

when the moratorium has not been waived.

In circumstances where a permit is not required for a taking, the Marine Mammal Protection Act is also more restrictive than the Endangered Species Act, and, therefore, the requirements under the Marine Mammal Protection Act would also prevail in that situation. Section 109(a)(4) of the Marine Mammal Protection Act provides that a State or local government official or employee may "in the course of his duties as an official or employee, (take) a marine mammal in a humane manner if such taking (A) is for the protection or welfare of such mammal or for the protection of the public health and welfare, and (B) includes steps designed to assure the return of such mammal to its natural habitat." Section 18.22 of 50 CFR makes express that no permit is required for such taking.

On the other hand 50 CFR 17.31(a) under the Endangered Species Act allows non-permit takings of listed Threatened species pursuant to the terms of § 17.21. Section 17.21(c)(3) provides that any employee or agent of the Fish and Wildlife Service, any other Federal land management agency, the National Marine Fisheries Service or of a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to: (i) Aid a sick, injured or orphaned specimen; or (ii) Dispose of a dead specimen; or (iii) Salvage a dead specimen which may be useful for scientific study.

50 CFR 17.31(b) provides:

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take any threatened wildlife to carry out scientific research or conservation programs.

EFFECT ON FEDERAL AGENCIES

The determination set forth in this Rulemaking makes the Southern Sea Otter eligible for the provisions of section 7 of the Act which reads as follows:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no Critical Habitat yet has been determined for the Southern Sea Otter, the other provisions of section 7 are applicable. The Service now is collecting data relative to preparing a proposed determination of Critical Habitat for the Southern Sea Otter, and all persons with pertinent information are invited to send the same to the Director.

EFFECTIVE DATE

This Rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543;

87 Stat. 884). The amendments will become effective on February 11, 1977.

Dated: January 3, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, Part 17, Subpart B, § 17.11 Title 50 of the Code of Federal Regulations, is amended as set forth below:

In § 17.11 add the following:

§ 17.11 Endangered and threatened wildlife.

Species			Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered				
Southern sea otter	<i>Enhydra lutris nereis</i>	NA	California	Entire	T			NA

[FR Doc.77-1268 Filed 1-13-77; 8:45 am]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

Extension of Period for Public Comment Upon Interim Regulations

Interim Final Regulations were published in the FEDERAL REGISTER September 15, 1976 (41 FR 39436) to provide the Regional Fishery Management Councils with uniform standards for Council operations and guidelines for developing management plans pursuant to Public Law 94-265. Comments from interested parties, Regional Councils and governmental agencies were requested by December 2, 1976. Two Regional Councils have requested additional time for review. Therefore, the period for public comment is extended to February 1, 1977. All submissions received by the Director, National Marine Fisheries Service, Washington, D.C., 20235, on or before that date will be considered prior to the publication of final regulations.

Issued in Washington, D.C. and dated January 10, 1977.

ROBERT W. SCHONING,
Director, National
Marine Fisheries Service.

[FR Doc.77-1264 Filed 1-13-77; 8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Delegation of Authority

On October 15, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 45577) for the purpose of amending or revoking current regulations on prohibited acts relating to the National Forest System, and

to provide for the delegation of authority to specified forest officers.

Interested persons were given until November 29, 1976, to submit comments. No comments were received on the proposed change in 7 CFR 2.60(b)(1). Accordingly, the proposed language is adopted without change. This change is related to changes in 36 CFR, Chapter II. Comments received on that title are discussed in the preamble to an amendment which is published concurrently.

Title 7 CFR 2.60(b)(1) is amended to read as follows:

§ 2.60 Chief, Forest Service.

(b) Reservations. The following authorities are reserved to the Assistant Secretary for Conservation, Research, and Education.

(1) The authority to issue regulations, except as provided in 36 CFR 261.70.

(80 Stat. 379, 5 U.S.C. 301.)

JOHN A. KNEBEL,
Secretary.

JANUARY 10, 1977.

