need for Program payments.

(d) The State agency, or the Department through FNSRO where applicable, shall enter into a written agreement with each School Food Authority or child-care institution approved for participation in the Program. Such agreement shall provide that the School Food Authority or child-care institution shall, with respect to participating schools and child-care institutions under its jurisdiction:

* * * * *

(2) Make free milk available at least once during each day of operation to needy children as defined in this part, and make no discrimination against any needy child because of his inability to pay for the milk;

* * * * *

(6) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(7) Upon request, make all records pertaining to its milk program available to the State agency and to FNS or OA for audit and administrative review, at any reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(8) Retain the individual applications for free milk submitted by families for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

8. In § 215.8, paragraphs (a), (b) and (c) are revised to read as follows:

**§ 215.8 Reimbursement payments.**

(a) Reimbursement payments shall be made for milk purchased and served to children by participating School Food Authorities and child-care institutions, except that reimbursement shall not be made for the first half pint of milk served as part of a reimbursed meal served under the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, or the Child Care Food Program, or served in commodity only schools as part of a meal meeting the requirements of § 210.15a(b) of this chapter.

(b)(1) The rate of reimbursement per half pint of milk purchased and served to children in nonpricing programs and served to children other than needy children in pricing programs shall be the rate announced by the Secretary for the fiscal year or period involved. However, in no event shall the reimbursement for each half pint of milk served to children exceed the cost of the milk to the

school or child-care institution. (2) Within the limitations set forth in paragraph (c) of this section, the rate of reimbursement for milk purchased at a single price and served to needy children in pricing programs shall be equal to the cost (after discount) per half pint of milk. If milk is purchased at more than one price, the average cost (i.e., the total cost of all milk purchased during the month, divided by the number of half pints purchased) shall be used.

(c) Reimbursement at the rate equal to the cost (after discount) per half pint of milk purchased and served to needy children shall be limited to one (1) half pint serving per child per operating day in pricing programs which also provide a food service to children, and two (2) half pint servings per child per operating day in pricing programs which do not provide a food service to children. Reimbursement for any additional milk served free to needy children in addition to these limitations shall be made at the rate prescribed in paragraph (b)(1) of this section.

* * * * *

9. In § 215.10, paragraphs (b), (c), (e) and (f) are revised to read as follows:

**§ 215.10 Reimbursement procedure.**

* * * * *

(b) Any Claim for Reimbursement for any fiscal year not received by the State agency, or FNSRO where applicable, within 90 days after the close of the milk service program, or, in the case of programs which operate year-round, within 90 days after the closing date of the fiscal year, may be disqualified from payment, except where the State agency, or FNSRO where applicable, considers that a Claim for Reimbursement has been filed late because of circumstances beyond the control of the School Food Authority or child-care institution.

(c) Each Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the information for the reports required under § 215.11(c). Claims for Reimbursement shall be filed with the State agency, or FNSRO where applicable, by the 10th day of the month following the month covered.

* * * * *

(e) Milk served to adults is not eligible for reimbursement.

(f) Any School Food Authority or child-care institution which operates both a pricing and nonpricing milk program in the same school or child-care institution, may elect to claim reimbursement for: (1) All milk purchased and served to children under the Program at the rate prescribed for nonpricing programs in § 215.8(b)(1), or (2) only milk purchased and served to children in the pricing program at the rates and limitations prescribed in § 215.8 (b) and (c) for pricing programs.

10. In § 215.11, paragraphs (a), (b), (c) and (d) are revised to read as follows:

**§ 215.11 Special responsibilities of State agencies.**

(a) *Program administration and goals.* Each State agency, or FNSRO where applicable, shall include in its State Plan of Child Nutrition Operations developed under § 210.4a of the National School Lunch Program regulations (7 CFR Part 210), or in its State Plan of Child Care Food Programs Operations developed under § 226.7 of the Child Care Food Program regulations (7 CFR Part 226), or in its program management and administration plan developed under § 225.8 of the Summer Food Service Program for Children regulations (7 CFR Part 225), its goals for the Program and a plan to monitor Program performance and measure progress in achieving Program goals. To meet the minimum criteria for approval, that portion of the Plan which deals with Program assistance must include: (i) objectives, (ii) reasons for the establishment of the objectives, (iii) methods to be used to accomplish the objectives, and (iv) evaluation methods to be used in determining if the objectives are being met.

