

(f) Nothing in the order shall affect rights to reemployment under the provisions of section 5(a)(1)(B) of the Emergency Petroleum Allocation Act of 1973, as amended, or section 212(g) of the Economic Stabilization Act of 1970, as amended. Any employee transferred pursuant to subsection (b) of this section having a right to reemployment under the provisions of section 28 of the Federal Energy Administration Act of 1974 shall retain that right during the period of his employment with the Federal Energy Office established by this order. Any employee of the Federal government appointed, without a break in service of one or more work days, to any position in the Federal Energy Office established by this order shall have the rights of reemployment provided by subpart B of Part 352 of title 5 of the Code of Federal Regulations.

SEC. 10. The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days from receipt of notice of the proposed action during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published along with public notice of the proposed action. The review required by this section may be waived for a period of 14 days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

SEC. 11. The Administrator of General Services shall provide, on a reimbursable basis, such administrative support as may be needed by the Federal Energy Office. All departments and agencies of the Executive branch shall, to the extent permitted by law, provide assistance and information to the Administrator of the Federal Energy Office.

SEC. 12. This order shall become effective on July 31, 1976.

Gerald R. Ford

THE WHITE HOUSE,
July 30, 1976.

[FR Doc. 76-22709 Filed 8-2-76; 10:56 am]

EDITORIAL NOTE: For the text of the President's statement, dated July 30, 1976, on signing Executive Order 11930, see the Weekly Compilation of Presidential Documents (vol. 12, no. 32).

Memorandum of July 19, 1976

Determination Under Section 103(d)(3) of the Agricultural Trade Development and Assistance Act of 1954, as Amended (Public Law 480)—Portugal

[Presidential Determination No. TQ1]

Memorandum for the Secretary of State, the Secretary of Agriculture

THE WHITE HOUSE,
Washington, July 19, 1976.

Pursuant to the authority vested in me under the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter "the Act"), I hereby:

Determine that for Portugal the waiver of the exclusion provided for by Section 103(d)(3) of the Act, for the purpose of selling up to \$5 million of agricultural commodities under Title I, is in the national interest of the United States.

Gerald R. Ford

STATEMENT OF REASONS THAT A WAIVER UNDER SECTION 103(d)(3) OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED (PUBLIC LAW 480), IS IN THE NATIONAL INTEREST

In response to current Portuguese import needs, it is proposed to export to that country an additional five million dollars of agricultural commodities bringing the total assistance provided in fiscal year 1976 and the transitional quarter under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (P.L. 480), to \$25 million.

The United States has consistently supported the efforts of the moderate Pinheiro Azevedo government to restore political stability to Portugal. Beset with enormous economic problems, exacerbated by the influx of thousands of refugees, Portugal needs urgent economic assistance. Concessional sales of agricultural commodities to Portugal constitute a tangible demonstration of our willingness to help provide this assistance.

Portuguese nationalized firms exported to Cuba in 1975, and it is likely they will do so again this year. Therefore, in order to enter into an agreement with the Government of Portugal for such a sale under Title I, it is necessary that the President determine that such sales to Portugal would be in the national interest of the United States. Section 103(d)(3) of P.L. 480 excludes from eligibility for concessional sales under Title I any country which sells or furnishes or permits ships or aircraft under its registry to transport to or from Cuba or North Vietnam any equipment, materials, or commodities, so long as those countries are governed by Communist regimes. However, under Section 103(d)(3), as amended by Section 203 of P.L. 94-161, the President is authorized to waive this exclusion if he determines that such a waiver is in the national interest.

The considerations noted above make the proposed sale of agricultural commodities to Portugal and the necessary waiver important to the national interest of the United States.

[FR Doc.76-22589 Filed 7-30-76;2:41 pm]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Redesignation

Regulations governing a program for the payment of State Administrative Expense Funds, formerly contained in Part 220 of this chapter, are hereby redesignated as Part 235.

Sections 220.1–220.3 and §§ 220.24–220.29 are superseded insofar as they refer to State Administrative Expense Funds and §§ 220.19–220.23 are deleted.