[FR Doc.77-1302 Filed 1-13-77; 8:45 am]

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

EGGS AND POULTRY

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and the Egg Products Inspection Act (84 Stat. 1620 et seq., 21 U.S.C. 1031-1056), the U.S. Department of Agriculture hereby amends the Regulations Governing the Voluntary Inspection and Grading of Egg Products (7 CFR Part 55); the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56); the Regulations Governing the Inspection of Eggs and Egg Products (7 CFR Part 59); and the Regulations

Governing the Voluntary Grading of Poultry Products and Rabbit Products and U.S. Classes, Standards, and Grades with Respect Thereto (7 CFR Part 70).

STATEMENT OF CONSIDERATIONS

The primary purpose of these amendments is to remove an unnecessary charge for service which will now be covered in another manner. The affected regulations currently provide that for travel expenses and other charges incurred while rendering grading service, 10 percent of the total expenses shall be added to cover administrative costs of the Department. A recent adjustment in the rate for services was calculated to cover such administrative costs so the additional 10 percent is no longer necessary. Therefore, §§ 55.530, 56.49, and 70.75 are revised to eliminate the requirement of the additional 10-percent charge, and §§ 55.560(a)(4), 56.52(a)(4), 56.54(a)(3), 70.76(a)(3), and 70.77(a)(4) are eliminated.

Other amendments update the affected regulations by removing obsolete material and clarifying certain sections. Some amendments are for uniformity.

At one time, the Department provided shell egg sampling service by employees of the Department or other personnel authorized by the Secretary to only perform this service. The sampled product was then graded by official graders. Now, sampling is an integral part of the official grading function and is done by the USDA graders who also grade the product. Accordingly, the definitions for "Sampler" and "Sampling report" have been eliminated from section 56.1 and the definition of "Office of grading" has been amended to delete reference to "the sampler." In this same section of the egg grading regulations, the definition of "National supervisor" has been amended to indicate that the reference to "the poultry grading service" should read "the shell egg grading service." Since "sampler" and "sampling service" are no longer appropriate terms, they have been deleted whenever they appear in the regulations being amended. The affected sections are 55.500, 56.13, 56.15, 56.16, 56.20, 56.21, 56.24, 56.30, 56.31, and 56.45.

A definition of "Quality assurance inspector" has been added to the shell egg grading regulations to replace the present definition of "Supervisor of packaging." The new definition more accurately describes the functions of the company personnel who have been authorized by the Department to perform quality assurance work, including the supervision of packaging.

Accordingly, the wording "Supervisor of packaging" has been changed to "Quality assurance inspector" in §§ 56.11, 56.35, and 56.39. Also, in §§ 56.13, 56.16, and 56.30, references to "Supervisor of packaging" have been deleted since these personnel are not licensed or authorized to report violations, nor will the newly defined "Quality assurance inspectors" be licensed or be authorized to report violations.

Paragraph (a)(3) of § 56.36 provides that in official identification, the plant number preceded by the letter "P" may appear in the grademark or elsewhere on the packaging material. For the sake of uniformity, this paragraph has been revised to require the plant number only on the cartons or other packaging material and not in the grademark.

Section 56.38, "Rescindment of approved labels," has been deleted from the shell egg grading regulations and similar requirements for egg products in §§ 55.330 and 59.417 have also been deleted. The national office has a coding system for the review and control of labels. Authority for the approval of labels bearing codes issued by the national office is delegated to the plant grader or inspector where the labels are used. It is no longer necessary to notify the national office (Administrator) when labels are obsolete.

Section 56.42, which contains the requirements for the AA quality control program for eggs, has been amended by deleting paragraph (a) 6 and the words "and distribution" from paragraph (a) 7. Temperatures of eggs at the retail level are controlled in many cases by State or municipal laws and do not need to be stated in the Federal regulations.

Some ambiguous wording has been removed in §§ 55.560, 56.52, and 56.54 and is clarified in revised paragraphs (b)(3)(iv) in each of these sections to make direct reference to conditions under which grading service could be suspended, withdrawn, or terminated. This is consistent with similar changes made previously in Part 70.

Sections 56.4(b) and 70.11 provide that continuous grading service in an official plant may be rendered only when a majority of the grader's time is utilized each month in performing grading for quality on the basis of the official standards. These sections are being eliminated since this requirement could restrict quality control services the grader could perform relative to further processed items prepared from graded product, specification work, and other services.