(b) *Program assistance.* Each State agency, or FNSRO where applicable, shall provide Program assistance, as follows:

(1) Consultive, technical, and managerial personnel to administer the Program and monitor performance of schools and child-care institutions and to measure progress towards achieving Program goals.

(2) Visits to participating schools and child-care institutions to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title), issued under title VI of the Civil Rights Act of 1964.

(3) Documentation of such Program assistance shall be maintained on file by the State agency, or FNSRO where applicable.

(c) *Records and reports.* (1) Each State agency shall submit information on Program operations on a form provided by FNS, and shall maintain current accounting records of Program operations which will adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall report information on the use of Program funds to FNS on a form provided by FNS. Reports shall continue to be submitted on a regular basis after the end of the fiscal year to which they pertain until all unpaid obligations have been liquidated at which time the last report should be marked "Final" and submission discontinued for that fiscal year.

(d) *Compliance.* State agencies, or FNSROs where applicable, shall require School Food Authorities and child-care institutions to comply with applicable provisions of this part.

* * * * *

11. In § 215.12, paragraph (b) is deleted and reserved; and paragraphs (a) and (d) and the last sentence of paragraph (f) are revised to read as follows:

**§ 215.12 Claims against schools or child-care institutions.**

(a) State agencies, or FNSROs where applicable, shall disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) [Reserved]

* * * * *

(d) Each State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

* * * * *

(f) * * * Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of § 215.5(c).

* * * * *

12. Section 215.13 is revised to read as follows:

**§ 215.13 Management evaluations and audits.**

(a) In accordance with the plan submitted under § 210.4a or §225.8 or § 226.7 of this chapter, the State agency shall provide for audits of the funds and operations of the Program covered by this part, at the State, School Food Authority and child-care institution levels, to be made with reasonable frequency but, beginning in fiscal year 1978, not less frequently than once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in Attachment G of Federal Management Circular 74–7. Audits may be made by State agency internal auditors, by State Auditors General, by State Controllers, or by other comparable State audit groups; or by Certified Public Accountants or State licensed public accountants.

(b) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) make audits on a statewide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(c) Use of audit guides available from OA is encouraged. When these guides are

utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(d) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools and child-care institutions) of any operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools and child-care institutions) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under the Program, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school or child-care institution.

(e) In making management evaluations or audits for any fiscal year, the State agency, FNS or OA may disregard any overpayment which does not exceed $35 or, in the case of a State agency administered Program, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses generally. However, no overpayment shall be disregarded when there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

13. Section 215.13a is added to read as follows:

**§ 215.13a Determining eligibility for free milk in child-care institutions.**

(a) *General.* Child-care institutions participating in the Program shall make free milk available to children who are unable to pay the full price of milk. It is the responsibility of each child-care institution to determine the children who are eligible to receive free milk, and to assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price of milk.

(b) *Action by State agencies and FNSROs.* Each State agency, or FNSRO where applicable, shall annually, for child-care institutions participating in the Program under their jurisdiction:

(1) Inform each child-care institution of its responsibility to provide free milk to eligible children upon request, and to provide to each a copy of the State's family-size income standards for determining eligibility for free meals under the National School Lunch Program and School Breakfast Program to assist the institution in meeting its responsibility;

(2) Require each child-care institution to develop, at the time the child-care institution applies for Program participation and thereafter at the time the Program agreement is renewed, a written policy statement to be used uniformly in all food service centers under its jurisdiction, as required in paragraphs (c) or (d) of this section.

(3) No State agency, or FNSRO where applicable, shall approve any child-care institution for participation on either a summer or year-round basis unless the free milk policy statement has been reviewed and approved, nor renew the agreement of any child-care institution participating on a year-round basis unless the free milk policy statement has been reviewed and approved. Approval of such policy statement shall be made within 60 days of receipt from the child-care institution. Pending approval of a revision of a policy statement, an existing policy statement shall remain in effect.