Since this part has been removed from Part 220, with the primary changes being of an editorial nature to conform the regulations to the revised child nutrition program regulations necessitated by Pub. L. 94–105 and a minor change in the allocation formula, the Department finds that proposed rulemaking and public participation procedure is impracticable and unnecessary.

Accordingly, the regulations governing State Administrative Expense Funds are amended and reissued, as follows:

Part 235 is added to read as follows:

Sec.	
235.1	General purpose and scope.
235.2	Definitions.
235.3	Administration.
235.4	Allocation of funds to States.
235.5	Payments to States.
235.6	Use of funds by State agencies.
235.7	Records and reports.
235.8	Management evaluations and audits.
235.9	Procurement standards.
235.10	Property management requirements.
235.11	Other provisions.

AUTHORITY: Secs. 7 and 10, Pub. L. 89–642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779).

§ 235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making advances of funds to State agencies for use for administrative expenses incurred in supervising and giving technical assistance in connection with additional activities undertaken by them under the special assistance phase of the National School Lunch Program (7 CFR Part 210), the Child Care Food Program (7 CFR Part 226), the School Breakfast Program (7 CFR Part 220), and the Non-

food Assistance Program (7 CFR Part 230).

§ 235.2 Definitions.

For the purpose of this part, the term:

(a) "Act" means the Child Nutrition Act of 1966, as amended.

(b) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(c) "Department" means the U.S. Department of Agriculture.

(d) "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.

(e) "Expendable personal property" means all tangible personal property other than nonexpendable property.

(f) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(g) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the U.S. Department of Agriculture.

(h) "Fiscal year" means a period of 12 calendar months beginning October 1, 1976, and October 1 of each calendar year thereafter and ending with September 30 of the following calendar year.

(i) "Institution" means a child care center or a sponsoring organization as defined in Part 226 of this chapter.

(j) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. The State agency may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

(k) "OA" means the Office of Audit of the Department.

(l) "OI" means the Office of Investigation of the Department.

(m) "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible having no physical existence—such as patents, inventions, and copyrights.

(n) "Real property" means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(o) "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 child care 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 "child care 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 hospitals 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.

(p) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a breakfast or a lunch program therein. The term "School Food Authority" also includes a nonprofit agency or organization to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with breakfast or lunch program regulations.

(q) "Secretary" means the Secretary of Agriculture.

(r) "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.

(s) "State agency" means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under Part 210, Part 220, Part 226, or Part 230 of this chapter.

(t) "State educational agency" means, as the State legislature may determine, (1) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

§ 235.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program for payment to States of State Administrative Expense Funds covered by this part. Within FNS, CND shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department. Each agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

§ 235.4 Allocation of funds to States.

(a) For the period beginning July 1, 1976, and ending September 30, 1976, FNS shall determine the amount of State Administrative Expense Funds payable to each State as follows: To the extent that funds are available, FNS shall establish a tentative allocation for each State agency which shall include: (1) A basic amount related to the number of man-years required to establish, maintain and expand the programs for needy children, including the State's outreach effort. This amount shall be determined by FNS on the basis of information available as to the salary level of State food service personnel; and (2) an additional amount determined by dividing 2 per centum of the remaining funds among Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands on the basis of the number of children, aged 3 to 17, inclusive, in each State and by dividing the balance of 98 per centum of such remaining funds among other States on the basis of the number of children, aged 3 to 17, inclusive, in each State in families with incomes of less than \$6,000 per annum. Information as to the program or programs for which these funds are available for each State shall be supplied by FNS to each State agency. Appropriate reductions from or additions to the tentative allocation so computed shall be made by FNS for any State where FNS determines that the scope and size of the State's child nutrition programs warrant such changes.

(b) Beginning with the fiscal year ending September 30, 1977, FNS shall determine the amount of State Administrative Expense Funds for each State each fiscal year as follows: To the extent that funds are available, FNS shall establish a tentative allocation which shall include: (1) A basic amount related to the number of man-years required to establish, maintain and expand the programs for needy children, including the State's outreach effort. This amount shall be determined by FNS on the basis of information available on an application form prescribed by FNS that conforms with Attachment M (Standard Form for Applying for Federal Assistance) of Federal Management Circular 74-7 (34 CFR Part 256). (2) An amount determined by dividing the remaining available funds among the States on the basis of the estimated total number of meals served free or at reduced price the previous fiscal year under

the National School Lunch Program, the School Breakfast Program and the Child Care Food Program. FNS shall inform each State agency as to the child nutrition program or programs for which allocated funds are available. Appropriate reductions from or additions to the tentative allocation so computed shall be made by FNS for any State where FNS determines that the scope and size of the State's child nutrition programs warrant such changes.