Other minor changes for clarification are as follows: A disclaimer provision for the service has been removed from §§ 55.170, 56.27, and 59.148, and more appropriately located in §§ 55.10, 56.3, and 59.10, respectively. The word "continuous" has been removed from the title of § 56.21 since both continuous and non-continuous services are covered. Also, in paragraph (b) of this section, the word "area" has been corrected to read "regional" which is now the term for the geographically located field offices. In § 56.210(g), the definition of "Bloody white" has been clarified. In § 55.90, the word "officials" has been corrected to "official" and in §§ 55.80 and 59.119, the word "activities" has been corrected to "activity." Deletion of some paragraphs in the affected regulations has required the redesignation of other paragraphs.

The amendments are as follows:

PART 55—VOLUNTARY INSPECTION AND GRADING OF EGG PRODUCTS

1. Section 55.10 is revised to read:

§ 55.10 Authority.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for a limited period any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 55.80 [Amended]

2. In § 55.80, the word "activities" is changed to read "activity."

§ 55.90 [Amended]

3. In § 55.90, paragraph (a)(3) is amended by changing the word "officials" to read "official."

§ 55.170 [Amended]

4. In § 55.170, the last sentence is deleted.

§ 55.330 [Amended]

5. In § 55.330, paragraph (c) is deleted and paragraph (d) is redesignated (c).

6. In § 55.500, paragraph (a) is revised to read:

§ 55.500 Payment of fees and charges.

(a) Fees and charges for any service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and §§ 55.510 to 55.560, both inclusive. If so required by the grader or inspector, such fees and charges shall be paid in advance.

7. Section 55.530 is revised to read:

§ 55.530 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the Department in connection with rendering grading service. Such charges shall include the costs of transportation, per diem, shipping containers, postage, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be \$.50 per certificate.

8. In § 55.560, paragraphs (a)(4) and (b)(3)(v) are deleted, paragraph (a)(5) is redesignated as (a)(4), and paragraph (b)(3)(iv) is revised to read:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

(b) Other provisions * * *

(3) * * *

(iv) Action taken by AMS pursuant to the provisions of §§ 55.180 or 55.200.

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

9. In § 56.1, the definitions for "Sampler," "Sampling report," and "Supervisor of packaging" are deleted, a new definition of "Quality assurance inspector" is added, and the definitions for "National supervisor" and "Office of grading" are revised to read:

§ 56.1 Meaning of words and terms defined.

"National supervisor" means (1) the officer in charge of the shell egg grading service of the Agricultural Marketing Service, and (2) such other employees of the Service as may be designated by him.

"Office of grading" means the office of any grader.

"Quality assurance inspector" means any designated company employee authorized by the Secretary to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

10. In § 56.3, paragraph (a) is revised to read:

§ 56.3 Administration.

(a) The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 56.4 [Amended]

11. In § 56.4, paragraph (b) is deleted and paragraph (c) is redesignated (b).

12. The center head preceding § 56.10 is revised to read: "Licensed Graders."

13. Section 56.11 is revised to read:

§ 56.11 Authorization to perform limited grading services.

Any person who is employed by any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the "U.S. Standards for Quality of Individual Shell Eggs," with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a "quality assurance inspector" in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

14. Section 56.13 is revised to read:

§ 56.13 Cancellation of license.

Upon termination of his services as a grader, each licensee shall surrender his license immediately for cancellation.

15. Section 56.15 is revised to read:

§ 56.15 Political activity.

All graders are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees, and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

16. Section 56.16 is revised to read:

§ 56.16 Identification.

All graders shall each have in possession at all times, and present upon request while on duty, the means of identification furnished by the Department to such person.

17. The center head preceding § 56.20 is revised to read: "Application for grading."

18. In § 56.20, the title and text are revised to read:

§ 56.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

19. In § 56.21, the title and text are revised to read:

§ 56.21 How application for service may be made: conditions of service.

(a) *Noncontinuous grading service on a fee basis.* An application for any non-

continuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom such application is made, or the Administrator, may require that the application be confirmed in writing.

(b) *Continuous grading service on a resident basis or continuous grading service on a nonresident basis.* An application for continuous grading service on a resident basis or for continuous grading service on a nonresident basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 56.24 [Amended]

20. In § 56.24, the first 14 words in the text are amended to read: "An application for grading service may be rejected by the Administrator"

§ 56.27 [Amended]

21. In § 56.27, the last sentence is deleted.

22. Section 56.30 is revised to read:

§ 56.30 Report of violations.

