

§ 2.86 Chairman, World Food and Agricultural Outlook and Situation Board.

(a) \* \* \*

(4) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(a) Inter- and intra-agency meetings, correspondence, and records;

(b) Budget and management tracking systems; and

(c) Inter-agency contacts and technology transfer.

(iii) Serve as or designate the Executive Secretary for the Remote Sensing Coordinating Committee.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: November 18, 1978.

BOB BERGLAND,  
*Secretary of Agriculture.*

For Subpart K:

Dated: November 18, 1978.

HOWARD W. HJORT,  
*Director of Economics, Policy  
Analysis and Budget.*

[FR Doc. 78-33684 Filed 11-30-78; 8:45 am]

[3410-10-M]

[Amdt. 4]

**PART 16—LIMITATION ON IMPORTS OF MEAT**

**Section 204 Import Regulations; Restrictions on the Importation of Meat From New Zealand**

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The regulations set forth in this Subpart are amended to limit imports of certain meats from New Zealand to no more than 314.8 million pounds, during calendar year 1978. Such action is necessary to carry out the 1978 restraint program including the agreement entered into by the United States with New Zealand pursuant to section 204 of the Agricultural Act of 1956 limiting the export from New Zealand and the importation into the United States of certain meats.

EFFECTIVE DATE: December 1, 1978. See supplementary information.

FOR FURTHER INFORMATION CONTACT:

John E. Riesz (FAS), 202-447-7217, Dairy, Livestock and Poultry Division, CP, FAS, USDA, Room 6621 South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The Secretary of State and the Special Representative for Trade Negotiations concur in the issuance of this regulation.

This regulation establishes quantitative restrictions applicable to meat imported from New Zealand which may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly, at the level of 314.8 million pounds during calendar year 1978.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, these regulations fall within the foreign affairs exception to the notice and effective date provisions of 5 U.S.C. 553 and E.O. 12044.

EFFECTIVE DATE

Meat released under the provisions of Section 448(b) of the Tariff Act of 1930 (19 U.S.C. 1448(b) (immediate delivery)) prior to December 1, 1978, shall not be denied entry.

Subpart A, Section 204 Import Regulations, of Part 16, Limitation on Imports of Meat, of Title 7 of the Code of Federal Regulations is amended to add paragraph (c) to § 16.5, "Quantitative Restrictions" which reads as follows:

§ 16.5 Quantitative restrictions.

\* \* \*

(c) Imports from New Zealand. During calendar year 1978, no more than 314.8 million pounds of meat, exported from New Zealand in the form in which it would fall within the definition of meat in TSUS 106.10 or 106.20, may be entered or withdrawn from warehouse for consumption in the United States, whether such meat was shipped directly or indirectly, from New Zealand to the United States.

(Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854) and Executive Order 11539 (35 FR 10733).)

Issued at Washington, D.C., this 28th day November 1978.

BOB BERGLAND,  
*Secretary.*

[FR Doc. 78-33741 Filed 11-30-78; 8:45 am]

[3410-08-M]

**CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE**

**PART 403—PEACH CROP INSURANCE**

**Subpart—Regulations for the 1979 and Succeeding Crop Years**

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes the procedure for insuring peaches under revised regulations, effective with the 1979 and succeeding crop years, which are designed to more nearly reflect the intent of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), as it relates to the cost of production protection provided by the insurance. Under the revised regulations, the production costs are reflected in the dollar amount of insurance based on both the expected production and the actual amount of fruit at harvest time. The fruit is valued based upon market price and the intent of these revised regulations is to relate the amount of insurance directly to the cost or production, and to relate the value of production directly to the dollar amount of insurance. These revised regulations are designed to more adequately cover the costs of production and reflect the true value of the production.

DATES: Effective December 1, 1978. Comments will be accepted until January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: The current peach crop insurance program, now offered by the Federal Crop Insurance Corporation in certain counties in Alabama, Arkansas, Georgia, and South Carolina is operating unsatisfactorily from the standpoint of grower participation and insuring experience. In 1971, there were 304 peach crop insurance contracts. In 1978, there are 161 such contracts. In the 8 years from 1971 through 1978, loss ratios on peach crop losses exceeded 1.00 in 6 of the 8 years, indicating a need for review and possible changes in order to assure a continuation of the peach crop insurance program. There are currently 17 contracts in Arkansas, 14 in Georgia, and 130 in South Carolina, with 111 of this number located in Spartanburg County. Due to the relatively small

number of peach crop insureds, it was possible for the Corporation to review the necessary changes in the regulations, appearing below, with a large number of growers in these States. Considerable time was spent with producers researching the revised peach crop insurance policy and evaluating the previous insuring experience under the old regulations. In the discussions, two proposed policies were reviewed. Selection was based on the policy which most adequately serves the needs of producers. Such policy is contained in the peach crop insurance regulations outlined below. The current peach crop insurance regulations were printed in the FEDERAL REGISTER on September 30, 1975 (40 FR 44823), and became effective for the 1976 crop year. These current regulations do not consider the value of the remaining production, dealing only with a percent of loss basis for adjustment purposes. It is possible for a crop with a high percentage of loss to still return to the grower substantial returns if the value of the fruit is high.

The value of the remaining production is taken into consideration under the revised regulations which more nearly reflect the intent of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.). Under the revised regulations, production costs are reflected in the dollar amount of insurance based on both the expected production and the actual amount of fruit at the time of harvest. The fruit is valued based upon the market price and the intent is that the amount of insurance relates directly to the cost of production and the value of production is related directly to the dollar amount of insurance. It is felt that the revised regulations more adequately cover the production costs and reflect the true value of production.