§ 235.5 Payments to States.

State Administrative Expense Funds allocated to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The basic amount of funds based on man-years may be made available to each State agency upon receipt of the application. Additional funds shall not be made available before approval of the State Plan of Child Nutrition Operations provided for under 7 CFR 210.4a or the State Plan of Child Care Food Program Operations provided for under 7 CFR 226.7 (the "State Plan").

§ 235.6 Use of funds by State agencies.

(a) State Administrative Expense Funds paid to any State shall be used by State agencies to employ additional personnel, as approved in the applicable State Plan, to supervise and give technical assistance to School Food Authorities and to institutions in their initiation, expansion, and conduct of any program for which the funds are made available. State agencies may also use these funds, in an amount approved by FNSRO in the application form, for their general administrative expenses in connection with any such program, including travel and related expenses. Additional personnel or part-time personnel hired to give assistance to any such program are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a man-year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(b) State Administrative Expense Funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Federal Management Circular 74-4 (7 CFR Part 255).

(c) State Administrative Expense Funds may also be used by the State agency to pay administrative expenses of a distributing agency (when such agency is an agency other than the State agency) to employ additional personnel relating to supervisory and technical assistance provided by such distributing agency to School Food Authorities and to institutions in the initiation, expansion, and conduct of any program for which State Administrative Expense Funds are made available.

(d) The amount of State Administrative Expense Funds paid to a distributing agency shall be based on the amount of

additional funds needed to perform such supervisory and technical assistance deemed necessary by the State agency: *Provided, however*, That the total amount paid to a distributing agency in any fiscal year shall not exceed 10 percent of the total amount of the State Administrative Expense Funds made available to the State agency for that fiscal year, unless specific written approval is obtained from FNSRO. Requests for State Administrative Expense Funds for a distributing agency which exceed the 10 percent limitation shall be submitted to FNSRO, with the State Plan, for approval.

(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of § 235.9 and § 235.10 must be observed.

(f) Each State agency shall release to FNS any Federal funds made available to it under this part which are unobligated at the end of each fiscal year. 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 related adjustment in the State agency's Letter of Credit.

(g) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

§ 235.7 Records and reports.

(a) Each State agency shall keep records on administrative expenses conforming with the applicable State Plan, and shall make such records available, upon a reasonable request, to FNS, OIA, OI, or the U.S. Comptroller General and shall maintain current accounting records of State Administrative Expense Funds which shall 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 the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) 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) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit information on State Administrative Expense Funds on forms provided by FNS and shall continue to report information on the use of State Administrative Expense Funds after the end of the fiscal year to which they pertain until all unpaid obligations have been liquidated at which time the next report made should be marked "Final" and submission discontinued for that fiscal year.

§ 235.8 Management evaluations and audits.

(a) Each State agency shall provide for audits of State agency operations under this part to be made with rea-

sonable frequency, but beginning in fiscal year 1978 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 H of Federal Management Circular 74-7 (34 CFR Part 256). Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall be incorporated into the State Plan where applicable. The State Plan shall: (1) State the frequency of audits of the State agency and delineate the positive action to be taken during fiscal years 1976 and 1977 to achieve audit frequency of not less than once every two years as set forth in paragraph (a) of this section; (2) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization; and (3) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

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

(d) 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.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA with full opportunity to conduct audits of all such operations. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request by FNS, OA, or the U.S. Comptroller General.

§ 235.9 Procurement standards.

