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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 308

Volunteer Service

AGENCY: Office of Personnel Management.

ACTION: Final Regulations.

SUMMARY: These regulations implement a Volunteer Service Program for students, as required by 5 U.S.C. 3111, and in accordance with program guidelines established by the Office of Personnel Management. These regulations are intended to provide a broad framework to ensure uniform acceptance of volunteer services within the executive branch of the Federal Government.

EFFECTIVE DATE: August 31, 1979.

FOR FURTHER INFORMATION CONTACT: James R. Poole, Student Employment Programs Section, Staffing Services, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C., 20415, (202) 632-5678.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1979, the Office of Personnel Management published interim regulations to implement the acceptance of Volunteer Service. The Office also issued program guidance through the Federal Personnel Manual (FPM) System on January 22, 1979. Both publications invited comments. During the public comment period, a total of 17 written comments were received—15 from Federal agencies and 2 from Labor organizations. All were addressed to the FPM guidance and none recommended changes to the regulations.

The major issues raised requested clarification of: (1) definitions, (2) the impact of guidance published pursuant to 5 U.S.C. 3111 upon existing volunteer programs conducted under different statutes, (3) procedures related to documentation and reports, and (4) program guidance language considered by commenters to be ambiguous. There are also recommendations for expanding coverage to include statements related to EEO, security clearances, Privacy Act, and relationships with Labor organizations.

The Office of Personnel Management has examined and considered all comments brought to its attention during the public comment period, and has modified, where appropriate, its program administration guidance to be published in subchapter 7, FPM chapter 308 in the Federal Personnel Manual.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is adding a new Part 308 to Title 5, Code of Federal Regulations, as set forth below:

PART 308—VOLUNTEER SERVICE

Secs.

Authority: 5 U.S.C. 3111.

§ 308.101 Definitions.

In this part: "Student" is an individual who is enrolled not less than half-time in a high school, trade school, technical or vocational institute, junior college, college, university or other accredited educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the agency that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"Volunteer Service" under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee or to staff a position which is a normal part of the agency's work force.

§ 308.102 Eligibility and status.

(a) *Minimum Age.* The selection of students to participate under the program should be in conformance with either Federal, State, or local laws and standards governing the employment of minors.

(b) *Status.* A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

§ 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Pub. L. 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in nonpay status.

[FR Doc. 79-27232 Filed 8-30-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 235

State Administrative Expense Funds; Interim Rule—Use of Discretionary Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This regulation amends existing State Administrative Expense (SAE) Fund regulations (7 CFR Part 235) by establishing guidelines under which allocations of a portion of the SAE funds authorized by section 7(a) of the Child Nutrition Act of 1966 will be made. The rule provides that State agencies and other State-level agencies which administer the Child Care Food Program (7 CFR Part 226) and the Food Distribution Program (7 CFR Part 250) will receive allocations of additional SAE funds to assist them in strengthening their program administration.

DATE: Effective August 31, 1979. To be assured of consideration, comments must be received by October 31, 1979.

ADDRESS: Comments should be sent to Margaret O'K. Glavin, Director, School Programs Division, FNS–USDA, Washington, D.C. 20250. Comments received will be available for inspection by interested parties in Room 4300B, Auditors Building, 14th Street and Independence Avenue, SW., Washington, D.C. during regular business hours (8:30 a.m. to 5:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, at the above address or by phone (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 7 of Public Law 95–627, enacted on November 10, 1978, amended section 7 of the Child Nutrition Act of 1966 and established a new allocation formula for the allocation of SAE funds to State agencies which administer the child nutrition programs.

Under section 7(a)(1) as amended, by Pub. L. 95–627, the Department annually has available to it one and one-half percent of the total program funds expended by all administering agencies during the second preceding year in the National School Lunch, School Breakfast, Special Milk, Food Service Equipment Assistance, and Child Care Food Programs. Under section 7(a)(2), each State agency is allocated not less than one-percent of program funds expended by it during the second preceding year in the school feeding programs (i.e., the National School Lunch, School Breakfast, Special Milk and Food Service Equipment Assistance Programs). State agencies which administer the Child Care Food Program (CCFP) are allocated SAE funds for that program based on the application of a different formula as set forth in section 7(a)(3) of the Child Nutrition Act of 1966, as amended. Section 7(a)(3) also allows the Department to "adjust any State's allocation to reflect changes in the size of its program."