Under the provisions of the peach crop insurance policy, the cancellation date, that date by which a policyholder must notify the Corporation of his desire to cancel his crop insurance coverage for a particular crop year, has been established as November 30. Any regulations that are promulgated herein, or any amendments thereto, must be placed on file in the Corporation's office for the county 15 days prior to such cancellation date, or November 15, in order to be effective for that crop year.

The Board of Directors of the Federal Crop Insurance Corporation has found and determined that there would not be enough time to follow the procedure for notice and public participation and still have the regulations on file in sufficient time to be effective for the coming 1979 crop year. In addition, the Board is mindful of the considerable time and research involved in discussions with peach pro-

ducers of the affected States prior to the decision to revise the peach crop insurance regulations. The Corporation will provide all current peach insureds a copy of the revised peach policy along with the rates and levels of coverage and a complete written explanation of the changes.

Because of the November 15 deadline, it is hereby found and determined that compliance with the notice and public participation procedure, provisions of 5 U.S.C. 553 is impractical, unnecessary, and contrary to the public interest.

Similarly, it is hereby found in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comments. However, in an effort to assure an opportunity for public comment in the rule making process as it relates to the insuring of peaches, the Corporation will accept written comments, views, and data on the revised Peach Crop Insurance regulations for a period of 60 days. Such comments, views, and data will be given serious consideration for use in future amendments to such regulations. The public is requested to forward any written comments, views, or data to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, by not later than January 30, 1979, in order to be sure of consideration.

Such comments, views, and data that are received in response to this invitation will be available for public inspection in the Office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday (7 CFR 1.27(b)).

Adopted by the Board of Directors on October 20, 1978.

#### FINAL RULE

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), 7 CFR Part 403, the Peach Crop Insurance Regulations for the 1976 and Succeeding Crop Years, as amended, which shall remain in full force and effect for the 1978 crop year, are hereby amended effective for the 1979 and succeeding crop years to read as set forth below.

The provisions of this subpart shall apply, until amended or superseded to all continuous peach crop insurance contracts as they relate to the 1979 and succeeding crop years.

#### Subpart—Regulations for the 1979 and Succeeding Crop Years

Sec.

403.40 Availability of peach crop insurance.

- 403.41 Premium rates and amounts of insurance.
- 403.42 Application for insurance.
- 403.43 Public notice of indemnities paid.
- 403.44 Creditors.
- 403.45 Good faith reliance on misrepresentation.
- 403.46 The contract.
- 403.47 The policy.

AUTHORITY: Secs. 506, 516, 52 Stat., 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

#### Subpart—Regulations for the 1979 and Succeeding Crop Years

§ 403.40 Availability of peach crop insurance.

Peach crop insurance shall be offered for the 1979 and succeeding crop years under the provisions of § 403.40 through § 403.47 in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors of the Corporation for peach crop insurance. The counties designated by the Manager shall be published by appendix to this section.

Counties designated by the Manager for Peach Crop Insurance effective for the 1979 crop year are:

#### ALABAMA

Chilton

#### ARKANSAS

Cross  
Johnson

Lee  
St. Francis

#### SOUTH CAROLINA

Aiken  
Allendale  
Barnwell  
Chesterfield  
Edgefield

Greenville  
Lexington  
Spartanburg  
York

§ 403.41 Premium rates and amounts of insurance.

The Manager shall establish premium rates and the amounts of insurance per acre which shall be shown on the county actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

§ 403.42 Application for insurance.

(a) Application for insurance may be submitted by any person to cover such person's insurable share in peaches as landlord, owner-operator, tenant, or sharecropper, at the office for the county on or before the closing date which shall be the January 10 of the year for which application for insurance is made of the Corporation.

(b) The Corporation reserves the right to discontinue the taking of applications in any county upon its determination that the insurance risk involved is excessive prior to the closing

date for the filing of applications. To extend the closing date for acceptance of applications in any county, by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period the Corporation will immediately discontinue the acceptance of applications.

(c) Application for initial insurance shall be made on the following form:

U.S. DEPARTMENT OF AGRICULTURE, FEDERAL CROP INSURANCE CORPORATION

APPLICATION FOR FEDERAL CROP INSURANCE FOR 19— AND SUCCEEDING CROP YEARS

Name and address: \_\_\_\_\_

ZIP code: \_\_\_\_\_

Contract No.: \_\_\_\_\_

County: \_\_\_\_\_

State: \_\_\_\_\_

Identification No.: \_\_\_\_\_

A. The undersigned applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called the "Corporation"), hereby applies to the Corporation for insurance on his share (for cotton, peanut and tobacco insurance, on his share-cropper or share tenant shares as specified in paragraph B below) in the crops stated below that are insurable crops planted on insurable acreage as shown on the applicable county actuarial table of the Corporation for the above-stated county. The applicant elects each plan of insurance, amount of insurance, or price at which indemnities shall be computed, shown below which in each case shall be an electable plan, amount, or price, as provided on the applicable county actuarial table on file in the Corporation's office for the above county. The premium rates and production guarantees shall be those shown on the applicable county actuarial table for each crop year.

Crops: \_\_\_\_\_  
Elections: \_\_\_\_\_  
(A): \_\_\_\_\_  
(P): \_\_\_\_\_

B. Applicable only to cotton, peanut and tobacco: If the applicant intends to insure only the shares of his share-croppers or share tenants who have no insurance on the crop with the Corporation "(SC-Int.)" shall be entered following the name of the crop. If the applicant intends to insure both his individual share and the shares of his share-croppers or share tenants "(Comb. Int.)" shall be entered following the name of the crop. Insurance for sharecroppers and share tenants shall be provided in accordance with the regulations of the Corporation (7 CFR 401, 103(b)).