(c) *Policy statement—nonpricing child-care institutions.* Child-care institutions which operate a nonpricing program shall develop a policy statement which consists of an assurance to the State agency, or FNSRO were applicable, that all children are offered the same quantity of milk at no separate charge regardless of race, color, or national origin, and that there is no discrimination in the course of the food service.

(d) *Policy statement—pricing child-care institutions.* Child-care institutions which operate a pricing program shall develop a policy statement for determining eligibility for free milk which shall contain the following:

(1) The specific criteria to be used in determining eligibility for free milk. These criteria shall give consideration to economic need as reflected by family size and income. The criteria used by the child-care institution may not result in the eligibility of children from families whose incomes exceed the State's family-size income standards for determining eligibility for free meals under the National School Lunch and School Breakfast Programs.

(2) The method by which the child-care institution will collect information from families in order to determine a child's eligibility for free milk.

(3) The method by which the child-care institution will collect milk payments so as to prevent the overt identification of children receiving free milk.

(4) A hearing procedure substantially like that outlined in Part 245 of this chapter.

(5) An assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin.

(e) *Public announcement of eligibility criteria.* Each child-care institution shall make available annually to the information media serving the area from which the child-care institution draws its attendance, a public release announcing the availability of free milk to children meeting the approved eligibility criteria. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

14. A new § 215.14a is added to read as follows:

**§ 215.14a Procurement standards.**

(a) This section provides standards for use by State agencies in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders. State agencies may use their own procurement regulations which reflect applicable State and local law, rules, and regulations, provided that procurements made with Federal grant funds adhere to the standards set forth in this section.

(b) The standards contained in this section do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into under the Program. This includes, but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) The State agency shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Program funds. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of the State agency, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) The State agency shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such de-

scription shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by the State agency to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed with Program funds.

(i) The type of procuring instruments used (e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Program. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(j) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to subparagraph 4 of this paragraph is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency.

(3) Any or all bids may be rejected when it is in the State agency's interest to do so, and such rejections are in accordance with applicable State law, rules, and regulations.

(4) Procurements may be negotiated by the State agency if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm; all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the Department for prior approval;

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by applicable Federal or State law, rules, or regulations.

(k) Contracts shall be made by State agencies only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies for negotiated purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: (i) Justification for the use of negotiation in lieu of advertising, (ii) contractor selection, (iii) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(n) The State agency shall include provisions to define a sound and complete agreement in all contracts which it awards when the contract costs are to be borne by Program funds.

(o) In awarding contracts the State agency must comply with the following requirements:

(1) The State agency's contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts awarded by State agencies in excess of $10,000 shall contain suitable provisions for termination by the State agency, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Where applicable, all contracts awarded by State agencies in excess of $2,500, which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation.

(4) Contracts awarded by State agencies, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters.

(5) All negotiated contracts (except those of $10,000 or less) awarded by State agencies shall include a provision to the effect that the State agency, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the Program for the purpose of making audit, examination, excerpts, and transcriptions.

(6) Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857b et seq.). Suspected violations shall be reported by the State agency in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(p) States agencies shall observe their regular requirements and practices with respect to bonding and insurance.

15. Section 215.15 is revised to read as follows:

**§ 215.15 Miscellaneous provisions.**

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment L of Federal Management Circular 74–7 (34 CFR Part 256).

(b) *Termination for cause.* FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the

conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and the reasons for the termination, together with the effective date. A State agency, or FNSRO where applicable, shall terminate a School Food Authority's or child-care institution's participation in the Program by written notice whenever it is determined by FNS or the State agency that the School Food Authority or child-care institution has failed to comply with the conditions of the Program. When participation in the Program has been terminated for cause, any payments made to the State agency or any recoveries from the State agency or from the School Food Authority or child-care institution shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation in the Program when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of noncancellable obligations, properly incurred by the State agency prior to termination. A State agency, or FNSRO where applicable, may terminate a School Food Authority's or child-care institution's participation in accordance with these provisions.

(d) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provision of this part.

16. Section 215.16 is revised to read as follows:

**§ 215.16 Program information.**

School Food Authorities and child-care institutions desiring information concerning the Program should write to their State educational agency, or the appropriate Food and Nutrition Service Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: New England Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 34 Third Avenue, Burlington, Massachusetts 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, the Commonwealth of Puerto Rico, Virginia, the Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08540.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee: Southeast Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30309.