Section 7(a)(4) as amended, that provides, after the required allocations of sections 7(a)(2) and (3) have been made, the remaining monies be "allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs. . . . including, but not limited to, improved program integrity and the quality of meals served to children." The Department has decided to allocate these discretionary funds in several ways. First, the Department is developing a system to assist in improving program management at the State and local levels. The system, known as AIMS (Assessment, Improvement and Monitoring System) will be issued in interim rulemaking in the near future. For the current fiscal year, $4 million in appropriated funds have been earmarked for AIMS. The Department expects that specific sums such as this will be needed as long as the system is being utilized. This interim regulation is intended to outline the Department's other plans for use of the remaining discretionary funds.

Child Care Food Program

Public Law 95–627 made several significant changes in the legislation governing the CCFP. These changes include the availability of start-up and advance payments to participating institutions, different reimbursement procedures by type of institution, and alternative institution approval procedures where licensing is not available. All of these changes will undoubtedly increase the administrative burden of State agencies by causing them to adjust existing systems or develop new ones and by requiring increased monitoring to ensure proper implementation. This fact, combined with the fact that in some States SAE funds are already being used in the CCFP in excess of that which will result from the new formula, has led the Department to believe that a portion of available discretionary SAE funds should be allocated for use in the CCFP.

As provided for in this regulation, each State which administers the CCFP will receive an additional $30,000 (the amount FNS estimates as necessary to employ one administrative staff person for one year, including salary, benefits, support staff, travel and other related expenses) in discretionary SAE funds annually. To be consistent with existing regulations, State agencies will not be required to spend these funds on CCFP administration but will have them available if needed.

Food Distribution Program

Current regulations (§ 235.6(c)) provide that SAE funds may be used in the administration of the Food Distribution Program. No specific funds or amount of funds are now set aside for this purpose. However, § 235.6, paragraph (d) further provides that the amount of total SAE funds which may be used for the Food Distribution Program is limited in each fiscal year to ten percent of the total amount of SAE funds made available to the State for that year.

This regulation establishes a minimum $30,000 payment to each State agency, which administers the food distribution program for child nutrition programs, whether it is the State Department of Education or other State-level agency, including the State distributing agency. It also eliminates the ten percent limitation in § 235.6(d). When funds remain after all other allocations of discretionary SAE monies have been made, such State agencies would also get a pro rata share of those remaining funds, based on the amount of donated food assistance provided under all child nutrition programs during the second preceding year. In those States where a different State agency services institutions, all SAE payments for food distribution will be provided to State agencies which administer the Food Distribution Program in schools. This limitation is intended to put SAE funds where they are most needed (i.e., where the larger food distribution program exists) and is based on an awareness that administrative funds are already being provided to some agencies which serve other than child nutrition programs under the Food Distribution Program. The Department is particularly interested in comments on the implications of this limitation.

The Department feels strongly that agencies administering the Food Distribution Program need administrative funding support. Some need additional qualified staff for monitoring contracts under which donated foods are processed or repackaged; others, improved accountability and tracking systems. Allocations in the amounts proposed could help eliminate these needs and the related problems.

Consistent with the intent for which SAE funds are provided, funds used by distributing agencies must be restricted to the administration of the Food Distribution Program in schools and institutions participating in the child nutrition programs.

This amendment also limits the eligible distributing agencies receiving SAE funds to public entities. Formerly, these regulations allowed private agencies to act in this capacity. This is a technical change which will bring the regulations into conformance with existing child nutrition program regulations.

Adjusted School Program Allocation

This regulation gives FNS the authority to adjust the amount of the school program allocation when the amount "does not accurately represent the level of funding intended by this formula" (i.e., one percent of second preceding year expenditures). This provision was included to give a reasonable amount of flexibility in

allocating school program funds when unique situations arise. For example, if the level of program funding in a State during the second preceding year was significantly lowered by extraordinary circumstances such as the need to close schools for long periods of time, the school program allocation for the current year could be based on estimates of funding levels which would have been attained if schools had not been closed.

Public Comment

The decision to allocate these discretionary funds as described above was made to meet certain specified needs. Issuing these regulations on an interim basis was intended to expedite their allocation. At this point, the Department plans to use these allocation formulae for fiscal year 1979 and until such time as a more effective usage and/or methodology is deemed to be necessary. To this end, the Department is asking for public comment (1) on the merits of the interim system and (2) suggesting alternative systems.

Accordingly, the Department is amending 7 CFR Part 235 on an interim basis to read as follows:

1. Section 235.1 is amended to read as follows:

§ 235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making payments of funds to State agencies for use in meeting administrative expenses incurred in supervising and giving technical assistance in connection with activities undertaken by them under the National School Lunch Program (7 CFR Part 210), the Special Milk Program (7 CFR Part 215), the School Breakfast Program (7 CFR Part 220), the Child Care Food Program (7 CFR Part 226), the Food Service Equipment Assistance Program (7 CFR Part 230) and the Food Distribution Program (7 CFR Part 250).