C. Upon acceptance of this application by the Corporation, the contract shall be in effect for the first crop year specified above, except on any crop on which the time for the filing of applications has passed at the time this application is filed, and shall continue for each succeeding crop year until cancelled or terminated as provided in the

contract. This application, the insurance policy, endorsements, and the county actuarial tables shall constitute the contract. Any changes in the contract shall be on file in the Corporation's office for the county at least 15 days prior to the applicable cancellation date.

D. This application, when executed by a person as an individual, shall not cover his share in a crop produced by a partnership or other legal entity.

The applicant is a \_\_\_\_\_ (type of entity).

All natural persons in whose behalf this application is made are over 18 years of age \_\_\_\_\_ (yes or no).

E. Premium Note: In consideration hereof, the insured promises to pay to the order of the Corporation each crop year of the contract the annual premiums. It is agreed that any amount due the Corporation by the insured may be deducted from any indemnity payable to the insured and when not prohibited by law, from any loan or payment otherwise due the insured under any program administered by the United States Department of Agriculture.

Witness to signature: \_\_\_\_\_

Signature of applicant: \_\_\_\_\_

Date: \_\_\_\_\_, 19—.

Code: \_\_\_\_\_

Address of office for county: \_\_\_\_\_

Phone: \_\_\_\_\_

Location of farm(s) or headquarters: \_\_\_\_\_

Phone: \_\_\_\_\_

§ 403.43 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at the county courthouse a listing of the indemnities paid in the county.

§ 403.44 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in sections 12 and 13 of the policy set forth in § 403.47.

§ 403.45 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the insurance contract whenever an insured person under any contract of crop insurance entered into under these regulations has suffered a loss to a crop which is not insured, or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, because of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation and the Board of Directors of the Corporation or the Manager in cases in-

volving not more than \$5,000 finds (a) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (b) that said insured person relied thereon in good faith, and (c) that to deny said insured's claim for indemnity would not be fair and equitable, such insured person shall be entitled to such indemnity the same as if otherwise entitled thereto.

§ 403.46 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the peach crop which is provided in and covered by the policy when insurance is accepted on the peach crop by the Corporation pursuant to a duly submitted application. Any changes made in the contract shall not affect the continuity from year to year.

§ 403.47 The policy.

The provisions of the Peach Insurance Policy for the 1979 and succeeding crop years are as follows:

U.S. DEPARTMENT OF AGRICULTURE

PEACH INSURANCE POLICY

(This is a continuous contract. Refer to Section 18.)

FEDERAL CROP INSURANCE CORPORATION

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person's peach crop against unavoidable loss of production due to causes of loss insured against that are specified in this policy. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For the purposes of insurance on peaches the terms:

(a) "Actuarial table" means the forms and related material approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, insurable acreage, and related information regarding peach crop insurance in the county.

(b) "Contract" means the accepted application, this policy, and the actuarial table.

(c) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(d) "Crop year" means the period within which the peach crop is normally grown and

shall be designated by the calendar year in which the peach crop is normally harvested.

(e) "Harvest" means picking of peaches from the tree or from the ground either by hand or machine for the purpose of marketing.

(f) "Loss ratio" means the ratio of indemnity(ies) paid to premium(s) earned.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured peach crop at the time insurance attaches as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share on the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the peach crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of peaches in the county on the date insurance attaches for the crop year (1) in which the insured has a 100 percent share, (2) which is owned by one person and operated by the insured as a tenant, or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peach crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county, or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share re-

ported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from drought, earthquake, flood, freeze, frost, hail, hurricane, lightning, tornado, wind, and an insufficient number of hours of chilling temperature to effectively break the dormant period occurring within the insurance period, subject, however, to any exception, exclusions, or limitations with respect to such causes of loss that are set forth on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production due to (1) disease or insect infestation, (2) the neglect or malfeasance of the insured, any member of his household, his tenants or employees, (3) failure to follow recognized good farming practices, (4) the backing up of water by any governmental or public utilities dam or reservoir project, (5) split pits and misshapen fruit regardless of the cause, or (6) any cause not specified as an insured cause in this policy as limited by the actuarial table.

3. *Crop and acreage insured.* (a) The peaches insured shall be of a variety established as adapted to the area and not shown as non-insurable on the actuarial table.

(b) The acreage insured for each crop year shall be that acreage of peaches in the county (1) in which the insured has a share at the time insurance attaches, (2) shown as insurable on the actuarial table, and (3) reported by the insured or as determined by the Corporation, whichever the Corporation shall elect:

*Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) on which the trees have not reached the 4th growing season after being set out or (2) having a minimum expected production of less than 100 bushels per acre on the date insurance attaches.

4. *Responsibility of insured to report acreage, share, and expected production.* (a) Not later than January 10 each year, the insured shall submit to the Corporation at the office for the county on a form prescribed by the Corporation a report showing the following:

(1) All acreage of peaches (including a designation of any acreage to which insurance does not attach) in which the insured has a share, (2) the insured's share therein, and (3) the expected production per acre from such acreage. If the insured does not have a share in any acreage of peaches for any year, he shall submit a report so indicating. Any acreage report submitted by the insured shall be binding upon the insured and shall not be subject to change by the insured.

(b) If the insured does not submit an acreage report on or before January 10, the Corporation may elect to determine by units the insured acreage, share, expected production per acre or declare the insured acreage on any unit(s) to be "zero."

5. *Amount of insurance per acre and prices for computing indemnities.* (a) At the time application for insurance is made, the applicant shall elect either a High, Medium, or Low dollar level of insurance from those shown on the actuarial table. If the insured has not elected a level or the level elected is not shown on the actuarial table for the crop year, the applicable level under the contract, and which the insured shall be deemed to have elected, shall be the level provided on the actuarial table for such purpose: *Provided*, That the level of insurance for peaches intended for processing as determined by the Corporation shall not exceed the Medium level. The insured may, with the consent of the Corporation, change the level elected for any crop year on or before the closing date for submitting applications for that crop year.