(a) *General purpose and scope.* This section provides standards for use by State agencies in establishing procedures for the procurement of supplies, equipment, and other services with State Administrative Expense 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 law, rules, and regulations, provided that procurement adheres 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 set-

tlement and satisfaction of all contractual and administrative issues arising out of procurements entered into with State Administrative Expense Funds. This includes, but is not limited to: disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violations of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) Each 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 State Administrative Expense 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 description 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 State Administrative Expense 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 Federal program involved. 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 paragraph (i) 4 of this section 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 FNS 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 materials 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 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 techni-

cal 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: (1) Justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) 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 adequately 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 State Administrative Expense 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 State Administrative Expense Funds, 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) State agencies shall observe their regular requirements and prices with respect to bonding and insurance.

§ 235.10 Property management requirements.

(a) *General purpose and scope.* This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by the State agency, whose cost was borne in whole or in part with State Administrative Expense Funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section.

(b) *Nonexpendable personal property.* The following requirements shall be observed in the acquisition, use and disposition of nonexpendable personal property:

(1) *Title.* When nonexpendable personal property is acquired by a State agency, in whole or in part with Federal funds, title shall be vested in the State agency.

(2) *Use.* The State agency shall retain such property as long as there is a need for such property to accomplish the purpose for which it was acquired whether or not the State agency continues to receive Federal funds for programs administered by the Department.

(3) *Disposition.* When there is no longer a need for such property to accomplish the purpose for which it was acquired, the State agency shall use the property in connection with other Federal programs it administers. Priority shall be given to Federal programs administered by the Department over the programs administered by other Federal agencies. When the State agency no longer has need for such property in any of its federally assisted programs, the

property may be used for the State agency's own official activities. In such situations, the State agency may use the property without reimbursement to the Department or sell the property and retain the proceeds if the property had an acquisition cost of less than \$500 per unit and has been used 4 years or more. In the case of other property, the State agency may retain the property for its own use, provided that a fair compensation is made to the Department for the Federal share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the property to the current fairmarket value of the property. If the State agency has no need for the property, disposition shall be made as follows:

(i) Except for property having an acquisition cost of less than \$500 per unit which has been used for 4 years or more, the State agency shall sell property having an acquisition cost of \$1,000 or less per unit and reimburse the Department in accordance with paragraph (a) (3) (ii) of this section.

(ii) If the property had an acquisition cost of over \$1,000 per unit, the State agency shall request disposition instructions from the Department. If the Department has no need for the property, the availability of the property shall be reported to the General Services Administration (GSA) by the Department to determine whether a requirement for the property exists in other Federal programs. The Department shall issue instructions to the State agency within 120 days following the receipt of the request. If the State agency is instructed to ship the property elsewhere, the State agency shall be reimbursed by the Department with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred. If the State agency is instructed to otherwise dispose of the property, the State agency shall be reimbursed by the Department for the costs incurred in the disposition. If disposition instructions are not issued within 120 days after reporting, the State agency shall sell the property and reimburse the Department an amount which is computed by applying the percentage of Federal participation in the cost of the property to the sales proceeds. Further, the State agency may be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the State agency's selling and handling expenses.

(iii) *Special property.* When the Department determines that nonexpendable personal property with an acquisition cost of \$1,000 or more and financed solely with Federal funds is unique, or difficult or costly to replace, the Department may reserve the right to require the State agency to transfer title to the property to the Department, or to another party subject to the following provisions:

(A) The right to require the transfer of title may be reserved only by means of an express special condition in the grant

or contract, or, if approval for the acquisition of the property is given after the grant is awarded, by means of a written stipulation at the time the approval is given.

(B) The property shall be appropriately identified in the award document or otherwise made known to the State agency.

(C) The Department shall not exercise this right until the State agency no longer needs the property for the purpose for which it was acquired. That need shall be deemed to end on the date of completion or termination of the grant or contract unless the State agency continues to conduct a program or programs administered by the Department after that date and demonstrates to the Department a continued need for the property in the program or programs.

(D) The Department shall issue disposition instructions within 120 days after the completion of the need for the property under the program for which it was acquired. If instructions are not issued within such 120-day period, the Department's right shall lapse, and the State agency shall apply the applicable standards contained in paragraphs (b) (2) and (b) (3) of this section.

(E) The State agency shall be entitled to reimbursement for any shipping and interim storage costs it incurs pursuant to the Department's disposition instructions.