2. In § 235.2, paragraphs (d) and (s) are amended to read as follows:

§ 235.2 Definitions.

* * * * *

(d) "Distributing agency" means a State agency which enters into an agreement with the Department for the distribution of donated foods pursuant to Part 250 of this title.

* * * * *

(s) "State agency" means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under Parts 210, 215, 220, 226, 230 or 250 of this title. Unless otherwise indicated, "State agency" shall also mean "distributing agency", as defined in § 235.2(d), when such agency is receiving funds directly from FNS under this part.

* * * * *

3. In § 235.4, a sentence is added to the end of paragraph (a), new paragraphs (b–1), (b–2) and (b–3) are added and paragraphs (c), (d) and (h) are amended to read as follows:

§ 235.4 Allocation of funds to States.

* * * * *

(a) * * * FNS may adjust the amount of funds allocated to any State under this paragraph when it determines that such amount does not accurately represent the level of funding intended by this formula.

(b)(1) For the fiscal year ending September 30, 1979, and for each succeeding fiscal year, FNS shall allocate $30,000 to each State agency which administers the Child Care Food Program (7 CFR Part 226).

(2) For the fiscal year ending September 30, 1979, and for each succeeding fiscal year, FNS shall allocate $30,000 to each State agency which administers the Food Distribution Program (7 CFR Part 250) in schools and institutions which participate in programs governed by Parts 210 and 220 of this title, *Provided, however,* That any State in which the Food Distribution Program in schools, as defined in § 235.2(o)(1) of this part, and the Food Distribution Program in institutions, as defined in § 235.2(o)(2) of this part, is administered by different agencies, this allocation and that provided for in paragraph (b)(3) of this section shall be made to the State agency which administers the Food Distribution Program in schools.

(3) Funds which remain after the allocations required in paragraphs (a), (b), (b)(1) and (b)(2) of this section, and after any payments provided for under paragraph (f) of this section, shall be allocated to State agencies which administer the Food Distribution Program (7 CFR Part 250). The amount of funds to be allocated to each State agency under this paragraph shall bear the same ratio to the total amount of such funds as the value of donated foods delivered to the State for schools and institutions participating in programs under Parts 210, 220 and 226 of this title during the second preceding fiscal year bears to the value of donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year.

(c) Funds allocated under paragraphs (a), (b), (b)(1), (b)(2) and (b)(3) of this section and 7 CFR Part 225 shall be used by the State agency for administrative costs incurred by it in connection with the programs governed by Parts 210, 215, 220, 225, 226, and 230 of this title. In addition, funds allocated under paragraphs (a), (b), (b)(1), (b)(2) and (b)(3) of this section may be used for the Food Distribution Program (7 CFR Part 250), as provided for in § 235.6(c).

(d) As part of its State Plan of Child Nutrition Operations, required by § 210.4a of this title, each State agency except for distributing agencies, shall submit to FNS a plan for the use of State administrative expense funds in the school nutrition programs and in the Child Care Food Program, including a staff formula for State personnel, system level supervisory personnel and operating personnel, and school level personnel. By May 15 of each year, each distributing agency shall submit to FNS a plan for the use of SAE funds for the following fiscal year in a format prescribed by FNS.

* * * * *

(h) FNS shall have available to it the applicable amounts provided for in paragraphs (a), (b), and (b)(1) of this section, and Part 225 of this title, when it is responsible for the administration of a program or programs within a State.

4. In § 235.5, the last sentence is amended to read as follows:

§ 235.5 Payments to States.

* * * Funds shall not be made available before approval of the State Plan of Child Nutrition Operations provided for under § 210.4a and § 226.7 of this title or the plan required under § 235.4(d) of this Part.

5. In § 235.6, an additional sentence is added to paragraph (c) and paragraph (d) is deleted and reserved as follows:

§ 235.6 Use of funds.

* * * * *

(c) * * * The amounts of State administrative expense funds paid by a State agency to a distributing agency shall be based on the amount of additional funds needed to perform such supervisory and technical assistance deemed necessary by the State agency.

(d) [Reserved]

* * * * *

6. In § 235.8, paragraph (b) is amended to read as follows:

§ 235.8 Management evaluation and audits.

* * * * *

(b) Each State agency shall develop a plan for the conduct of such audits which shall (1) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization, and (2) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations. Each State agency shall include the plan in its State Plan of Child Nutrition Operations, except that distributing agencies which receive funds directly under this part shall provide such information in the plan referred to in § 235.4(d).