(b) The dollar amount of insurance per acre for each crop year shall be determined as shown in the following Amount of Insurance Table. (1) For the purpose of computing premium, the dollar amount of insurance per acre shall be the amount corresponding with the expected production (as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect), and the applicable level of insurance as shown in Columns A and B. (2) For the purpose of determining any indemnity, where the amount of fruit remaining on the trees at the time of harvest is less than the expected production, the dollar amount of insurance shall be the amount shown in Columns C through H opposite the applicable level of insurance shown in Column B.

RULES AND REGULATIONS

56209

Amount of Insurance Table

Dollar Amount of Insurance Per Acre Based Upon Expected Production and Dollar Level of Insurance Per Acre at the Time Insurance Attaches			Dollar Amount of Insurance Per Acre Based Upon Bushels of Fruit Remaining on the Trees At the Time of Harvest					
Col. A	Col. B.	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	
Expected Production (Bus.)	Levels of Insurance	200 or More Bu.	150 to 199 Bu.	100 to 149 Bu.	50 to 99 Bu.	10 to 49 Bu.	0 to 9 Bu.	
300 or More	High	\$800	\$800	\$720	\$640	\$560	\$480	\$400
	Med.	600	600	540	480	420	360	300
	Low	400	400	360	320	280	240	200
250 - 299	High	\$700	\$700	\$630	\$560	\$490	\$420	\$350
	Med.	525	525	475	420	370	315	265
	Low	350	350	315	280	245	210	175
200 - 249	High	\$600	\$600	\$540	\$480	\$420	\$360	\$300
	Med.	450	450	405	360	315	270	225
	Low	300	300	270	240	210	180	150
150 - 199	High	\$500	\$500	\$500	\$440	\$375	\$315	\$250
	Med.	375	375	375	330	280	235	190
	Low	250	250	250	220	190	155	125
100 - 149	High	\$400	\$400	\$400	\$400	\$335	\$265	\$200
	Med.	300	300	300	300	250	200	150
	Low	200	200	200	200	165	135	100

(c) The price per bushel for computing indemnities shall be determined by the Corporation as follows: (1) The price for fresh fruit shall be based upon the applicable average FOB shipping point price per ¼ bushel carton of U.S. Extra #1 two-inch peaches (if not available, the next larger size for which a price is available) as reported by the Market News Service of the Department of Agriculture for the seven consecutive market days commencing with the day harvest starts for the variety as determined by the Corporation: *Provided*, That such price shall never be less than \$4.00 per ¼ bushel carton. (2) The price for peaches which are intended for processing as determined by the Corporation, shall be the price per bushel received by the insured: *Pro-*

*vided*, That such price shall never be less than \$2.00 per bushel.

6. *Annual premium.* (a) The annual premium is earned and payable at the time insurance attaches and shall be determined by multiplying the insured acreage times the amount of insurance per acre (based on the expected production when the insurance attaches) times the applicable premium rate, times the insured's share at the time insurance attaches, and applying the premium adjustment herein provided.

(b) For premium adjustment purposes, only the years during which premiums were earned subsequent to the 1978 crop year shall be considered.

(c) The premium shall be adjusted as shown in the following table:

[3410-08-C]

ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

Loss Ratio Through Previous Crop Year	Number of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	90	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE:

Loss Ratio Through Previous Crop Year	Number of Loss Years Through Previous Year														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.10 - 1.19	100	102	104	106	108	110	112	114	116	118	120	122	124	126	128
1.20 - 1.39	100	104	108	112	116	120	124	128	132	136	140	144	148	152	160
1.40 - 1.69	100	108	116	124	132	140	148	156	164	172	180	188	196	204	212
1.70 - 1.99	100	112	122	132	142	152	162	172	182	192	202	212	222	232	242
2.00 - 2.49	100	116	128	140	152	164	176	188	200	212	224	236	248	260	272
2.50 - 3.24	100	120	134	148	162	176	190	204	218	232	246	260	274	288	300
3.25 - 3.99	105	124	140	156	172	188	204	220	236	252	268	284	300	300	300
4.00 - 4.99	110	128	146	164	182	200	218	236	254	272	290	300	300	300	300
5.00 - 5.99	115	132	152	172	192	212	232	252	272	292	300	300	300	300	300
6.00 - Up	120	136	158	180	202	224	246	268	290	300	300	300	300	300	300

(d) If there is no break in the continuity of participation, any premium adjustment applicable under subsection (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured in operating only the same farm or farms, if such person had previously actively participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(e) If there is a break in the continuity of participation, any reduction in premium earned under subsection (c) of this section shall not thereafter apply; however, any increase in premium shall apply following a break in continuity.

(f) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

7. *Insurance period.* Insurance on insured acreage shall attach on January 10 and shall cease in the same calendar year upon the earlier of (1) harvest or (2) September 15.

8. *Notice of damage or loss.* Any notice of damage or loss shall be given in writing by the insured to the Corporation at the office for the county. The Corporation shall reject any claim for indemnity if any of the requirements of this section are not met.

(a) Notice shall be given for each damage to the peaches from an insured cause of loss within seven days after such damage becomes apparent, giving the date, cause, and estimated extent of such damage: *Provided*, That if an indemnity is to be claimed, the insured shall notify the office for the county immediately if the damage occurs within the seven-day period before harvest commences or during harvest. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of the insured prevent compliance with the provisions of this subsection.

(b) Any insured acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.

(c) There shall be no abandonment to the Corporation of any insured peach crop.