(4) *Property management standards.* The State agency property management standards for nonexpendable personal property shall also include the following procedural requirements:

(i) Property records shall be maintained accurately and provide for: (A) A description of the property; (B) manufacturer's serial number or other identification number; (C) acquisition date and cost; (D) source of the property; (E) location, use, and condition of the property; and (G) ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses the Department for its share.

(ii) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or the theft of the property. Any loss, damage, or the theft of non-expendable property shall be investigated and fully documented. The State agency shall be responsible for replacing or repairing (with funds of the State agency) property which is lost, damaged, or destroyed due to the negligence of the State agency.

(iv) Adequate maintenance procedures, recommended by the manufacturer, shall be implemented to keep the property in good condition.

(v) Proper sales procedures shall be established for unneeded property which would provide for competition to the ex-

istent practicable and result in the highest possible return.

(c) *Expendable personal property.* The State agency may at its option either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Compensation to the Department is required if the aggregate fair market value of all of those items acquired under the grant or contract exceeds \$500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sales proceeds of items sold.

(d) *Intangible personal property.* (1) *Patents and inventions.* If any program activity produces patents, patent rights, processes or inventions in the course of work aided by the Department, such fact shall be promptly and fully reported to the Department. Unless there is prior agreement between the State agency and the Department on disposition of such items, the Department shall determine whether protection of such invention or discovery will be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971), and "Statement of Government Patent Policy" (38 FR 16889).

(2) *Copyrights.* When a program activity results in a book or other copyrightable material, the author or State agency is free to copyright the work, but the Department reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.

(e) *Publications.* Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgment:

The activity which is the subject of the report was supported in whole or in part by the U.S. Department of Agriculture, Food and Nutrition Service. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Agriculture, and no official endorsement by the U.S. Department of Agriculture should be inferred.

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources for the administration of food programs for children shall not be diminished as a result of funds received under this part.

(b) *Termination for cause.* FNS may terminate a State agency's participation in the program for payment of State Administrative Expense Funds in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions under this part. FNS

shall promptly notify the State agency in writing of the termination, together with the effective date. When the program for payment of State Administrative Expense Funds has been terminated for cause, any further payments made to the State agency or any recoveries by FNS from the State agency shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may terminate the State agency's participation under this part in whole, or in part, when both parties agree that continuation 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 the noncancellable obligations, properly incurred by the State agency prior to termination.

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

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 part becomes effective August 1, 1976.

Dated: July 29, 1976.

JOHN DAMGARD,
Deputy Assistant Secretary.

[FR Doc.76-22472 Filed 8-2-76; 8:45 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 331—PLANT PEST REGULATIONS GOVERNING INTERSTATE MOVEMENT OF CERTAIN PRODUCTS AND ARTICLES

Subpart—Mediterranean Fruit Fly

REVOCATION OF NOTICE OF EXISTENCE OF EMERGENCY AND REGULATIONS RELATED THERETO

• Purpose: To revoke the Mediterranean fruit fly emergency regulations in Los Angeles County, California. •

The notice of existence of emergency and regulations related thereto with respect to the Mediterranean fruit fly, in 7 CFR 331.1 (40 FR 49784), are hereby revoked. However, such provisions shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

Statement of Considerations.—An intensive eradication program was begun

following the discovery in September 1975 of an infestation of the Mediterranean fruit fly in Los Angeles, California. Delimiting surveys utilizing traps indicated that the Mediterranean fruit fly infestation was limited to an area of approximately 100 square miles of Los Angeles County. Foliar spraying of citrus and related host trees and soil treatments were begun in October 1975. Because of the urban environment, however, the normal chemical treatments in the amounts needed to achieve eradication could not be utilized and, therefore, a sterile fly release program was instituted for the purpose of eradicating the Mediterranean fruit fly. Ground releases of sterile flies began in late October 1975, and aerial releases began in December. Ground and aerial releases ended the last of May 1976. The trapping program has continued since the pest was discovered. The last adult nonsterile fly was trapped on November 14, 1975. The Deputy Administrator has determined that eradication of the Mediterranean fruit fly has been achieved because enough time has elapsed for development of three complete life cycles without the detection of nonsterile flies, and a followup intensive surveillance has confirmed such finding.