(d) In the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin: Midwest Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Illinois 60605.

(e) In the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming: West-Central Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–D–22, Dallas, Texas 75242.

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, and Washington: Western Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(Catalog of Federal Domestic Assistance Program, No. 10.556, National Archives Reference Services)

NOTE.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date: This amendment shall become effective August 1, 1976.

Dated: July 21, 1976.

JOHN DAMGARD,
*Deputy Assistant Secretary.*

[FR Doc.76-21579 Filed 7-26-76;8:45 am]

## CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amendment 8]

### PART 722—COTTON

### Subpart—Regulations for 1968 and Succeeding Years Extra Long Staple Cotton Program

1976 CROP PRICE SUPPORT PAYMENT FACTOR AND PRICE SUPPORT PAYMENT RATE

On July 18, 1975, notice of proposed rule making regarding determinations with respect to the 1976 crop of extra long staple cotton was published in the FEDERAL REGISTER (40 FR 30283). Interested persons were invited to submit written data, views, and recommendations regarding the determinations within 30 days after publication of the notice. No comments were received in response to the factor and payment rate.

This amendment to the regulations governing the Extra Long Staple Cotton Program for 1968 and Succeeding Years is issued pursuant to section 101(f) of the Agricultural Act of 1949, as amended. The purposes of this amendment are to incorporate the 1976 price support payment factor and the 1976 price support payment rate.

The regulations governing the Extra Long Staple Cotton Program for 1968 and Succeeding Years, 33 FR 19159, as amended, are hereby further amended as follows:

1. Section 722.704 is amended by adding a new paragraph (g) to read as follows:

**§ 722.704 Price support payment factor.**

* * * * * *

(g) For 1976, the price support payment factor is 0.9725.

2. Section 722.709 is amended by adding a new sentence at the end of paragraph (a).

**§ 722.709 Price support payment.**

(a) * * * For 1976, the price support payment rate shall be 1.51 cents per pound.

* * * * * *

(Sec. 101(f), as amended, 82 Stat. 702 (7 U.S.C. 1441(f)))

Effective date: July 27, 1976.

Signed at Washington, D.C., on July 20, 1976.

KENNETH E. FRICK,
*Adminisitrator, Agricultural Stabilization and Conservation Service.*

[FR Doc.76-21519 Filed 7-26-76;8:45 am]

## CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Regulation 536, Amendment 1]

### PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Limitation of Handling

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period July 16–22, 1976. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

(a) *Findings.*—(1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended mar-

keting agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 536 (41 FR 29130). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.*—The provisions in pargraph (b) (1) (i), and (ii) of § 908.836 Valencia Orange Regulation 536 (41 FR 29130) are hereby amended to read as follows:

**§ 908.836 [Amended]**

* * * * *

(1) District 1: 315,000 cartons;
(ii) District 2: 385,000 cartons.

(b) * * *

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

Dated: July 22, 1976.

CHARLES R. BRADER,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.76–21668 Filed 7–26–76;8:45 am]

[Nectarine Reg. 8, Amdt. 1]

## PART 916—NECTARINES GROWN IN CALIFORNIA

### Container, Pack, and Container Marking Requirements

This amendment of Nectarine Regulation 8 (§ 917.350; 41 FR 24698) is issued pursuant to the marketing agreement and Order No. 916 (7 CFR Part 916). Said regulation became effective on June 15, 1976, and this amendment extends the regulation, without change, for an indefinite period. Unless extended, the regulation would expire on August 2, 1976. The regulation specifies certain container labeling and pack requirements for fresh shipments of California nectarines.

Notice was published in the June 30, 1976, issue of the FEDERAL REGISTER (41 FR 26923) that consideration was being given to a proposal by the Nectarine Administrative Committee, established under the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in California. This is a regulatory program effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act." The notice allowed interested persons 16 days to submit written data, views, or arguments pertaining to the proposal. No such material was submitted.