9. *Claim for indemnity.* (a) Any claim for indemnity on any unit shall be submitted to the Corporation on a form prescribed by the Corporation. It shall be a condition precedent to the payment of any indemnity that the insured (1) establish that any loss has been directly caused by one or more of the causes insured against during the insurance period for which the indemnity is claimed and (2) furnish any other information regarding the loss as may be required by the Corporation.

(b) The amount of indemnity for any unit shall be determined by subtracting the dollar value of production from the dollar amount of insurance and multiplying the remainder by the insured share. The dollar value of production is obtained by multiplying the total production to be counted by the applicable price for computing indemnities provided in subsection 5(c). The dollar amount of insurance is obtained by multiplying the applicable dollar amount per acre determined in accordance with the provisions of subsections 5 (a) and (b) times the

insured acres: *Provided*, That if the premium computed on the acreage as determined by the Corporation and share, is more than the premium computed on the acreage and share, the amount of indemnity shall be computed on the determined acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and subject to adjustment for wind and hail damage to fruit, shall include all harvested production and any appraisals made by the Corporation for unharvested production, poor farming practices, uninsured causes of loss, or for acreage abandoned or put to another use without prior written consent of the Corporation. The production to be counted shall not be less than the expected production per acre at the time insurance attached for any acreage of peaches which is abandoned, put to another use without prior written consent of the Corporation, not inspected by the Corporation prior to the completion of harvest or damaged solely by an uninsured cause.

(d) The Corporation reserves the right to delay final appraisal of any damage until the extent of damage can be determined.

(e) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

10. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damage in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

11. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

12. *Collateral assignment.* Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

13. *Transfer of insured share.* If the insured transfers all or any part of the insured share during the crop year, upon approval by the Corporation, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop

year. Any transfer shall be made on a form prescribed by the Corporation.

14. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made and shall execute all papers required and take appropriate action to secure such rights.

15. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all peaches produced on each unit in which the insured has a share, including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

16. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

17. *Contract changes.* The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 18.

18. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding the crop year for which the cancellation is to become effective.

(b) The contract will terminate if (1) any amount due the Corporation is not paid on or before the termination date for of the calendar year immediately following the crop year of the indebtedness: *Provided*, That the date of payment for premium deducted from any indemnity claim shall be the date the insured signs such claim, or when deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved or (2) the insured has not complied with a request by the Corporation for satisfactory arrangements for payment of the premium for the following crop year.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All States.....	Nov. 30	Jan. 10

(d) The contract will terminate if no premium is earned for three consecutive years.

(e) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches

for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership, unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(f) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (b), (c), (d), and (e) of this section, the contract shall continue in force for each succeeding crop year.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. 840.

Dated: November 9, 1978.

PETER F. COLE,  
Secretary, Federal Crop  
Insurance Corporation.

Dated: November 28, 1978.

Approved by:

BOB BERGLAND,  
Secretary.

[FR Doc. 78-33683 Filed 11-30-78; 8:45 am]

#### [3410-05-M]

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

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

##### PART 722—COTTON

#### Subpart—1979 Crop Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

##### FINAL RULE; CORRECTION

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to extra-long staple cotton and the apportionment of national acreage allotments to the States appearing in the FEDERAL REGISTER of October 20, 1978 at 43 FR 48990.

FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham (ASCS) 202-447-7873.

In FR Doc. 78-29546 appearing at page 48990 of October 20, 1978, the second line of § 722.560 is corrected by deleting 000,000 and substituting 114,965 therefor.

Signed at Washington, D.C., on November 22, 1978.

RAY FITZGERALD,  
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-33678 Filed 11-30-78; 8:45 am]

#### [3410-02-M]

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

[Lemon Regulation 175; Lemon Regulation 174, Amdt. 1]

#### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

##### Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

SUMMARY: Final rule.

ACTION: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 3-9, 1978, and increases the quantity of such lemons that may be so shipped during the period November 26-December 2. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 3, 1978, and the amendment is effective for the period November 26-December 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on November 28, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the

specified weeks. The committee reports the demand for lemons continues good on all sizes but slightly easier on 200's.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.475 Lemon Regulation 175.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 3, 1978, through December 9, 1978, is established at 240,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

§ 910.474 [Amended]

Paragraph (a) of § 910.474 Lemon Regulation 174 (43 FR 54934) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 26, 1978, through December 2, 1978, is established at 240,000 cartons."

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

Dated:

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

[FR Doc. 78-33851 Filed 11-30-78; 11:22 am]

#### [3410-37-M]

### CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 2859—INSPECTION OF EGGS AND EGG PRODUCTS

##### Fees and Charges

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

**SUMMARY:** The hourly rates for overtime or holiday work incurred under the mandatory egg products inspection service are changed to reflect salary increases for inspectors.

**EFFECTIVE DATE:** December 3, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Ashley R. Gulich, Food Safety and Quality Service, United States Department of Agriculture, Room 3944 South Building, Washington, D.C. 20250, Phone: (202) 447-3506.

**SUPPLEMENTARY INFORMATION:** Under the mandatory egg products inspection program the first 40 hours of an inspector's charges are paid by the Federal Government. Users of the Service are charged only for work performed in overtime, on holidays, or on certain appeal inspections. The Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) requires that the costs of inspection for such services as overtime and holiday work be recovered from the users. Fees for these services have not been adjusted since November 1976. Since that time, there have been two general salary increases for Federal employees and some State employees, as well as increases in other costs to provide services. To recover costs for service, the hourly rates for overtime and holiday inspection work are increased from \$10.60 to \$12.00 per hour.

Therefore, pursuant to the authority of the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) § 2859.126 and § 2859.128(a), (7 CFR Part 2859) are amended to read as follows:

§ 2859.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day, or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of \$12.00 to cover the cost thereof.

§ 2859.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of \$12.00 to cover the cost thereof.