Each grader shall report in the manner prescribed by the Administrator, all violations and noncompliances under the Act and this part of which such grader has knowledge.

23. In § 56.31, paragraph (a) (1) (i) is revised to read:

§ 56.31 Debarment.

(a) * * *

(1) * * *

(i) The making or filing of an application for any grading service or appeal service;

24. In § 56.35, paragraph (a) is revised to read:

§ 56.35 Authority to use, and approval of official identification.

(a) *Authority to use official identification.* Authority to officially identify product graded pursuant to this part is granted only to applicants who make the services of a grader or quality assurance inspector available for use in accordance with this part. Packaging materials bearing official identification marks shall be approved pursuant to §§ 56.35 to 56.39, inclusive, and shall be used only for the

purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official identification may result in cancellation of the approval and denial of the use of labels or packaging materials bearing official identification or denial of the benefits of the Act pursuant to the provisions of § 56.31.

25. In § 56.36, paragraph (a) (3) is revised to read:

§ 56.36 Information required on and form of grademark.

(3) The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.

§ 56.38 [Deleted]

26. Section 56.38 is deleted.
27. In § 56.39, the title and text are revised to read:

§ 56.39 Quality assurance inspector required.

The official identification of any graded product as provided in §§ 56.35 to 56.43, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official identification.

28. In § 56.42, paragraph (a) (6) is deleted, and paragraph (a) (7) is redesignated (a) (6) and is revised to read:

§ 56.42 Requirements for eggs packaged under Fresh Fancy Quality grade-mark or AA grade-mark as shown in Figures 4 and 5 of § 56.36.

(6) Periodic checks to determine the adequacy of the production programs shall be made by governmentally employed graders.

29. In § 56.45, paragraph (a) is revised to read:

§ 56.45 Payment for fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 56.46 to 56.54, both inclusive; and, if so required by the grader, such fees and charges shall be paid in advance.

30. Section 56.49 is revised to read:

§ 56.49 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses. Expenses

are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be \$.50 per certificate.

31. In § 56.52, paragraphs (a) (4), (a) (7) [Reserved], and (b) (3) (v) are deleted, paragraphs (a) (5) and (a) (8) are redesignated (a) (4) and (a) (5), respectively, and paragraph (b) (3) (iv) is revised to read:

§ 56.52 Continuous grading performed on a resident basis.

(b) Other provisions. . . .

(iv) Action taken by AMS pursuant to the provisions of § 56.31.

32. In § 56.54, paragraphs (a) (3) and (b) (3) (v) are deleted, paragraph (a) (4) is redesignated (a) (3), and paragraph (b) (3) (iv) is revised to read:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

(b) Other provisions. . . .

(iv) Action taken by AMS pursuant to the provisions of § 56.31.

33. In § 56.210, paragraph (g) is revised to read:

§ 56.210 Terms descriptive of the white.

(g) *Bloody white.* An egg which has blood diffused through the white. Eggs with bloody whites are classed as loss. Eggs with blood spots which show a slight diffusion into the white around the localized spot are not to be classed as bloody whites.

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS

34. Section 59.10 is revised to read:

§ 59.10 Authority.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act, and this part. The Administrator may waive for a limited period any particular provisions of the regulations to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to maintain full compliance with the spirit and intent of the regulations. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 59.119 [Amended]

35. In § 59.119, the word "activities" is changed to read "activity."

§ 59.148 [Amended]

36. In § 59.148, the last sentence is deleted.

§ 59.417 [Amended]

37. In § 59.417, paragraph (c) is deleted and paragraph (d) is redesignated (c).

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

§ 70.11 [Deleted]

38. Section 70.11 is deleted.
39. Section 70.75 is revised to read:

§ 70.75 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the Service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be \$.50 per certificate.

§ 70.76 [Amended]

40. In § 70.76, paragraph (a) (3) is deleted and paragraph (a) (4) is redesignated (a) (3).

§ 70.77 [Amended]

41. In § 70.77, paragraph (a) (4) is deleted and paragraphs (a) (5), (6), and (7) are redesignated (a) (4), (5), and (6), respectively.