§ 331.1 [Reserved]

Accordingly, the Mediterranean fruit fly notice of existence of emergency and regulations related thereto in § 331.1 (7 CFR 331.1) are hereby revoked. Also, § 331.1 is reserved.

This revocation relieves restrictions heretofore imposed, and should be made effective promptly in order to be of maximum benefit to the persons subject to the restrictions that are being relieved. Also, it does not appear that public participation in rulemaking procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable, unnecessary, and contrary to the public interest and good cause is found for making the revocation effective less than 30 days after publication in the *FEDERAL REGISTER*.

(Secs. 105, 106, 107; 71 Stat. 32, 33, 34 (7 U.S.C. 150dd-150ff); 37 FR 28464, 28477, 38 FR 19141.)

The foregoing revocation of notice of existence of emergency and regulations related thereto shall become effective August 2, 1976.

Done at Washington, D.C. this 27th day of July 1976.

T. G. DARLING,
Acting Deputy Administrator,
Plant Protection and Quarantine
Programs, Animal and Plant
Health Inspection Service.

NOTE: This document is reprinted without change from the issue of Monday, August 2, 1976.

[FR Doc.76-22231 Filed 7-30-76;8:45 am]

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

PART 916—NECTARINES GROWN IN CALIFORNIA

Expenses and Rate of Assessment for the 1976-77 Fiscal Period

This document authorizes \$765,380 of Nectarine Administrative Committee expenses, under Marketing Order No. 916, for the 1976-77 fiscal period and fixes a rate of assessment of \$0.065 per No. 22D standard lug box of nectarines handled in such period to be paid to the committee by each first handler as his pro rata share of such expenses.

On July 7, 1976, notice of proposed rulemaking was published in the *FEDERAL REGISTER* (41 FR 27844) regarding proposed expenses and the proposed rate of assessment for the period March 1, 1976, through February 28, 1977, pursuant to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916) regulating the handling of nectarines grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The notice provided that all written data, views, or arguments in connection with said proposals be submitted not later than July 23, 1976. None were received. After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Nectarine Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 916.215 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Nectarine Administrative Committee during the period March 1, 1976, through February 28, 1977, will amount to \$765,380.

(b) *Rate of Assessment.* The rate of assessment for said period, payable by each handler in accordance with § 916.41, is fixed at \$0.065 per No. 22D standard lug box of nectarines, or equivalent quantity of nectarines in other containers or in bulk.

(c) *Terms.* Terms used in the marketing agreement, as amended, and order, as amended, shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order, and "No. 22D standard lug box" shall have the same meaning as set forth in section 1380.19 of the California Code of Food and Agriculture.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) in that (1) shipments of the current crop of nectarines grown in California are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate

of assessment herein fixed shall be applicable to all assessable nectarines handled during the aforesaid period; and (3) such period began on March 1, 1976, and said rate of assessment will automatically apply to all such nectarines beginning with such date.

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

Dated: July 29, 1976.

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

[FR Doc.76-22402 Filed 8-2-76;8:45 am]

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

Peach Commodity Committee Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This document authorizes \$686,409 of Peach Commodity Committee expenses, under Marketing Order No. 917, for the 1976-77 fiscal period and fixes a rate of assessment of \$0.065 per No. 22D standard lug box of peaches handled in such period to be paid to the committee by each first handler as his pro rata share of such expenses. It also authorizes the carryover, as a committee reserve, of unexpended assessment income from fiscal 1975-76.

On July 13, 1976, notice of rulemaking was published in the *FEDERAL REGISTER* (41 FR 28794) regarding proposed expenses and the related rate of assessment for the fiscal year beginning March 1, 1976, and ending February 28, 1977, and the carryover of unexpended 1975-76 assessment income pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528), regulating the handling of fresh pears, plums, and peaches grown in California. The notice invited interested persons to submit written data, views, or arguments through July 26, 1976. No such material was submitted. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Peach Commodity Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 917.216 Peach Commodity Committee expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1976, through February 28, 1977, will amount to \$686,409.

(b) *Rate of Assessment.* The rate of assessment for such fiscal period payable by each handler in accordance with § 917.37 is fixed at six and five-tenths cents (\$0.065) per No. 22D standard lug box of peaches, or its equivalent in other containers or in bulk.