(84 Stat. 1633, 21 U.S.C. 1053)

It has been determined that in order to cover these increased costs of the services, the hourly fees charged in connection with the performance of the services must be increased as soon as practicable as provided herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Food Safety and Quality Service.

The Egg Products Inspection Act requires that fees recovered from users of the mandatory egg products inspection program for overtime and holiday work cover the costs for such services. Increased revenues are urgently needed to meet the costs of these services as presently being performed. Therefore, Sydney J. Butler has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period. Further, these amendments have not been classified "significant" and an impact analysis is not required since the amendments are mandated by statute.

Accordingly, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to these amendments are impracticable and contrary to the public interest and good cause is found for making these amendments effective before January 2, 1979.

Done at Washington, D.C. on: November 27, 1978.

SYDNEY J. BUTLER,  
Acting Administrator,  
Food Safety and Quality Service.

[FR Doc. 78-33680 Filed 11-30-78; 8:45 am]

[3410-34-M]

Title 9—Animal and Animal Products

CHAPTER I—ANIMAL AND PLANT  
HEALTH INSPECTION SERVICE, DE-  
PARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 3—STANDARDS

Revision of Standards for the Trans-  
portation and the Handling, Care,  
and Treatment in Connection  
Therewith of Dogs, Cats, Rabbits,  
Hamsters, Guinea Pigs, Nonhuman  
Primates, and Certain Other Warm-  
blooded Animals

AGENCY: Animal and Plant Health  
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends  
the transportation standards govern-

ing certain live warmblooded animals under the Animal Welfare Act published in the FEDERAL REGISTER on June 21, 1977 (42 FR 31556-31571) and on May 16, 1978 (43 FR 21160-21167). The amendments contained herein concern changes in the allowable minimum and maximum air temperatures surrounding dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates and certain other warmblooded animals when transported in commerce. They also contain a new procedure for measuring the air temperature surrounding live animals being transported in commerce which replaces the "ambient temperature" provisions of the present transportation standards. In connection with such new procedure, the range of allowable air temperatures for animals being transported in commerce takes into consideration the differences between the air temperature occurring inside the animal shipping container and the air temperature surrounding such container. The revisions contains herein are the result of petition for reconsideration which were received by the Department and which made new facts and evidence available that appeared to warrant such action.

DATE: Effective date January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8271.

**SUPPLEMENTARY INFORMATION:** On October 17, 1978, the Department published a notice of proposed rule-making containing changes and additions to Part 3 of Subchapter A, Chapter 1, Title 9 of the Code of Federal Regulations (42 F.R. 47964-47968) which provided for (1) a change in the minimum allowable air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) for dogs, cats, hamsters, rabbits, and certain other warmblooded animals when transported in commerce, (2) a change in the maximum allowable air temperature from 35°C. (95°F.) to 29.5°C. (85°F.) for all warmblooded animals under the Animal Welfare Act when transported in commerce, and (3) a new procedure for measuring the air temperature surrounding live animals transported in commerce wherein the air temperature is measured and read outside the animal shipping container at a distance not to exceed .91 meters (3 feet) from the external walls of such container.

A total of 839 comments were received representing many interest groups, i.e., air carriers, pet shop

owners and operators, humane groups, pet animal dealers, veterinarians, hobby breeders, individual pet owners and concerned citizens. Many of the comments raised questions or provided information which warranted some changes in the proposed amendments to the standards. Certain editorial changes were also made for clarification.

#### DISCUSSION OF MAJOR PROPOSED ITEMS AND COMMENTS

##### METHOD FOR MEASURING THE AIR TEMPERATURE SURROUNDING LIVE ANIMALS TRANSPORTED IN COMMERCE

The present transportation standards (9 CFR 3.18, 3.42, 3.67, 3.92, and 3.118) cite a minimum and maximum ambient temperature within primary enclosures used to transport certain warmblooded animals. Criticism of these standards, because they require the insertion of a thermometer into the shipping container to measure the ambient temperature and may result in possible injury to contained animals, prompted the Department to propose a safer and more practical procedure for measuring the air temperature surrounding animals during transportation. Consequently, the Department proposed that the air temperature be measured and read outside the primary enclosure (shipping container) which contains the live animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level paralleled to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such enclosure.

Carriers and several other persons commenting on the proposed method for measuring air temperature indicated their agreement with the proposal as being practical and easy for carrier personnel to accomplish, as well as being safe for the contained animals. On the other hand, two comments criticized the proposed method as far too subjective and less accurate in reflecting the actual temperature impacting the contained animals. It was indicated that the proposed method did not take into consideration factors such as direct sunlight, construction of the shipping container, etc., which could affect the temperature within a shipping container. However, the effect of all these interrelated factors has yet to be sufficiently evaluated relative to a warmblooded animal's physiological response to temperature extremes. In addition, inexpensive temperature measuring devices which would not require thrusting some part of such devices into the animal's shipping container are not readily available and there is a reluctance on the

part of carrier or intermediate handler employees to get too near an animal whose disposition toward strangers is unknown. The Department is therefore amending §§ 3.16, 3.40, 3.65, 3.90, and 3.118 to reflect the new method of measuring and reading the air temperature outside primary enclosures (shipping containers) containing live animals.