* * * * *

Authority: (Sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776).)

Note.—In accordance with Executive Order 12044, a copy of the draft impact analysis for this proposed regulation is available at the Office of the Director, School Programs Division, USDA–FNS, Washington, D.C. 20250 during regular business hours.

Dated: August 28, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–27334 Filed 8–30–79; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Stabilization and Conservation Service

7 CFR Part 722

[Amendment 6]

Marketing Quota Regulations for the 1972 and Succeeding Crops of Extra Long Staple Cotton and Recordkeeping Requirements for Extra Long Staple and Upland Cotton

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

ACTION: Final rule.

SUMMARY: This rule announces the rate of penalty applicable to the 1979 crop of extra long staple cotton as prescribed by the Agricultural Adjustment Act of 1938, as amended. Also, since Title VI of the Food and Agriculture Act of 1977 suspended the statutory requirement with respect to marketing quotas for upland cotton for 1978 through 1981, this rule eliminates the recordkeeping requirement for upland cotton from the provisions of this subpart. All requirements for upland cotton may now be found in Part 713 of this chapter, as amended.

EFFECTIVE DATE: August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Charles Riley, Production Adjustment Division, ASCS, USDA, 3644 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7633.

SUPPLEMENTARY INFORMATION: Section 347(c) of Agricultural Adjustment Act of 1938, as amended, specifies that the rate of penalty with respect to each crop of extra long staple cotton shall be the higher of 50 percent of the parity price as of June 15 of the calendar year in which the crop is produced or 50 percent of the support price of extra long staple cotton. The parity price effective for June 15 as published in "Agricultural Prices" was 161.0 cents per pound and the extra long staple cotton loan rate applicable for the 1979 crop is 92.95 cents per pound.

Accordingly, 7 CFR Part 722 is amended as follows:

1. The title of the first subpart is revised to read as follows:

Subpart—Marketing Quota Regulations and Recordkeeping Requirements for the 1972 and Succeeding Crops of Extra Long Staple Cotton

2. Section 722.61 is revised by deleting and reserving paragraph (b) and revising paragraph (d) to read as follows:

§ 722.61 Applicability.

* * * * *

(b) [Reserved]

* * * * *

(d) The marketing quota provisions of this subpart shall not apply to upland cotton produced in 1971–81, since marketing quotas are not in effect for those years under the statutory authority and amendments contained in the Agricultural Act of 1970 (Pub. L. 91–524, 84 Stat. 1358 et seq., approved November 30, 1970), the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93–86, 87 Stat. 233, approved August 10, 1973), and the Food and Agriculture Act of 1977 (Pub. L. 95–113, 91 Stat. 933, approved September 29, 1977). The recordkeeping provisions of this subpart shall not apply to upland cotton produced in 1979–81.

* * * * *

3. Section 722.73 is amended by deleting paragraphs (c) (1) through (6) and revising paragraph (c) to read as follows:

§ 722.73 Rate of penalty.

* * * * *

(c) The 1979 ELS cotton penalty rate is 80.5 cents per pound.

(Secs. 346, 347, 373, 63 Stat. 674, as amended, 63 Stat 675 as amended; 52 Stat. 65, 66, as amended; 7 U.S.C. 1346, 1347, 1373, 1375)

Note.—The rate of penalty is a mathematical determination. The other changes make the regulations conform to the law by removing requirements no longer applicable to the public or are editorial in nature.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant", and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Ray Fitzgerald, Administrator, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Signed at Washington, D.C., August 22, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79–26985 Filed 8–30–79; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 214]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period September 2–8, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 2, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under 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. The agreement and order are effective under

the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on August 28, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is somewhat slow.

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 is 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. 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.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.514 Lemon Regulation 214.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period September 2, 1979, through September 8, 1979, is established at 200,232 cartons.

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

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

Dated: August 29, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-27487 Filed 8-30-79; 11:28 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1488

Export Programs; CFR Correction

In the January 1, 1979 edition of Title 7, Code of Federal Regulations, Parts 1200–1499, under Subchapter C of Chapter XIV—Commodity Credit Corporation, the text of § 1488.12(a) which appears on pages 543 and 544 is incorrect and should read as follows:

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (i) for payment of bank obligations issued by them or (ii) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (iii) as provided in paragraphs (c) and (d).