The amendments are primarily administrative. They clarify certain sections, remove obsolete material, and remove unnecessary restrictions. They do not impose additional burdens on the public. It is especially important and to the advantage of the users of the service to remove the additional 10-percent charge added to total expense charges for grading service at the earliest possible date which will be the next accounting period beginning January 16, 1977.

Accordingly, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the *FEDERAL REGISTER*.

Issued at Washington, D.C. January 11, 1977.

Effective: January 16, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc. 77-1243 Filed 1-13-77; 8:45 am]

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

[Amdt. 25]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Reimbursement Payments

On July 23, 1976 a proposed amendment was published (41 FR 30347) for public comment to clarify provisions for reimbursement payments. Twenty-two

comments were received, several of which were favorable.

All of the comments received concerning the proposed amendment have been carefully considered. All substantive comments and recommendations, together with the resulting changes in the amendment or reasons for not accepting the suggestions, are set forth below:

Comments of twelve of the twenty-two respondents with respect to initial assignment of rates focused primarily upon two concerns: That the regulations were contrary to the intent of the Conference Report which accompanied Pub. L. 94-105 and that the wording of the proposed provision was confusing and vague. Those who felt the amendment was contrary to the Conference Report misinterpreted it to mean that all State and local revenue must be considered by the State agency when assigning Federal rates of reimbursement for general cash-for-food assistance, and believed this would result in the withdrawal of State and local revenue.

The proposed regulation does not require consideration of revenues as such except in the case of free and reduced price lunches. The Department envisions that the level of the School Food Authority's operating balance will ultimately reflect any amount of revenue available for the general support of the school food service over and above normal requirements. Revenue available for general support would include local contributions, including children's payments, local school board support, State assistance provided for all lunches and other contributions.

However, as a part of a State's ongoing financial management system, when initially assigning rates of reimbursement and in any subsequent rate assignments, the State agency must consider the cost of producing a lunch as the base factor. The base factor will then be reduced by: (1) State assistance provided specifically for free and reduced price lunches, (2) An amount equal to the highest reduced price charge to the child, and (3) Any funds which exceed three months operating balance for normal operations. The Department believes that this procedure is consistent with the intent of the National School Lunch Act that reimbursement rates vary between schools on the basis of need, within a maximum rate to be prescribed by the Secretary (sections 8 and 11). Also, it implements the intent of maximum flexibility expressed in the Conference Report that accompanied Pub. L. 94-105: it would not prohibit State or local authorities from designating funds to support the nonneedy child.

Inasmuch as the proposed provision was misinterpreted and found to be confusing and vague to a considerable number of the respondents, the Department has revised the wording.

Thirteen respondents commented adversely on (1) The provision allowing State agencies, and FNSROs where applicable, maximum flexibility in varying general cash-for-food assistance reim-

bursment rates between schools and School Food Authorities, and (2) The requirement that Federal and State assistance provided specifically for free and reduced price lunches, plus the highest reduced price charge, not exceed the cost of producing a lunch. Primarily, these comments centered upon vague and confusing wording. The Department will retain these provisions, but has clarified the language.

Four respondents opposed the provision requiring State agencies to periodically monitor and adjust reimbursement rates. Criticism was varied, with two objections centered upon the difficulty of monitoring the rates. Consistent with sound program operations, State agencies must initiate a financial management system which, as a minimum, would assure accountability. The Department will retain this provision.

In regard to the requirement that State agencies review operating balances, two respondents indicated that "operating balance" should be defined, while another stated that a time frame should be established for the review. The Department herein has clarified the provisions for review and treatment of the operating balance and will review the need for additional provisions with State agencies.

Accordingly, this part is amended as set forth below:

1. In § 210.2, a new paragraph (n-3) is added to read as follows:

§ 210.2 Definitions.

(n-3) "Revenue" means the value of resources available to operate the lunch service, including cash funds (Federal, State, and local), and the value of goods and services contributed.

2. In § 210.11, paragraphs (e) and (f) are deleted, paragraphs (g) and (h) are redesignated as paragraphs (e) and (f), respectively, and paragraphs (b), (c), and (d) are revised to read as follows:

§ 210.11 Reimbursement payments.