##### ALLOWABLE MAXIMUM AIR TEMPERATURE

In proposing to change the method of measuring the air temperature around warmblooded animals confined in shipping containers, the Department recognized that there is a difference between the air temperature which immediately surrounds an animal within a shipping container and the temperature of the air surrounding the outside of such container. Physiological data indicates that warmblooded animals adjust to their environment through an elaborately developed heat-regulating system to maintain a relatively constant body temperature. However, as the temperature of the surrounding air approaches the level of the animal's body temperature, the animal will experience discomfort and, after a period of time, death. Scientific data also indicates that as the temperature outside an animal shipping container rises, the differential between the temperature inside the shipping container and the temperature of the outside environment increases. Information also available to the Department indicates that when the air temperature which surrounds the animal shipping container within 3 feet of such container, reaches 29.5°C. (85°F.) the air temperature surrounding the animal inside the shipping container will reach approximately 35°C. (95°F.). Based on this information, the Department proposed that carriers and intermediate handlers not allow the air temperatures which surround the animal shipping container in animal holding areas of terminal facilities to exceed 20.5°C. (85°F.). Further, the Department proposed to require that auxiliary ventilation be used when the temperature reaches 23.9°C. (75°F.).

Comments from air carriers indicated that the existing allowable maximum air temperature standards, i.e., air temperature shall not exceed 29.5°C. (85°F.) for more than 4 hours and never exceed a maximum of 35°C. (95°F.), have not resulted in a hazardous or detrimental environment for animals maintained in carriers' animal holding areas. Furthermore, comments indicated that air carriers have not been advised by either shippers or the public of instances where the temperatures in carriers' facilities which contained live warmblooded animals have exceeded the present standards

for allowable maximum air temperatures. Several shippers of animals expressed the fear of air carriers refusing to accept animal shipments when the outside atmospheric temperature reaches 75°F. because the carriers would not have temperature controlled areas in their terminal facilities. The Department received no comments or information which refuted the basic available data indicating that subjection of warmblooded animals to temperatures higher than 95°F. is inhumane. It believes that the proposed standard for the allowable maximum temperature (29.5°C. or 85°F.) outside the shipping container is necessary considering the temperature which immediately surrounds the confined animal inside a shipping container. Therefore, it is provided herein that carriers and intermediate handlers shall not allow the air temperature which is measured and read outside the animal container or primary enclosure (within 0.91 meters (3 feet) of the external walls of such enclosure) to exceed 29.5°C. (85°F.) for all warmblooded animals covered by the Act. Further, it is also provided that auxiliary ventilation must be used when the temperature reaches 23.9°C. (75°F.).

##### ALLOWABLE MINIMUM AIR TEMPERATURE

The present transportation standards provide that the ambient air temperature and the temperature surrounding live warmblooded animals transported in commerce shall not be allowed to fall below 7.2°C. (45°F.). An exception is provided for USDA licensees or registrants and U.S. Government Departments, agencies, or instrumentalities wherein a certificate executed by a licensed veterinarian may be furnished to carriers or intermediate handlers indicating that an animal presented for transportation (with the exception of guinea pigs) is acclimated to air temperatures lower than 7.2°C. (45°F.). Many individuals, other than USDA licensees or registrants and representatives of the U.S. Government agencies, felt that their dogs and cats and certain other warmblooded animals were not adversely affected by air temperatures down to 35°F. Based on empirical information, as well as on a certain amount of scientific data, the Department proposed to provide for a minimum allowable air temperature of 1.7°C. (35°F.) surrounding dogs, cats, hamsters, rabbits, and certain other warmblooded animals, with the exception of guinea pigs and nonhuman primates, when transported in commerce.

A majority of individuals who submitted comments, many of whom are pet owners, vehemently objected to the lowering of the allowable minimum air temperature surrounding warmblooded animals, mostly basing

their objections on an anthropomorphic response, i.e., a human would be uncomfortable and eventually freeze in a 35°F. environment; therefore, animals will also be uncomfortable and eventually freeze under the same conditions. Other comments disagreed with the proposal because it lacked certain qualifying criteria, such as (1) restriction on the time an animal could be subjected to temperatures as low as 35°F., (2) consideration for the physical differences between animal breeds, e.g., long-haired animals versus short-haired animals, relative to their ability to adjust to colder environments, and (3) allowances for differences between the less developed thermoregulatory mechanisms of young animals and the well developed mechanisms of adult animals. Hobby breeders decried the discrimination of not being allowed to present a certificate of acclimation to lower temperatures to carriers when shipping long-haired, adult dogs or cats which are acclimated to colder temperatures.

The Department's proposed amendments to the standards for allowable minimum air temperatures apply to all dogs (*Canis familiaris*), all cats (*Felis catus*), and other warmblooded animals affected by the Act and do not give consideration to breed differences or age differences. There is no available scientific data which evaluates the individual ability of the many various breeds of dogs, cats, and other animals to tolerate various temperatures lower than 45°F. or which indicates the pathological effect of such low temperatures on the animals. In addition, those scientific experiments which have involved certain breeds of animals and the effect of temperature extremes utilized adult animals rather than young or immature ones. Consideration for these animal breed and age differences would create complicated requirements wherein carriers and intermediate handlers would have to recognize breeds of animals and differentiate animals by age. Such requirements would be impractical, if not impossible.

The Department feels that additional scientific evaluation of the effects of cold temperatures on those warmblooded animals covered by the Animal Welfare Act must be made and has already initiated action to derive this needed information. In the meantime, the proposed change of the allowable minimum air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) shall not be implemented in this rulemaking.

The Department acknowledges the validity of the complaints from hobby breeders and individual pet owners who are presently not afforded the opportunity to present to carriers a certificate of acclimation to lower tem-

peratures when shipping an animal which is known to be so acclimated. The Department will therefore consider providing such an option to all pet owners through a certificate of acclimation to lower temperatures executed by an "accredited" veterinarian in future rulemaking. An "accredited" veterinarian is a licensed veterinarian who has been officially authorized by the Deputy administrator of the Department's Veterinary Services to perform certain functions in connection with programs and laws which the Department administers.