The amended regulation will continue to require that all varieties of California nectarines in fresh shipments be in containers which conform to the pack and container requirements hereinafter specified. Those requirements are that (1) nectarines packed in closed containers shall meet the requirements of "standard pack" and nectarines loose-filled or loose-packed in open containers shall be "fairly uniform in size." (Standard pack" and "fairly uniform in size" are defined in the United States Standards for Grades of Nectarines.), (2) each package or container of nectarines shall bear the name "nectarines" and the name of the variety or the words "unknown variety" if the variety is not known, (3) each package or container of nectarines shall be marked with the size of the nectarines therein, (4) No. 22D and 22E standard lug boxes of loose-filled or loose-packed nectarines shall be labeled according to the applicable net weight requirement, and (5) bulk bin containers of nectarines, in addition to above requirements, as applicable, shall contain at least 400 pounds, net weight, and be marked with the name and address of the shipper and specific net weight.

Nectarine Regulation 8 contains essentially the same requirements as were in effect in 1975 and prior years except for the requirement that loose-filled or loose-packed nectarines in open containers be "fairly uniform in size," the requirement that the name "nectarines" appear on the container in addition to the varietal name and the additional requirements applicable to bulk bin containers of nectarines. This regulatory action is necessary to assure that shippers of fresh California nectarines will continue to implement standardized packing practices and more informative labeling which will facilitate more orderly marketing of fresh California nectarines and contribute to more effective operations under said marketing agreement and order.

After consideration of all relevant material presented, including the proposal set forth in the aforesaid notice, the recommendations and information submitted by the Nectarine Administrative Committee, established under said amended marketing agreement and order, other available information, it is hereby found that the regulation of California nectarines, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of California nectarines are currently in progress and the regulation should continue to be applicable to all such shipments in order to effectuate the declared policy of the act; (2) the provisions of the amendment are identical to those specified in the notice; (3) compliance with this amended regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof; and (4) this amended regulation was recommended by members of the Nectarine Administrative Committee in an open meeting at which all interested persons were afforded an opportunity to submit their views.

*Order.*—The provisions of § 916.350(b) preceding subparagraph (1) thereof are amended to read as follows:

**§ 916.350 Nectarine Regulation 8.**

* * * * *

(b) On and after August 2, 1976, no handler shall handle any package or container of any variety of nectarines except in accordance with the following terms and conditions: * * *

* * * * *

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

Dated: July 22, 1976, to become effective August 2, 1976.

CHARLES R. BRADER,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.76–21736 Filed 7–26–76;8:45 am]

[Peach Reg. 8, Amdt. 1]

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

### Container, Pack and Container Marking Requirements

This amendment of Peach Regulation 8 (§ 917.442; 41 FR 23185) is issued pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528). Said regulation became effective on June 9, 1976, and this amendment extends the regulation, without change, for an indefinite period. Unless extended, the regulation would expire on August 2, 1976. The regulation specifies certain container labeling and pack requirements for fresh shipments of California peaches.

Notice was published in the June 28, 1976, issue of the FEDERAL REGISTER (41 FR 26576) that consideration was being given to a proposal by the Peach Commodity Committee, established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528), regulating the han-

dling of fresh pears, plums, and peaches grown in California. This is a regulatory program effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act." The notice allowed interested persons 18 days to submit written data, views, or arguments pertaining to the proposal. No such material was submitted.

The amended regulation will continue to require that all varieties of California peaches in fresh shipments be in containers which conform to the pack and container requirements hereinafter specified. Those requirements are that (1) all peaches packed in closed containers shall meet the requirements of "standard pack" as specified in the United States Standards for Peaches, (2) each container of peaches shall bear the name "peaches" and the name of the variety or the words "unknown variety" if the variety is not known, (3) each container of peaches shall be marked with the size of the peaches therein, (4) the variation in diameter among peaches in each container shall not exceed specified limits, (5) No. 22D and 22E standard lug boxes shall be labeled according to the applicable net weight requirement, and (6) bulk bin containers of peaches, in addition to above requirements, as applicable, shall contain at least 400 pounds, net weight, and be marked with the name and address of the shipper and specific net weight.

Peach Regulation 8 contains essentially the same requirements as were in effect in 1975 and prior years except for the requirement that the name "peaches" appear on the container in addition to the varietal name and the additional requirements applicable to bulk bin containers of peaches. This regulatory action is necessary to assure that shippers of fresh California peaches will continue to implement standardized packing practices and more informative labeling, which will facilitate more orderly marketing of fresh California peaches and contribute to more effective operations under said marketing agreement and order.