(b) The maximum rates of reimbursement to be made by State agencies, or FNSROs where applicable, to School Food Authorities for general cash-for-food assistance and for special cash assistance shall be prescribed by the Secretary by July 1 of each fiscal year and by January 1 of each fiscal year in the notice of adjustment to the national average payment factors made in accordance with § 210.4(c) of this part. At the beginning of each school year and at the effective date of the other semiannual adjustment, State agencies, or FNSROs where applicable, shall, within these maximum rates of reimbursement, initially assign rates of reimbursement for School Food Authorities or for schools through School Food Authorities at levels based on the anticipated cost of producing a lunch, the anticipated State revenue provided specifically for a free

or reduced price lunch, an amount equal to the highest reduced price charge to the child per lunch, and other per lunch revenues available for the general support of the school food service program as reflected in the School Food Authority's operating balance. The assigned rates shall permit reimbursement for the total number of Type A lunches, including reduced price lunches and free lunches, from the general cash-for-food assistance funds and from the special cash assistance funds available under § 210.4 of this part to the State agency, or FNSRO where applicable.

(c) Based on the principles set forth in this section, State agencies, and FNSROs where applicable, shall have maximum flexibility in assigning rates of reimbursement from general cash-for-food assistance funds among schools and School Food Authorities. The State agency, or FNSRO where applicable, shall assign to any school or school food authority the same rate of reimbursement from general cash-for-food assistance funds for the lunches served to children at the full price and for lunches served to children free or at a reduced price. In addition to the assigned rate of reimbursement from general cash-for-food assistance funds, the State agency, or FNSRO where applicable, shall assign rates of reimbursement for free and reduced price lunches from special cash assistance funds, as applicable. The combined rates of reimbursement from general cash-for-food assistance and special cash assistance funds for each free or reduced price lunch are hereinafter referred to as the "per lunch reimbursement". For any school, or School Food Authority, the total of (1) The per lunch reimbursement rates assigned for free and reduced price lunches, (2) State assistance provided specifically for free and reduced price lunches, and (3) In the case of reduced price lunches, an amount equal to the highest reduced price charge to the child per lunch, shall not exceed the per lunch cost of providing a Type A lunch during the school year.

(d) The financial management system of each State agency, or FNSRO where applicable, must positively demonstrate the objective of assigning and adjusting reimbursement rates based on a periodic review of the per lunch cost. The financial management system of each State agency, or FNSRO where applicable, shall demonstrate the reason for variations among schools or School Food Authorities in the assigned rates of reimbursement from general cash-for-food assistance funds and special cash assistance funds for the particular type lunch.

3. Section 210.15 is revised to read as follows:

§ 210.15 Review of operating balances.

Each State agency, or FNSRO where applicable, shall periodically, at least once each school year, review the level

and trend of the operating balances reported by School Food Authorities. If the operating balance exceeds three months normal operating cost, the State agency, or FNSRO where applicable, shall establish and implement a plan of action to reduce prices, improve food quality or take action designed to otherwise improve the food service in the Program. In the absence of any such action, adjustments in the rates of reimbursement shall be made. Evidence of the action taken as a result of the review of excessive balances shall be maintained on file.

NOTE.—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 on January 12, 1977.

Dated: January 12, 1977.

JOHN DAMCARD,
Acting Assistant Secretary.

[FR Doc. 77-1396 Filed 1-13-77; 8:45 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Revisions Reflecting Policy Changes

Basin and purpose. The provisions of this part (7 CFR Part 718) are issued pursuant to the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 1281 et. seq.), to provide for the determination of producer adherence to the requirements specified in program regulations issued by the Agricultural Stabilization and Conservation Service in order for the producer to receive program benefits.

This document is a revision of the rules currently in effect under §§ 718.1 to 718.14 of this part (38 FR 12891). The rules have been rewritten to incorporate changes attributable to policy decisions affecting 1976 and subsequent crop years. Substantial changes are as follows:

Section 718.2 has been rewritten to redefine certain terms, include definitions for additional terms, and remove definitions that are no longer applicable.

Section 718.3 has been rewritten to provide authority for the county committee to enter a farm for making other program determinations in addition to acreage determinations.