Accordingly, the standards (9 CFR 3.1 *et seq.*) are amended in the following respects:

1. The Table of Contents cited in Part 3—STANDARDS is amended by deleting §§ 3.18, 3.42, 3.67, 3.92, and 3.118.

#### § 3.11 [Amended]

2. Section 3.11(c) of the standards (9 CFR 3.11(c)) is amended by deleting the section number 3.18 in the phrase, " \* \* \* prescribed in §§ 3.16 and 3.18." and inserting the section number "3.17" in its place.

3. Section 3.16 of the standards (9 CFR 3.16) is revised to read as follows:

#### § 3.16 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live dogs or cats shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live dogs and cats when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live dog or cat in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* That no live dog or cat shall be subjected to air temperatures around any such dog or cat in excess

of 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live dog or cat shall be measured and read outside the primary enclosure which contains such dog or cat at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

#### § 3.17 [Amended]

4. Section 3.17(a)(1) of the standards (9 CFR 3.17(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun and such live dogs or cats shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes. \* \* \*

5. Section 3.17(a)(3) of the standards (9 CFR 3.17(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live dogs and cats when the outdoor air temperature falls below 10°C. (50°F.), and such live dogs or cats shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes unless such dogs or cats are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.11(c).

#### § 3.18 [Deleted]

6. Section 3.18 of the standards (9 CFR 3.18) is deleted.

#### § 3.35 [Amended]

7. Section 3.35(c) of the standards (9 CFR 3.35(c)) is amended by deleting the section number "3.42" in the phrase, " \* \* \* prescribed in §§ 3.40 and 3.42." and inserting the section number "3.41" in its place.

8. Section 3.40 of the standards (9 CFR 3.40) is revised to read as follows:

#### § 3.40 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate

handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live guinea pigs or hamsters shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live guinea pigs and hamsters when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live guinea pig or hamster in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live guinea pig or hamster shall be measured and read outside the primary enclosure which contains such guinea pig or hamster at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and measured on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

#### § 3.41 [Amended]

9. Section 3.41(a)(1) of the standards (9 CFR 3.41(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun and such live guinea pigs or hamsters shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes. \* \* \*

10. Section 3.41(a)(3) of the standards (9 CFR 3.41(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the outdoor air temperature falls below 10°C. (50°F.), and such live guinea pigs

or hamsters shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes.

#### § 3.42 [Deleted]

11. Section 3.42 of the standards (9 CFR 3.42) is deleted.

#### § 3.60 [Amended]

12. Section 3.60(c) of the standards (9 CFR 3.60(c)) is amended by deleting the section number "3.67" in the phrase, " \* \* \* prescribed in §§ 3.65 and 3.67" and inserting the section number "3.66." in its place.

13. Section 3.65 of the standards (9 CFR 3.65) is revised to read as follows:

#### § 3.65 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live rabbits shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live rabbits when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live rabbit in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live rabbit shall be measured and read outside the primary enclosure which contains such rabbit at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

#### § 3.66 [Amended]

14. Section 3.66(a)(1) of the standards (9 CFR 3.66(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun and such live rabbits shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes. \* \* \*

15. Section 3.66(a)(3) of the standards (9 CFR 3.66(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live rabbits when the outdoor air temperature falls below 10°C. (50°F.), and such live rabbits shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes unless such rabbits are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.60(c).

#### § 3.67 [Deleted]

16. Section 3.67 of the standards (9 CFR 3.67) is deleted.

#### § 3.85 [Amended]

17. Section 3.85(c) of the standards (9 CFR 3.85(c)) is amended by deleting the section number "3.92" in the phrase, " \* \* \* prescribed in §§ 3.90 and 3.92." and inserting the section number "3.91." in its place.

18. Section 3.90 of the standards (9 CFR 3.90) is revised to read as follows:

#### § 3.90 Terminal facilities

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live nonhuman primates shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circu-

lated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live nonhuman primates when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live nonhuman primate in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* that no live nonhuman primate shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live nonhuman primate shall be measured and read outside the primary enclosure which contains such nonhuman primate at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.91 [Amended]

19. Section 3.91(a)(1) of the standards (9 CFR 3.91(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun and such live nonhuman primates shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes. \* \* \*

20. Section 3.91(a)(3) of the standards (9 CFR 3.91(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the outdoor air temperature falls below 10°C. (50°F.) and such live nonhuman primates shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes unless such nonhuman primates are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.85(c).

§ 3.92 [Deleted]

21. Section 3.92 of the standards (9 CFR 3.92) is deleted.

§ 3.111 [Amended]

22. Section 3.111(c) of the standards (9 CFR 3.111(c)) is amended by deleting the section number "3.118" in the phrase, " \* \* \* prescribed in §§ 3.116 and 3.118." and inserting the section number "3.117." in its place.

23. Section 3.116 of the standards (9 CFR 3.116) is revised to read as follows:

§ 3.116 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.116 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live animals shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live animal in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* that no live animal shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live animal shall be measured and read outside the primary enclosure which contains such animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.117 [Amended]

24. Section 3.117(a)(1) of the standards (9 CFR 3.117(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun and such live animals shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes. \* \* \*

25. Section 3.117(a)(3) of the standards (9 CFR 3.117(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the outdoor air temperature falls below 10°C. (50°F.) and such live animals shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes unless such animals are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.111(c).

(Secs. 12 and 13, 90 Stat. 418 and 419, 7 U.S.C. 2142 and 2143; 37 FR 28477, 28646; 38 FR 19141.)

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon such good cause that further notice and other public participation with respect to the revision are impracticable and unnecessary.

Done at Washington, D.C., this 29th day of November, 1978.

NOTE.—This rule has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations", and has been designated "significant". An approved Final Impact Analysis Statement has been prepared and is available from the Animal Care Staff, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone Area Code (301) 436-8271.

E. A. SCHILF,  
Acting Deputy Administrator,  
Veterinary Services.

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