* * * * *

BILLING CODE 6820-27-M

Food Safety and Quality Service

9 CFR Part 381

Poultry Products Inspection Regulations; Definitions and Standards of Identity or Composition; Standards for Turkey Ham

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the poultry products inspection regulations by providing a standard for "Turkey Ham." The standard, among other things, provides that "Turkey Ham" shall be fabricated from cured, boneless turkey thigh meat with the skin and the surface fat attached to the skin removed, and that the product name "Turkey Ham" shall be qualified with the statement "Cured Turkey Thigh Meat." This standard is necessary to assure that a product labeled as "Turkey Ham" would have the characteristics associated with the product name, and that consumers are fully informed of the nature of the product.

EFFECTIVE DATE: October 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1978, the Department published a document in the **Federal Register** (43 FR 24064–66) proposing a standard for "Turkey Ham." As explained in the proposal, the Department since 1975 has permitted certain cured poultry products fabricated from turkey thigh meat to be labeled as "Turkey Ham" without further qualification. The decision to permit this labeling was based on the view that the term "ham" when prefixed by the species name of an animal refers to the hind limb of that animal. Poultry products are subject to the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) and the poultry products inspection regulations (9 CFR Part 381). The Act and regulations do not define the term "ham"; however, this conclusion concerning the meaning of the term "ham" was based on § 317.8(b)(13) of the Federal meat inspection regulations (9 CFR 317.8(b)(13)), which provides:

> The word "ham," without any prefix indicating the species of animal from which derived, shall be used in labeling only in connection with the hind legs of swine.

This provision implies that the term "ham" when prefixed by the species name of an animal refers to the hind limb of that animal.

Section 4(h)(1) and (3) of the Poultry Products Inspection Act (21 U.S.C. 451(h)(1) and (3)) provide that a poultry product is misbranded "if its labeling is false or misleading in any particular," or "if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word 'imitation' and immediately thereafter the name of the food imitated." In this connection, the American Meat Institute (AMI) and the National Pork Producers Council (NPPC) petitioned the Department to amend the Fedeal meat inspection regulation and the poultry products inspection regulations to restrict the use of the term "ham" to the labeling of meat products prepared from the hind legs of swine. AMI and NPPC assert that the labeling of a turkey product merely as "Turkey Ham" would falsely indicate that the product contains pork, and that a "Turkey Ham" is an imitation of a pork ham. The proposal also referred to a market survey that the Department had conducted for the purpose of determining the consumers' understanding of the term "Turkey Ham." A substantial group of consumers indicated that the term "Turkey Ham" referred to a product that contained some pork or was made from meat only of pork.

Under these circumstances, the Department proposed that a standard be adopted for a product made from cured turkey thigh meat and that the product name be "Turkey Ham" qualified with the statement "Cured Turkey Thigh Meat."

Summary of Comments

A total of 553 submittals were received representing the views of 854 individuals and organizations. Of those individuals and organizations, 369 expressed support for the proposal, 481 were in opposition to the proposal (most were against the use of the word "Ham"), three were uncommitted, and one was a recorded duplicate.

There were 319 comments submitted from representatives of meat plants, pork producers, and their associations. Representatives of poultry plants, turkey growers, and their associations submitted 85 comments. A total of 428 consumers submitted comments on the proposal. The remainder of the comments were from feed suppliers; representatives of farm publications, agricultural colleges, State Boards of Agriculture, and Farm Bureaus; and persons who indicated that they raise both hogs and turkeys. Some of the comments submitted were in the form of congressional referrals.

Name of the Product

The majority of comments submitted in response to the proposal discussed reasons for and against the use of the word "ham" in the name of the product.

Many commenters referred to dictionary definitions and § 317.8(b)(13) of the Federal meat inspection regulations in support of their claim that "ham" is generally understood to mean the hind leg of swine. Others also referred to dictionary definitions and the same provisions of the Federal meat inspection regulations to support their position that the word "ham" should be permitted to be used in the product name when shown with the species "turkey." Several commenters indicated that at the time they purchased the product labeled as "Turkey Ham" they mistakenly thought it was turkey and pork ham combined. Another commenter wrote that because her husband cannot eat pork, she never purchased "Turkey Ham" until the recent publicity, because she previously was not aware that the product did not contain pork. One commenter stated that turkey is a favorite of the elderly, that some of the elderly are not permitted to eat "ham", and that the words, "Turkey Ham", could be particularly confusing to the elderly. Another said that using the word "ham" in the product name, regardless of the qualifiers proposed, will imply to at least some consumers that the product is made or contains the flesh of the hind legs of swine.