Section 718.4 has been rewritten to provide authority for the county committee to make other program determinations in addition to acreage determinations, to remove State committee authority for recommending a different percentage for the standard perimeter deduction, and to provide authority for the State committee to establish final reporting dates and normal planting periods for crops.

Section 718.5 has been rewritten to provide producer services for other de-

terminations and inspections in addition to acreage measurement services.

Section 718.6 replaces former sections 718.6 and 718.7 and has been rewritten to provide for farm operator reports of acreage instead of farmer certifications, to change the criteria for accepting late filed reports, to establish deadlines by which the farm operator may correct or revise a report of acreage, to restrict application of measurement variance (formerly administrative variance) to marketing quota crops, and to authorize the county committee to use a different percentage for the standard perimeter deduction upon approval by the State committee.

Section 718.7 replaces former section 718.8 and has been written so that the provisions of this section do not apply to acreages determined from data furnished by the producer.

Section 718.8 replaces former section 718.9.

Section 718.9 replaces former section 718.11 and has been rewritten to provide for a notice of measured acreage instead of a notice of failure to comply and to change the requirements for furnishing farm operators such notice.

Section 718.10 replaces former section 718.12 and has been rewritten to provide for redetermination of appraised yield and farm stored production in addition to redetermination of acreages.

Section 718.11 replaces former section 718.13 and has been rewritten to restrict application to peanut and tobacco acreages.

Former section 718.10 has been deleted because applicable program regulations now cover these provisions where applicable.

Former section 718.14 has been deleted because the State committee has been given authority to establish final reporting dates under section 718.4.

Since farmers need to know the changes herein as soon as possible in connection with the 1976 and subsequent years, it is hereby found and determined that compliance with the notice, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, the provisions of 7 CFR of Part 718 are revised to read as follows:

Sec.	
718.1	Applicability.
718.2	Definitions.
718.3	Authority for farm entry and securing information.
718.4	Committee responsibilities.
718.5	Producer services.
718.6	Determining farm operator adherence to program requirements.
718.7	Producer reliance on previous determinations.
718.8	Determining acreage for unusual cases.
718.9	Notice of measured acreage.
718.10	Redeterminations.
718.11	Adjustment of peanut and tobacco acreage.

AUTHORITY: Secs. 314, 373, 374, 375, 52 Stat. 48, as amended, 65, as amended, 66, as amended (7 U.S.C. 1314, 1373, 1374, 1375); Sec. 403, 61 Stat. 932, as amended (7 U.S.C. 1153).

§ 718.1 Applicability.

The provisions of this part apply to compliance determinations for 1976 and subsequent years under programs administered by the Agricultural Stabilization and Conservation Service through State and county committees, as authorized by the Agricultural Adjustment Act of 1938, as amended.

§ 718.2 Definitions.

(a) *General.* As used in this part and in all instructions, forms, and documents issued in connection therewith, the words and phrases defined in Part 719 of this chapter shall have the meanings so assigned and the terms defined in paragraph (b) of this section shall have the meanings so assigned, unless the text or subject matter otherwise requires.

(b) *Other terms.* (1) *Allotment crop.* Any crop for which acreage allotments are established pursuant to regulations of the Department implementing Federal law.

(2) *Determined acreage.* That acreage established by a representative of the Department of Agriculture on the farm by use of official acreage, delineations on the photograph and planimetry or computations from scaled dimensions, or ground measurements.

(3) *Director.* The Director or Acting Director, Program Operations Division, Agricultural Stabilization and Conservation Service, Department of Agriculture.

(4) *Field.* A part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, crop-lines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

(5) *Measurement Variance.* A prescribed amount within which the determined acreage can exceed a program requirement and still be considered as having met the program requirement.

(6) *Normal Planting period.* That period established by the State committee and approved by the Deputy Administrator during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

(7) *Normal row width.* The normal distance between rows of the crop in the field, but not less than four links (approximately 32 inches).

(8) *Official acreage.* That acreage established in the office or on the farm for fields and subdivisions and entered and maintained on aerial photography.

(9) *Performance assistant.* Person employed to secure data necessary for ascertaining producer adherence to requirements for receiving program benefits as set forth in this chapter.

(10) *Photocopy.* A reproduction of a portion of an aerial photographic enlargement, showing a farm or group of small farms.