After consideration of all relevant material presented, including the proposal set forth in the aforesaid notice, the recommendations and information submitted by the Peach Commodity Committee, established under said amended marketing agreement and order, and other available information, it is hereby found that regulation of California peaches, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of California peaches are currently in progress and the regulation should continue to be applicable to all such shipments in order to effectuate the declared policy of the act; (2) the provisions of the amendment are identical to those specified in the notice; (3) compliance with this amended regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof; and (4) this amended regulation was recommended by members of the Peach Commodity Committee in an open meeting at which all interested persons were afforded an opportunity to submit their views.

*Order.*—The provisions of § 917.442(b) preceding subparagraph (1) thereof are amended to read as follows:

**§ 917.442 Peach Regulation 8.**

* * * * *

(b) On and after August 2, 1976, no handler shall handle any package or container of any variety of peaches except in accordance with the following terms and conditions: * * *

* * * * *

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

Dated, July 22, 1976, to become effective August 2, 1976.

CHARLES R. BRADER,
*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.76–21738 Filed 7–26–76;8:45 am]

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

### Special Purpose Shipments—Pears

This regulation permits movement of pears from California to a packing facility in Oregon without inspection and certification prior to such movement, subject to certain safeguard requirements which prevent distribution in commercial channels until they are graded and certified as meeting all applicable order requirements.

This action is authorized under § 917.43 of the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17529), regulating the handling of fresh pears, plums, and peaches grown in California, and was recommended by the Pear Commodity Committee which is established under the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Movement of pears between the production area (i.e. the State of California) and any point outside thereof is defined as handling under the order, and prior to handling of the fruit, it must be inspected and certified as meeting all order requirements by the Federal or Federal-State Inspection Service. Hence, grower-handlers who produce pears within such area but own packing facilities outside the area are precluded from the use of those facilities in the grading and packing of their pears, and must arrange with persons who own facilities within the area to pack such pears. The special purpose provisions of the order provide for the establishment of procedures, with appropriate safeguards, which would permit movement of pears to a facility outside the production area for packing.

The rule herein contained establishes such a procedure to permit the movement of pears owned by a grower to a packing facility owned by such grower in Oregon. The safeguards require: Approval by the committee prior to any movement of the pears; filing reports indicating the quantity of pears moved and disposition thereof; all pears must be of the person's own production and may be moved only to a packing facility owned and operated by that person; inspection and certification by the Federal-State Inspection Service prior to shipment from the Oregon packing facility; and disposition of any pears which do not meet grade, size, or quality requirements in accordance with order requirements.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this action until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The time intervening between the date when the information upon which this amendment is based became available and the time such amendment should become effective is insufficient; (2) shipments of pears are expected to begin on or about July 12, 1976, and to permit persons directly affected to harvest and market pears, the amendment should become effective as soon as possible; and (3) no useful purpose would be served by delaying the effective time.

Therefore, Subpart—Rules and Regulations (§§ 917.100–917.179) is amended by adding a new section, which reads as follows:

**§ 917.149 Special purpose shipments.**

Any person may file a request with the Pear Commodity Committee to transport pears to a packing facility located in the State of Oregon without inspection and certification prior to such transporting. The committee may approve such a request subject to the following terms and conditions:

(a) Approval shall be requested by the person prior to transporting the pears out of the area of production.

(b) Such person shall file with the committee, in such manner as required, reports showing, among other things, the date and quantity of pears comprising each shipment of pears transported to Oregon and the disposition thereof.

(c) All such pears shall be of the person's own production and the packing facility to which they are transported must be owned and operated by that person.

(d) All such pears shall be inspected and certified, as required by § 917.45, by the Federal or Federal-State Inspection Service prior to the time such pears are shipped from the packing facility. Any pears shipped to any such facility which, upon inspection, do not meet the requirements of the then effective grade, size, or quality regulations, may be shipped, or handled, within the State, for consumption by any charitable institution or for distribution by any relief agency or for conversion into products. Prior to any such shipment or handling, there shall