A number of commenters indicated that a ham style product made from meat other than pork satisfies the needs of many consumers who for ethnic or religious reasons cannot eat pork and that the name "Turkey Ham" qualified by "Cured Turkey Thigh Meat" is sufficient to differentiate between a pork product and a turkey product. One commenter suggested naming the product "Ham Style Turkey." Another commenter indicated that the product is being produced and marketed to resemble the pork ham and as such should be labeled "Imitation Ham." Some commenters wanted the phrase "No Pork Added" on the label. A large number of commenters indicated that the term "Turkey Ham" should be completely deleted from the product name and that the product name merely should be "Cured Turkey Thigh Meat." Other commenters suggested simply naming the product "Smoked Turkey" or "Smoked Turkey Loaf."

The results of the market survey and the comments submitted in response to the proposal indicate that the term "Turkey Ham" without further qualification appears to have been incorrectly understood by many persons to represent a product containing pork. Accordingly, it has been determined that the name "Turkey Ham" without further qualification would cause such products to be misbranded and, therefore, could not be used as the standard name for the product.

Consideration has been given to names suggested by the comments.

The names "Ham Style Turkey", "Smoked Turkey", and "Smoked Turkey Loaf" are not acceptable because they do not reflect that the turkey used in the product comes only from the "ham" portion of the turkey. Further, the products are not required to be smoked.

The name "Imitation Ham" would also not be acceptable. The product, although having certain unique characteristics, has some characteristics similar to a "pork ham." However, it would not be an "imitation" of a "pork ham" within the meaning of the Poultry Products Inspection Act. This document establishes a standard for the product and it is an established policy of the Department not to require a standardized product to be labeled as an "imitation." This is required pursuant to the Poultry Products Inspection Act which provides that a product represented as a standardized product must bear the standard name (21 U.S.C. 453(h)(7)). The Federal Meat Inspection Act contains provisions identical to the provisions in the Poultry Products Inspection Act concerning the term "imitation." In this connection, it should be noted that the standardized product "beef patties" must be labeled as "beef patties" and not "imitation ground beef" or "imitation hamburger" (see 9 CFR 319.15).

The name "Cured Turkey Thigh Meat" accurately describes the product now known as "Turkey Ham." However, the term "Turkey Ham" has been used as the name of the product since 1975 and better connotes the characteristics which have become associated with the product. As noted above, the term "Turkey Ham" has been misleading to some consumers because they thought it represented a product containing pork. This problem, of course, has been lessened somewhat as more persons have become acquainted with the name and the product. However, in order to assure that consumers are not misled, it has been determined that the product should be named "Turkey Ham" but also qualified by the term "Cured Turkey Thigh Meat" in order to clearly inform consumers that the product consists of turkey but not pork. This is also in accordance with the proposal.

In addition, some comments indicated that the name should be qualified by the statement "No Pork Added." The Department does not favor the adoption of negative labeling requirements if the information intended to be presented can be feasibly presented otherwise. This is because some persons may wrongly interpret certain negative labeling in a pejorative sense. In this case, some persons might incorrectly interpret the term "No Pork Added" to include the concept that pork is inferior to turkey, rather than merely what was intended; i.e., that the product does not contain pork. It is the view of the Department that the qualifying term "Cured Turkey Thigh Meat" adequately informs consumers of the true nature of the product and that negative labeling is not necessary to indicate the absence of pork.

Miscellaneous

Section 381.171(a) of the proposed standard reads, in part, that "'Turkey Ham' shall be fabricated from boneless turkey thigh meat with the skin and surface fat removed." Many commenters claimed that the determination of whether surface fat is adequately removed would be inherently subjective and will vary from inspector to inspector. It was also pointed out that surface fat removal is not required of pork hams. There is a misunderstanding

with respect to what was meant by "surface fat removed." Some surface fat is attached to skin and is removed along with the skin. It was merely intended that this fat would not be used as part of the product. This is clarified in the final rule.

Section 381.171(b) of the proposed standard provides that the product, among other things, may contain "seasonings." Comments requested clarification with respect to what was intended by the term "seasonings." This term was intended to include common salt, sugars, spices, spice extractives, dehydrated garlic, and onions, as well as flavoring agents as provided for in § 381.147(f) of the current poultry products inspection regulations (9 CFR 381.147(f)); i.e., approved artificial smoke flavorings, approved smoke flavoring, autolyzed yeast extract, corn syrup solids, corn syrup, glucose syrup, disodium inosinate, diosodium guanylate, hydrolyzed plant protein, malt syrup, milk protein hydrolysate, monosodium glutamate, sodium sulfoacetate (derivative of mono- and diglycerides) and approved sugars (sucrose and dextrose). The final rule was amended accordingly.

Also, it was evident from the proposal that water would be used in the product for the purpose of dissolving many of the added ingredients, such as curing agents, cure accelerators, and phosphates. Accordingly, water is added to the list of permitted ingredients.

The following statement in § 318.171(c) of the proposal was confusing to many commenters: "The finished product weight after cooking shall be no more than the original weight of the turkey thigh meat used prior to curing." The exact intent of the term "after cooking" was not clear to many commenters. Some comments questioned whether "after packing" was closer to what was intended. The phrase "after cooking" was intended to indicate the cooked finished product which allows for shrinkage up to the time of packaging. To clarify this concept, the Administrator has rephrased the requirement to read "The cooked finished product weight shall be no more than the original weight of the turkey thigh meat used prior to curing."

Commenters questioned whether a protein multiplier would be utilized to determine whether the finished product weighs more than the original weight prior to curing. A protein multiplier has not been established for turkey meat. This determination will be made on a weight basis.

The proposal provided that "qualifying statements shall not be less than one-half the size of the product name, but the letters shall not be less than one-eighth inch in height." A number of poultry establishments claimed that a minimum type size of one-eighth inch for the qualifying statement "Cured Turkey Thigh Meat" would be proportionally too large for the product name and for small packages of sliced product. A number of other commenters claimed that a qualifying statement of only one-eighth inch would be too small. In particular, it was stated that the small black print on a red background is difficult to read, and small type is a disadvantage to the elderly. One of the commenters noted that the term "Water Added" on labels for water added hams is required to be three-eighths inch in height and asserted that the qualifying statement "Cured Turkey Thigh Meat" should also be required to be three-eighths inch in height. In support of this assertion, the commenter stated that there is more possibility of confusion in the consumer's mind regarding "Turkey Ham vs. Real Ham" than there is with "Ham vs. Water Added Ham."

The name of the product and the qualifying statement must be close enough in size to assure that they are both read and understood by consumers. There does not appear to be any valid reason for permitting the qualifying statement to be smaller in comparison to the product name than was proposed.

Also, particularly with respect to color combinations and small packages, it should be noted that the Poultry Products Inspection Act specifically provides that ". . . information required to appear on a label must be prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use . . . ." Color combinations, of course, must be reviewed as part of the label on an individual basis, and may not be used if they cause information to be difficult to read. Also, first priority for label space must be given to mandatory label information. If this requires elimination of designs, advertising logos, and the like to prominently display mandatory labeling information, then that is the only course left for the processor. In addition, there are relevant differences between the qualifying statement "Cured Turkey Thigh Meat" and the term "Water Added." The term "Water Added" under the provisions of the Federal meat inspection regulations (9 CFR 319.104) is required to be three-eighths inch in height on consumer-sized packages. However, the term "Water Added" indicates that the product contains a substance in addition to ham; i.e., water, and is required to be part of the product name and the term "Cured Turkey Thigh Meat" clarifies the name "Turkey Ham." It does not appear that a phrase which merely clarifies the meaning of a product name should be required to be in letters as large as the product name itself. Further, it appears that the proposed requirements with respect to minimum heights would be sufficient and necessary to assure that consumers would be informed of the nature of the product. Accordingly, they are adopted as proposed.

The proposal provides that a product would be required to be labeled with the qualifying statement "Chunked and Formed" if fabricated from chunks of turkey thigh meat or "Ground and Formed" if fabricated from ground turkey thigh meat. Comments from poultry processors questioned what criteria would be utilized to determine when a product would be classified as "Chunked or Formed" or "Ground and Formed." Poultry processors further asserted that the product should not be labeled with the term "chunked" if it consists of whole thighs, even if separated into a few pieces during removal of the bone. The Department agrees that clarification should be made with respect to these matters. As noted in the proposal, there is a textural difference among products prepared from whole thighs, chunked thigh meat, and ground thigh meat. The final rule is changed to more clearly reflect these differences and help consumers better understand what general texture to expect from such products. Accordingly, it has been determined that pieces of turkey thigh meat that result from the cutting through the muscle (as opposed to whole thighs intact or whole thighs with some incidental separation of muscle tissue during removal of the bone) should be labeled with the qualifying statement "Chunked and Formed" if the pieces are at least the equivalent of a one-half inch cube. Smaller pieces of turkey thigh meat used in the product will be required to be qualified by the term "Ground and Formed" or "Chopped and Formed" as appropriate.

The final rule was also clarified to specify that qualifying statements must be contiguous to the product name and that no intervening type or designs may be placed between the qualifying statement "Cured Turkey Thigh Meat" and the product name "Turkey Ham." This will help assure that the qualifying

statements are conspicuous and likely to be read and understood by consumers. Further, the additional requirement for the qualifying statement "Cured Turkey Thigh Meat" will help to assure that the name and the qualifying statement are read together and thereby clearly identify the nature of the product.

Some comments suggested that any required information relating to texture; e.g., "Chunked and Formed", be permitted to be combined with the qualifying phrase "Cured Turkey Thigh Meat" in order to conserve label space. An example of this suggested combination would be "Cured Chunked and Formed Turkey Thigh Meat." This suggestion was not adopted. As explained above, it is intended that the qualifying statement "Cured Turkey Thigh Meat" be read together with the product name in order to clearly identify the nature of the product; i.e., that it is a turkey product and that it does not contain pork. This statement will be more forcefully presented and more likely to be correctly understood if it does not contain additional information.

A few processors requested that the poultry products inspection regulations be further amended to provide a separate standard for canned "Turkey Ham" and to provide an additional standard for a "Water Added Turkey Ham", similar to that provided in the Federal meat inspection regulations for pork hams. These concepts were not included in the proposal. However, consideration will be given concerning whether such standards should be proposed in the future.

The standard provides that "Turkey Ham" shall be cured using one or more of the approved curing agents "as provided in § 381.147(f) of this Part." Nitrates and nitrites are listed therein as curing agents. The matter of the use of nitrates and nitrites in poultry products is under active review by the Food and Drug Administration. The provisions in the standard prescribing the use of nitrites may be affected by action undertaken in the future by the Food and Drug Administration.

On July 18, 1979, the National Advisory Committee on Meat and Poultry Inspection was consulted regarding this standard. Members of the Committee expressed comments both in support of the proposal and in opposition to it. The Committee members did not raise issues outside the scope of the written comments as discussed above, but their views were also considered in the preparation of this final rule.

Under the circumstances referred to above, the poultry products inspection regulations (9 CFR Part 381) are amended as follows:

1. The table of contents for Part 381, Subpart P, is amended to add

Sec.
"381.171 Definition and standard for "Turkey Ham."

2. A new section 381.171 is added to Part 381, Subpart P, to read as follows:

§ 381.171 Definition and standard for "Turkey Ham."

(a) "Turkey Ham" shall be fabricated from boneless, turkey thigh meat with skin and the surface fat attached to the skin removed. The thighs shall be that cut of poultry described in § 381.170(b)(5) of this Part.

(b) The product may or may not be smoked, and shall be cured using one or more of the approved curing agents as provided in § 381.147(f) of this Part. The product may also contain cure accelerators, phosphates, and flavoring agents as provided in § 381.147(f) of this Part; common salt, sugars, spices, spice extractives, dehydrated garlic, and dehydrated onions; and water for purpose of dissolving and dispersing the substances specified above.

(c) The cooked finished product weight shall be no more than the original weight of the turkey thigh meat used prior to curing.

(d) The product name on the label shall show the word "Turkey" in the same size, style, color, and with the same background as the word "Ham" and shall precede and be adjacent to it.

(e) The product name shall be qualified with the statement "Cured Turkey Thigh Meat." The qualifying statement shall be contiguous to the product name, without intervening type or designs, shall be not less than one-half the size of the product name but not less than one-eighth inch in height, and shall be in the same style and color and with the same background as the product name.

(f) If the product is fabricated from pieces of turkey thigh meat that result from the cutting through the muscle (as opposed the whole thighs intact or whole thighs with some incidental separation of muscle tissue during removal of the bone), the product name shall be further qualified by a descriptive statement. The product name of product fabricated from such pieces of turkey thigh meat equivalent in size to a one-half inch cube or greater shall be further qualified to specify that the product is "Chunked and Formed." The product name of product fabricated from such pieces of turkey thigh meat smaller than the equivalent of a one-half inch cube shall be further qualified to specify that the product is "Ground and Formed" or "Chopped and Formed" as appropriate. The qualifying statement shall immediately follow and be contiguous to the statement required in paragraph (e) of this section, and shall be not less than one-half the size of the product name but not less than one-eighth inch in height, and shall be in the same style and color and with the same background as the product name.

(Sec. 14, 71 Stat. 447, as amended 21 U.S.C. 463; 42 FR 35625, 35626, 35631)

It does not appear that additional relevant information would be available by further public participation in rulemaking proceedings on this amendment. Accordingly, it is found upon good cause under the administrative procedure provisions of 5 U.S.C. 553, that further notice or other public procedures with respect to this amendment are impracticable and unnecessary.

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An Approved Final Impact Statement is available from Mr. Fried, Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. The alternatives considered during the analysis are listed in the Final Impact Statement.

Done at Washington, D.C., on August 15, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule (Change in discount rates).

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country.

Pursuant to the authority of 5 U.S.C. Sec. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed