United States Information Agency

General Counsel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-7976

United States Soldiers' & Airmen's Home

Chief, Employee Management Branch, United States Soldiers' and Airmen's Home, Box 1200, 3700 North Capitol Street NW., Washington, DC 20317, (301) 722-3425

III. THE UNITED STATES POSTAL SERVICE AND THE POSTAL RATE COMMISSION

United States Postal Service

Service of process may be made on the postmaster or head of the installation where the employee obligor works. However, if the installation where the employee obligor works cannot be determined, service of process may be made on the appropriate Chief Field Counsel. The geographic areas served by the Chief Field Counsels and their addresses are as follows:

Chief Field Counsel, Northeast Region, U.S. Postal Service, 6 Griffin Park Road North, Windsor, CT 10098-0120, (203) 285-7127

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070-079 and 085-089), New York, and the Caribbean Islands.

Chief Field Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19197-0120, (215) 496-6011

Serving: The District of Columbia, Delaware, Kentucky, Ohio, Maryland, Pennsylvania, Virginia, West Virginia, southern New Jersey (ZIP codes beginning with 080-084), North Carolina and South Carolina (ZIP codes beginning with 290-292).

Chief Field Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166-0170, (901) 722-7350

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP codes beginning with 298-299), Tennessee and Texas.

Chief Field Counsel, Central Region, U.S. Postal Service, 300 South Riverside Street, Chicago, IL 60606-0170, (212) 765-5264

Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Colorado and Wyoming.

Chief Field Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099-0170, (415) 742-4810

Serving: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and the Pacific Islands including the Trust Territory.

Processing of legal process in garnishment actions will be substantially expedited by serving the postmaster or installation head rather than the Chief Field Counsel.

Postal Rate Commission

Chief Administrative Officer, Postal Rate Commission, 2000 L Street NW., Washington, DC 20268, (202) 254-3880

IV. THE DISTRICT OF COLUMBIA, AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue NW., Washington, DC 20004, (202) 727-6979

American Samoa

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633-4155

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472-6841 (Country Code 671)

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774-1163

V. INSTRUMENTALITY

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive SW., Washington, DC 20560, (202) 381-5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490-9000

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5 CFR Part 591

RIN 3206-AB34

Cost of Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations on the nonforeign area cost-of-living allowance (COLA) and post differential authorized by 5 U.S.C. 5941. This amendment is necessary to bring the terminology into conformance with current usage, clarify certain provisions, modify the method used to calculate rates, and ensure that the requirements of the Administrative Procedure Act are met or exceeded.

EFFECTIVE DATE: February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632-7471.

SUPPLEMENTARY INFORMATION: On June 2, 1989, OPM published proposed regulations in the **Federal Register** (54 FR 23664) providing that interested persons could file comments through August 31, 1989. We received over 100 written comments from employees, employee groups, agencies, members of Congress, and attorneys and experts hired by employee groups.

Several changes and clarifications were made to the proposed regulations in response to the comments received. These changes are discussed in the sections below.

General Comments. Some individuals interpreted the proposed rule as a proposal to reduce existing allowance rates. The changes in methodology we are adopting are designed to improve the measurement of living costs used to set the allowance rates, and are not intended either to reduce or increase allowance rates.

Many commenters remarked that the proposed rule was too vague and imprecise to make informed comment possible. We disagree. OPM received extensive, detailed, and carefully-reasoned comments from over 100 interested parties. This final rule is intended to serve as the vehicle for publishing a broad methodology to establish a sound basis for conducting future reviews of allowance rates. As noted in § 591.205(d) of the final rule, OPM fully intends to go through another round of rule-making in which we will describe the details of a particular year's living cost survey and the proposed rates that result from it. We expect to repeat this process each time we propose to adjust allowance rates.

Some commenters remarked, especially with respect to § 591.205, that the regulations should be expressed in simpler language which can better be understood by the individuals directly affected by the COLA program. In addition to clarifying several specific points in response to comments, we have reworded portions of § 591.205 in response to these concerns.

One employee commended OPM for establishing different allowance rates for employees with commissary and exchange privileges and those shopping at retail outlets.

Comments on COLA Methodology. Several commenters expressed concern that the proposed rule would not actually measure relative living costs, but would merely measure how individuals allocate their budgets. This comment reflects an interpretation of the term "budget" which OPM did not intend. We have revised § 591.205 to eliminate the term "budget," and to emphasize that OPM will first determine the cost of an appropriate market basket of goods, services, and other expense categories in the Washington, DC area, and then measure the cost of the same market basket in the allowance area. This method will measure actual differences in the cost of living by calculating the additional income employees would need to purchase the contents of the market basket in the higher-cost area.

Several commenters also expressed concern that weighting the "budgets" for each location to reflect the distribution of General Schedule (GS) grades in the location (§ 591.205(c)) will unfairly disadvantage employees in the allowance areas, since GS grades tend, on average, to be higher in the Washington, DC area. OPM is adopting a weighting method specifically designed to eliminate any potential disadvantage to employees in allowance areas where the average GS grade is lower than in the Washington, DC area. Section 591.205(c) of the final rule has been clarified to show that the weighting of both the Washington, DC dollar amounts and the allowance area dollar amounts will be based on the GS distribution in the allowance area, thereby insuring that the higher average GS grade in the Washington, DC area does not affect the calculation of the allowance rate.

Several commenters argued that defining an allowance area as a 50-mile radius around certain Alaskan cities was unrealistic because (1) housing costs are sharply lower 30 to 40 miles outside major cities; (2) few persons commute or routinely travel as much as 50 miles due to harsh conditions and poor road systems; and (3) reaching a point within 50 miles of a city such as Anchorage may require an automobile trip of up to 180 miles. Interested parties should note that the standard established by the final rule is a 50-mile distance by road. We continue to believe that the 50-mile-by-road standard represents an appropriate definition of an economic community.

One individual suggested incorporating allowances paid by private sector employers into the calculation of allowance rates for Federal employees. Another commenter recommended delaying possible reductions in allowance rates until Federal employees attain pay comparability with private sector employees. These suggestions can not be adopted since the statute bases the calculation of the cost-of-living allowance only on differences in living costs.

Definitions. One individual asked OPM to provide the specific jurisdictions included in the definition of the Washington, DC area. As currently defined by the Office of Management and Budget, the Washington, DC–MD–VA Metropolitan Statistical Area includes: the District of Columbia; the following counties in Maryland: Montgomery, Prince Georges, Frederick, Charles, and Calvert; and the following areas of Virginia: the cities of Fairfax, Falls Church, Manassas, Manassas Park, and Alexandria, and the counties of Arlington, Fairfax, Loudoun, Stafford, and Prince William.

Several commenters asked OPM to limit cost of living measurements to the city limits of Washington, DC. Such a limitation would (1) conflict with a provision of Executive Order 10,000, as amended, specifying the "Washington, DC area" as the basis for comparison, and (2) disregard the fact that many Federal employees working in agencies located in Washington, DC live and shop in the neighboring areas of Maryland and Virginia.

One commenter suggested that the proposed definitions of the terms "date of arrival" and "date of departure" in § 591.201 would be difficult to administer since most agencies prefer to begin and end payment of allowances or differentials at the beginning or end of a pay period, respectively. The commenter also believed that a requirement to determine employees' precise dates of arrival and departure would be administratively cumbersome and nonproductive, and recommended (1) beginning payment at the start of the employee's first pay period in duty status in the allowance or differential area; and (2) ending payment at the end of the employee's last pay period in duty status in the allowance or differential area. We do not believe that it would be appropriate to authorize payment of an allowance or differential for any portion of a pay period preceding an employee's arrival in the nonforeign area or after the employee's departure from the nonforeign area. However, we have revised the definitions of "date of arrival" and "date of departure" to correspond with the first and last days, respectively, that the employee is in a pay status in the allowance or differential area. The information needed to determine an employee's date of arrival or departure should be readily available in the agency's records. We have also defined the term "differential area" to parallel the definition of "allowance area," and to simplify the definitions of "date of arrival" and "date of departure."

The same commenter stated that the proposed rule should be revised to specifically state that certain employees appointed to the Stay-in-School program under the authority of 5 CFR 213.3102(w) are eligible to receive allowances or differentials. We agree, and have clarified § 591.203 accordingly. We also have clarified § 591.203 by adding a paragraph authorizing agencies to apply this final rule, at their discretion, to certain groups of employees whose rates of basic pay are established at the administrative discretion of the head of the agency.

The same commenter also asked OPM to specify when allowances and differentials are to be included in a lump sum payment for annual leave. We agree, and have modified § 591.210(b)(1) to specifically address this issue.

A few commenters asked for a specific definition of the term "appropriate," which appears several times in the final rule. We have used the term "appropriate" in recognition of the fact, noted by several commenters, that an approach suitable for one area may be unsuitable for another area. We believe it is desirable to preserve some flexibility to tailor the details of a given survey to specific conditions to ensure that we can respond effectively to changes and local variations in economic conditions. As noted above, interested parties will have an opportunity to comment on the appropriateness of specific sources of data before future allowance rates, based on such data, are finalized.

Consumption Goods and Services. Many commenters supported the use of same-brand pricing, and several individuals asked OPM to employ same-brand pricing in all cases. The regulations commit OPM to same-brand pricing whenever possible. However, if exact brands cannot be compared for a specific item, we believe it would be preferable to price the closest brands available, rather than altogether excluding a relevant item from the survey.

Transportation. Several individuals commented that the costs of auto insurance are significantly higher in allowance areas than in the Washington, DC area. Several commenters noted that severe weather conditions in allowance areas may accelerate deterioration of automobiles. To the extent that such factors result in increased automobile operating expenses, they will be reflected in transportation cost data gathered under § 591.205(b)(2).

One commenter suggested including costs resulting from a lack of public transportation. To the extent that a lack of public transportation results in a greater average number of automobile miles driven, such additional costs will be reflected in the Transportation expense category.

Housing. One individual commended OPM for including home purchase prices and mortgage interest rates in calculating housing costs.

Many commenters were concerned that depressed housing prices in Alaska would artificially lower allowance rates. The commenters believe that many employees in allowance areas purchased homes during periods when housing prices were substantially higher than they are today, and that sole consideration of current housing prices would be inappropriate since employees who purchased homes during boom periods are locked into higher mortgage payments based on prices and interest rates available at the time of purchase and are unable to take advantage of current levels of housing prices.

Some of these concerns may have resulted from a typographical error in the proposed rule. OPM had written in the supplementary material for the proposal rule that "the purchase price and interest rate, two important factors in home ownership costs, are very dependent on the time of purchase." When the proposal was published, however, the text read "very independent." We have revised § 591.205(b)(3) to indicate that we fully intend to consider both current and prior dates for home purchase in measuring living costs. Because this mix reflects the average of what consumers actually pay, it is a more accurate measure of living costs than current market prices, which only affect those currently purchasing housing. However, it is not reasonable to completely ignore current market prices when prices have been dropping, since the current market affects the living costs of employees who have recently purchased housing.

One individual suggested that OPM calculate housing costs based on data from the Department of Housing and Urban Development (HUD), rather than conduct surveys in the allowance area. The final rule gives OPM the flexibility to use data from HUD or other knowledgeable agencies, and we will consider the possibility of doing so. If HUD data is used as a tool to help determine specific allowance rates, that fact will be published for comment, as noted above, before any adjustments in allowance rates are finalized.

Another individual suggested using certain indices of construction and labor costs. Although these indices measure costs which have some impact on the cost of living, we believe it will be more accurate to directly measure the cost of living through the methodology provided in the final rule.

Several individuals suggested that OPM continue to use surveys of individual employee costs to calculate housing expenses instead of collecting data from market sources about housing units independent of the employment of the occupant. We believe that the quality and quantity-specific methodology of the final rule results in an improved method of measuring differences in living costs.

Several commenters asked OPM to include real estate taxes because they are expecially high in Alaska. Section 591.205(b)(3) of the final rule indicates that real estate taxes will be included in the measurement of housing costs.

One commenter supported the proposal to compare similar housing units between areas, but recommended holding constant factors such as neighborhood/location, commuting distance, age of dwelling, quality of dwelling, rural vs. urban setting, quality of schools, etc. There is a practical limit to the number of control variables that can be used in any comparison of housing costs. We believe that selecting standard shelter specifications based on type, size, and age of dwelling definitions and selecting living communities based on the expert opinion of housing professionals in each location will ensure a reasonable, accurate, and fair comparison of housing costs.

Some commenters believe OPM should authorize different allowance rates for employees based on the actual date they purchased their dwelling. One implication of such an approach would be a different allowance rate for each employee based on his or her particular circumstances and characteristics. Performing individual calculations of living costs for each of thousands of employees is neither feasible nor desirable.

Miscellaneous Expenses. One individual asked OPM to include the cost of health care in its measurements of living costs. Several individuals indicated that employees in remote areas may incur unusually high travel expenses, such as the need to charter an airplane, to obtain emergency medical or dental care. Other commenters indicated that the costs of medical services in allowance areas are often so high that health insurance plans that typically provide reimbursement based on "customary and reasonable" charges often reimburse a much smaller portion of actual expenses in allowance areas than in the Washington, DC area. Health care costs are one of the fastest growing components of living costs, and we agree that it is appropriate to incorporate them in the living cost comparison. We have therefore included specific mention of health care costs in the list of miscellaneous expenses in § 591.205(b)(4).

Many individuals, as well as the attorneys for several employee groups, commented that the proposed rule fails to consider differential needs—i.e., the cost of goods and services which are needed in the allowance areas, but are not normally needed in the Washington, DC area (such as the cost of flying to and from the lower 48 states to attend college, take a vacation, or visit friends and relatives, 4-wheel drive vehicles, and engine block heaters), as well as the cost of certain goods and services which may be needed in greater quantities in certain allowance areas (such as fuel oil, automobile tires, automobile maintenance and repair, and heavy winter clothing). While we understand the commenters' concerns, we do not believe it is necessary to isolate and compare every location-specific difference in items purchased in order to fairly and accurately calculate differences in the cost of living. However, interested parties should note that, in some cases, differences in needs are inseparable from the basic measurement of the cost of an item, and will therefore affect the calculation of allowance rates under the final rule. For example, in an allowance area where automobiles are routinely equipped with engine block heaters, the additional cost of purchasing such heaters will be reflected in the survey of transportation costs.

Several individuals, as well as the attorneys for employee groups, also commented that the proposed rule fails to consider "non-economic costs" incurred in allowance areas, such as a limited selection of consumer items, separation from family and native culture, and a perceived inferior overall quality of living. Several commenters recommended that an additional 5 per cent be added to each allowance rate to compensate for differential needs and additional "non-economic costs". We do not believe that the statute guarantees equal standards of living in the allowance areas and the Washington, DC area. Rather, it authorizes payment of an allowance to compensate employees for the higher cost of living in the allowance area. OPM does not believe that adding 5 per cent to the calculated allowance rates based on unsupported conjecture would be consistent with the requirement in Executive Order 10,000, as amended, to insure that allowance rates "shall not in any instance exceed the amount justified."

Other Comments on Allowances. Several individuals asked OPM to use a lower-cost area than the Washington, DC area as the basis for comparing living costs in the allowance areas. We can not adopt this suggestion because the statute and Executive Order specify Washington, DC as the area whose living costs must be compared with living costs in the allowance areas.

Several commenters asked OPM to implement any possible changes in allowance rates gradually. Some commenters also asked OPM to specify by regulation the maximum percentage by which an allowance rate could decrease in a one-year period—e.g., limit decreases to 2.5 per cent per year. Whenever an allowance rate is substantially reduced due to program or methodology revisions, OPM will implement the reduction gradually, in accordance with section 210 of Executive Order 10,000, as amended. However, we do not believe it would be appropriate to adopt a fixed percentage of reduction without considering the specific circumstances surrounding the rate reduction, such as prevailing economic conditions and the amount of the reduction. Interested parties will have an opportunity to comment on any reduction in an allowance rate before the rate is finalized.

A Federal executive association and a member of Congress asked OPM to adopt a "credit bank" approach under which any excess in a calculated allowance rate above the maximum payable rate of 25 per cent of basic pay would be held in abeyance for offset against any future reductions in allowance rates below the 25 per cent maximum. This suggestion can not be adopted as it would conflict with the requirement, mandated by Executive Order 10,000, as amended, to conduct periodic reviews to ensure that allowance rates "shall continue only during the continuance of conditions justifying such payment."

The attorneys for several employee groups recommended revising § 591.210(e)(1) to include allowances in the calculation of the rate of overtime pay for employees exempt from the provisions of the Fair Labor Standards Act (FLSA). OPM can not adopt this recommendation since, by law, the rate of overtime pay for exempt employees is derived from their rate of basic pay. Cost of living allowances are paid in addition to an employee's rate of basic pay (which is fixed by statute), and are therefore not includable in the calculation of an exempt employee's rate of overtime pay. Because an allowance is considered part of a nonexempt employee's "total remuneration," the allowance rate must be included in a non-exempt employee's regular rate of pay for computing overtime pay entitlement under the FLSA.

One individual suggested that (1) any future reductions in allowance rates only be applied to new employees, and (2) implementation of any future reductions in allowance rates be delayed for at least two years. OPM can not adopt these suggestions since Executive Order 10,000 requires OPM to ensure that employees do not receive higher allowance rates than would be justified by current conditions.

Two commenters argued that OPM's Regulatory Flexibility Act certification was inappropriate, and that the proposed rule would have a significant economic impact on a substantial number of small entities. We disagree, for three reasons. First, the proposed rule deals only with allowances and differentials paid to Federal employees, and places no restrictions or requirements on small entities. Second, there is no indication that the changes in methodology we are adopting will significantly affect the amounts of allowances or differentials paid to Federal employees. Third, the allowance program has been in operation for many years, and although there have been occasional reductions in allowance rates, we have received no indication that such reductions have had a significant economic impact on small entities.

Post Differential. A Federal executive association and an employee suggested that OPM extend authority to pay post differentials to employees in all areas of Alaska. Since employees in the nonurban areas of Alaska are already receiving the maximum allowance rate permitted by law (25 per cent), current law does not permit these employees to also receive a post differential.

An employee asked whether eligibility for a post differential is limited to employees who have moved into a differential area to compensate for work force shortages. An employee who has not been recruited or transferred from outside the differential area may receive a post differential under certain circumstances, as provided in § 591.209 of the final rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply to Federal employees and agencies.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is revising subpart B, with the exception of the appendix, of part 591 of title 5, Code of Federal Regulations, to read as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

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Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

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Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR, 1943–1948 Comp., p. 792; E.O. 12,510; 3 CFR, 1985 Comp., p. 338.

§ 591.201 Definitions.

In this subpart—

Allowance area means a geographic area for which an allowance has been authorized. There may be more than one allowance area within a nonforeign area. Allowance areas are listed in § 591.204 of this part.

Date of arrival means the employee's first day in a pay status in the allowance or differential area.

Date of departure means the employee's last day in a pay status in the allowance or differential area.

Day or *calendar day* means any day of the year. Fractional days are considered whole days.

Differential area means a geographic area for which a post differential has been authorized. Differential areas are listed in § 591.208 of this part.

Nonforeign allowance or *allowance* means a cost-of-living allowance established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC, area.

Nonforeign area means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, territories and possessions of the United States, and any additional areas located outside the contiguous United States that the Secretary of State designates as being within the scope of Part II of Executive Order 10,000, as amended. Nonforeign areas are listed in § 591.202 of this part.

Nonforeign differential or *differential* means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

Washington, DC, area or *Washington area* means the District of Columbia and all other areas in Maryland and Virginia included in the Washington DC–MD–VA Metropolitan Statistical Area as defined by the Office of Management and Budget.

§ 591.202 Areas covered.

The following areas are nonforeign areas:

(a) Alaska (including all the Aleutian islands east of longitude 167 degrees east of Greenwich).

(b) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(c) Canton and Enderbury Islands.

(d) Commonwealth of Puerto Rico.

(e) Virgin Islands of the United States.

(f) Guam.

(g) Commonwealth of the Northern Mariana Islands.

(h) Hawaii (including Ocean or Kure Island).

(i) Howland, Baker, and Jarvis Islands.

(j) Johnston Island and Sand Island.

(k) Kingman Reef.

(l) Midway Islands.

(m) Navassaa Island.

(n) Palmyra Atoll.

(o) Wake Island.

(p) Any small guano islands, rocks, or keys that, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

(q) Any other islands to which the U.S. Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, an independent establishment, or a wholly-owned Government corporation. The following pay plans are covered by this subpart:

(1) General Schedule (including the Performance Management and Recognition System, the Senior Executive Service, and employees in positions authorized by 5 CFR 213.3102(w) whose rates of basic pay are established under the General Schedule).

(2) Veterans Health Services and Research Administration (Department of Veterans Affairs).

(3) Foreign Service (where applicable under this subpart).

(4) Postal Service (where applicable under provisions of 39 U.S.C.).

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in positions authorized by 5 CFR 213.3102 (v) or (w) whose rates of basic pay are not established under the General Schedule or under the Federal Wage System.

§ 591.204 Establishment of allowance areas.

(a) The Office of Personnel Management (OPM) designates within nonforeign areas allowance areas where employees are eligible to receive a cost-of-living allowance by virtue of living costs that are substantially higher than those in the Washington, DC, area. In establishing the limits of allowance areas, OPM considers:

(1) The existence of a well defined economic community;

(2) The availability of consumer goods and services;

(3) The concentration of Federal employees covered by this supart; and

(4) Unique circumstances related to a specific location.

(b) The following allowance areas have been established where an allowance is authorized to be paid:

(1) *State of Hawaii.* (i) City and County of Honolulu.

(ii) County of Kauai.

(iii) County of Maui (including Kalawao County).

(iv) County of Hawaii.

(2) *State of Alaska.* (i) City of Anchorage and 50 mile radius by road.

(ii) City of Fairbanks and 50 mile radius by road.

(iii) City of Juneau and 50 mile radius by road.

(iv) The rest of the State.

(3) *Commonwealth of Puerto Rico.* The entire Commonwealth.

(4) *The Virgin Islands.* (i) St. Croix.

(ii) St. Thomas and St. John.

(5) *Territory of Guam.* The entire Territory.

(c) The head of a department or agency will submit requests in writing to OPM for the establishment or revision of allowance areas.

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC area. Two allowance rates are calculated for each area; Local Retail and Commissary/Exchange (see § 591.207 of this part). The four categories of expenses are:

(1) Consumption goods and services.

(2) Transportation.

(3) Housing.

(4) Miscellaneous expenses.

(b) Costs are determined for several income levels and home occupancy types (renter or owner), and averaged.

(1) The cost of consumption goods and services (excluding transportation and housing) will be estimated from appropriate consumer expenditure data at several income levels for a standard family size. The cost of goods and services in the Washington, DC area will be adjusted by a price index reflecting the estimated price difference between the allowance area and the Washington, DC area.

(i) Goods and services surveyed. The types and amounts of consumption goods and services to be surveyed at each income level will be derived from appropriate consumer expenditure surveys. Whenever possible, exact brands and models are priced in each location. Price data are obtained from appropriate retail outlets in each area. Price data from military facilities are provided by the Department of Defense where needed. Individual items are grouped into categories according to common functions or uses.

(ii) The item and category weights are derived from consumer expenditure surveys. The category weights vary by income.

(2) Transportation costs for each income level and area are estimated using data collected by or for OPM on automobile operating expenses and other factors affecting transportation costs.

(3) Housing costs for renters and owners are estimated based on similar housing units. Standard shelter specifications (type, size, age) are selected for each income level. Appropriate living communities to survey based on the income level and housing type specified are selected for each survey location. Housing data on units within the selected communities meeting the specifications are then collected for newly purchased and previously purchased units. Mortgage interest rate and payment data are collected from lending institutions in the area, utility companies and other sources provide information about utility rates, and local governments provide information on real estate tax rates. These data are then combined to estimate dollar expenditures within each survey area for the specified shelter in the selected community.

(4) Miscellaneous expenses. Miscellaneous expenses for health care, gifts, contributions, savings and investments, retirement, and life insurance are estimated from consumer expenditure surveys and other data appropriate for Federal employee for each income level.

(c) The dollar amounts estimated for consumption, transportation, housing, and miscellaneous expenses are combined to produce a total dollar amount for renters and a total dollar amount for home owners at each income level. The dollar amounts for renters are combined with the dollar amounts for home owners for each income level by using weights, derived from appropriate consumer expenditure or census data, representing the proportion of renters and owners at each income level. The dollar amounts for each income level are weighted into one average amount to reflect the GS grade distribution for the allowance area. The average allowance area dollar amount is divided by the average Washington, DC, area dollar amount to generate a comparative cost index. The allowance rate for the area is based upon the index.

(d) OPM will describe in detail the calculation of each allowance rate at the time the rate is published in the **Federal Register** for comment.

§ 591.206 Establishment of allowance rates.

(a) OPM uses the comparative cost indexes for each allowance area to determine the allowance rates for that area. The range of values within which the index value falls determines the appropriate allowance rate, expressed as a percentage of the rate of basic pay for that category of eligible employee.

(b) The following table shows the comparative index range and corresponding allowance rate to be established for an allowance category under § 591.207 of this part:

COMPARATIVE INDEX AND ALLOWANCE RATE TABLE

Index range	Allowance rate (percent)
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

(c) Allowance area survey summaries, category indexes, and allowance rates are published as notices in the **Federal Register.**

§ 591.207 Allowance categories, eligibility, and adjustments.

(a) Section 205(b) of Executive Order 10,000, as amended, requires adjustments to allowance payments where warranted because of Federal quarters or special purchasing privileges. These adjustments occur only when the quarters or purchasing privileges are made available as a result of Federal civilian employment and result in substantially lower costs when compared to local area costs.

(1) Special purchasing privileges. Adjustments for access to commissaries and exchanges are incorporated into the comparative index calculations and the resulting allowance rates.

(2) Federal quarters. If the rent charged an employee by an agency for quarters is less than the net reasonable value rent, after appropriate adjustments, established as prescribed by the Office of Management and Budget, the difference between the rent charged and the reasonable value rent will be deducted from the allowance paid by the employing agency up to, but not exceeding, the amount of the allowance.

(b) The allowance categories that are established in each area are—

(1) "Local Retail," which applies to those Federal employees who purchase goods and services from private retail establishments.

(2) "Commissary/Exchange," which applies to those Federal employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

(c) Eligibility for access to commissary and exchange facilities is determined by the appropriate military department. Agencies shall obtain the information needed from employees to determine the applicable allowance category.

§ 591.208 Post differential.

(a) The post differential is based on:

(1) Extraordinarily difficult living conditions;

(2) Excessive physical hardship; or

(3) Notably unhealthful conditions.

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(2) Canton and Enderbury Islands.

(3) Guam.

(4) The Commonwealth of the Northern Mariana Islands.

(5) Johnston Island and Sand Island.

(6) Midway Islands and Wake Island.

(7) Christmas Island.

(c) New or revised post differential rates are published as notices in the **Federal Register.**

§ 591.209 Eligibility for a differential.

A department or agency will determine employee eligibility to receive a differential as follows:

(a) To be eligible to receive a differential:

(1) The employee must be a citizen or national of the United States;

(2) The employee's residence in the area where the differential applies must be attributable to employment by the United States; and

(3) Any prior residence in the area must be because of employment by the United States or by U.S. firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include, but are not limited to—

(1) Those recruited or transferred from outside the area where the differential applies.

(2) Those employed in the area where the differential applies but who—

(i) Were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the U.S. Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or

(ii) Were at the time of employment temporarily present in the differential area concerned for travel or formal study and maintained residence outside the area during that period.

(3) Those who are not normally residents of the area where the differential applies and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.210 Payment of allowances and differentials.

(a) Allowances and differentials under this subpart are payable to an employee whose permanent duty station is in a nonforeign area for which an allowance or differential is authorized.

(b)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials are calculated and paid as a percentage of an employee's hourly rate of basic pay for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the allowance or differential area. Allowances and differentials are included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code, to an employee who separates while in a duty status in the allowance or differential area.

(2) Payment of a differential during periods of paid leave or travel outside the differential area continues for the first 42 consecutive calendar days of the absence. Payment of allowances and differentials while absent from the post continues only if the employee returns to duty status in the area, unless the agency determines that—

(i) It is in the public interest not to return the employee to the duty station; or

(ii) The employee's failure to return to the duty station was due to compelling personal reasons or to circumstances over which the employee had no control.

(c) An employee assigned to a duty station for which both an allowance and a differential are authorized under this subpart and eligible for both will receive the full amount of the allowance, plus so much of the differential as will not cause the combined total of allowance and differential to exceed 25 percent of the hourly rate of basic pay.

(d) If an employee who is receiving an allowance or differential or both under this subpart is temporarily assigned to a duty station in a foreign area and is eligible to receive a foreign post differential authorized by the Department of State under 5 U.S.C. 5925, the employee will receive the foreign area differential, plus so much of the allowance and/or differential (in that order) authorized under this subpart as will not cause the combined total to exceed 25 percent of the hourly rate of basic pay.

(e)(1) An allowance or a differential is not part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, allowance, or differential under title 5, United States Code.

(2) An allowance or differential is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act of 1938, as amended.

(f) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(g) Payment of an allowance or differential will begin as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or differential will cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

§ 591.211 Periodic review.

In accordance with Executive Order 10,000, OPM reviews from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make warranted changes to ensure that payments under this subpart will continue only during the continuance of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

[FR Doc. 90-906 Filed 1-12-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 215, 225, 226, and 235

[Amdt. Nos. 37, 2, 22, and 17, respectively]

Renaming of Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the Special Milk Program, Summer Food Service Program, Child Care Food Program (CCFP) and State Administrative Expense Funds to change the title of the CCFP to the "Child and Adult Care Food Program" (CACFP). This change is mandated by the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101-147, which was enacted on November 10, 1989. With the enactment of the Older Americans Act Amendments of 1987, certain adult day care centers that care for chronically impaired adults or persons 60 years of age or older became eligible to receive cash and commodity assistance under the CCFP. Adding the word "Adult" to the Program title helps recognize participation by those centers.

EFFECTIVE DATE: November 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or James C. O'Donnell, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

No new reporting or recordkeeping requirements are included which would require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This rule implements section 105(a) of Public Law 101-147, a nondiscretionary provision that changes the title of the Child Care Food Program under section 17 of the National School Lunch Act (42 U.S.C. 1766) to the "Child and Adult Care Food Program". This provision is effective with the enactment of Public Law 101-147, on November 10, 1989. Given the nondiscretionary nature of this provision and the fact that it is effective upon enactment of Public Law 101-147, the Department believes it to be in the best interest of CCFP administrators, to publish this rule as a final regulation to expedite an orderly revision of Program related materials. Because of the nondiscretionary, interpretive nature of this rule, G. Scott Dunn, the Acting Administrator of the Food and Nutrition Service, has determined that prior notice and comment and a 30-day post-publication waiting period are not required in accordance with 5 U.S.C. 553(b)(3)(A) and 553(d)(2).

State Administrative Expense Funds, Special Milk, Summer Food Service, and Child and Adult Care Food Programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.560, 10.556, 10.559, and 10.558 respectively and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published at 48 FR 29115, June 24, 1983).

Background

The Older Americans Act (OAA) Amendments of 1987 (Pub. L. 100-175), which was enacted on November 29, 1987, amended section 17 of the National School Lunch Act by extending eligibility for CCFP cash and commodity assistance to adult day care centers. Eligible centers must provide adult day care services on a less than 24-hour basis to chronically impaired disabled adults or persons 60 years of age or older. On December 28, 1988, the Department published an Interim Rule with request for comments on the Adult Day Care Provision at 53 FR 52584. As indicated in the preamble to those regulations, these adult day care centers and the individuals they serve are eligible for the CCFP in essentially the same manner and under the same terms and conditions as eligible child care centers. Where differences exist, particularly those established in the OAA Amendments and the Hunger Prevention Act of 1988 (Pub. L. 100-460), they are reflected in current Program regulations.

Notwithstanding the above, Congress has determined that it is appropriate and useful to give recognition to the fact that there are clear differences between adult centers and child care centers, and that adult day care centers are to participate fully in the CCFP. Accordingly, section 105(a) of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, amended section 17 of the National School Lunch Act (42 U.S.C. 1766) by changing the heading of section 17 from "Child Care Food Program" to "Child and Adult Care Food Program", thus renaming the Program and necessitating these regulatory changes.

List of Subjects

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant Programs—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, Children.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, infants and children. Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, parts 215, 225, 226, and 235 are amended as follows:

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 is amended to read as follows:

Authority: Secs. 3, 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1772, 1779).

§ 215.2 [Amended]

2. In § 215.2:

a. Paragraph (d) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

b. Paragraph (e) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

§ 225.16 [Amended]

2. In § 225.16, the third sentence of paragraph (f)(2) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In part 226, the part title is revised as set forth above.

§ 226.1 [Amended]

3. In § 226.1, the first sentence of the paragraph is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place

4. In § 226.2, the definitions of "CCFP child care standards" and "Program" are revised to read as follows:

§ 226.2 Definitions.

* * * * *

CACFP child care standards means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and dare care homes by the State agency under the provisions of § 226.6(d) (2) and (3)

* * * * *

Program means the Child and Adult Care Food Program authorized by Section 17 of the National School Lunch Act, as amended.

* * * * *

§ 226.6 [Amended]

5. In § 226.6:

a. Paragraph (d)(1)(i) is amended by removing the words "Child Care Food".

b. Paragraph (d)(1)(v) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

c. The heading to paragraph (d)(2) and the intoductory text of (d)(2)(i) are amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place, and (d)(2)(i)(I) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

d. The third and fourth sentences of paragraph (d)(3) are amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place.

e. Paragraph (e)(1) is amended by removing the words "Child Care Food".

§ 226.7 [Amended]

6. In 226.7, the first sentence of paragraph (d) is amended by removing the words "a final report of Child Care Food Program Operations (FNS 44)" and adding "the final Report of the Child and Adult Care Food Program (FNS 44)" in their place.

§ 226.8 [Amended]

7. In § 226.8, paragraph (b) is amended by removing the acronym "CCFP" each time it appears and adding "CACFP" in its place.

§ 226.9 [Amended]

8. In § 226.9, the introductory text of paragraph (c) is amended by removing the acronym "CCFP" and adding the word "Program" in its place.

§ 226.10 [Amended]

9. In § 226.10:

a. The first sentence of paragraph (c) is amended by removing the words "Reports of Child Care Food Program Operations" and adding "the final Report of the Child and Adult Care Food Program (FNS 44)" in their place.

b. The sixth sentence of paragraph (e) is amended by removing the words "Child Care Food Program Operations (FNS 44)" and adding "the Child and Adult Care Food Programs (FNS 44)" in their place.

§ 226.15 [Amended]

10. In § 226.15, paragraph (i) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 226.17 [Amended]

11. In § 226.17, paragraph (b)(1)(ii) is amended by removing "CCFP Child Care Standards" and adding "CACFP child care standards" in their place.

§ 226.18 [Amended]

12. In § 226.18, paragraph (a)(2) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

§ 226.19 [Amended]

13. In § 226.19, paragraph (b)(1)(ii) is amended by removing the acronym "CCFP"and adding "CACFP" in its place.

§ 226.19a [Amended]

14. In § 226.19a, the second sentence of paragraph (b)(6) is amended by removing the acronym "CCFP" and adding "CACFP" in its place.

§ 226.23 [Amended]

15. In § 226.23, paragraphs (e)(1)(i), (e)(1)(ii)(F), and (h)(2)(iv)(C) are amended by removing the acronym "CCFP" each time it appears and adding "Program" in its place.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 is amended to read as follows:

Authority: Secs. 7 and 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1776, 1779).

§ 235.1 [Amended]

2. In § 235.1, the second sentence is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 235.2 [Amended]

3. In § 235.2, paragraph (i) is amended by adding the words "or adult" after the word "child".

4. In § 235.4:

a. The introductory text of paragraphs (b) and (b)(1) are amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place each time they appear.

b. Paragraph (b)(4) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place and the last sentence of paragraph (b)(4) is revised.

c. Paragraph (c) is amended by removing the words "child care institutions" and adding "child and adult care institutions" in their place.

The revision specified above reads as follows:

§ 235.4 Allocation of funds to States.

* * * * *

(b) * * *

(4) * * * The amount of funds to be allocated to each State agency administering the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocations to all such State agencies under this paragraph as the amount of funds allocated to the State agencies administering the Child and Adult Care Food Program under paragraph (b) of this section bears to the amount allocated to all such State agencies under that paragraph.

* * * * *

§ 235.5 [Amended]

5. In § 235.5:

a. Paragraph (b)(1) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place and removing the words "child care institutions" and adding "child and adult care institutions" in their place.

(b) Paragraph (b)(2) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place each time they appear and removing the words "child care institutions" and adding "child and adult care institutions" in their place.

§ 235.6 [Amended]

6. In § 235.6, paragraph (c) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

§ 235.7 [Amended]

7. In § 235.7, paragraph (c) is amended by removing the words "child care institutions" and adding "child and adult care institutions" in their place.

§ 235.11 [Amended]

8. In § 235.11:

a. Paragraph (a) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

b. Paragraph (b)(1) is amended by removing the words "child care institutions." and adding "child and adult care institutions." in their place.

c. Paragraph (b)(3) is amended by removing the words "Child Care Food Program" and adding "Child and Adult Care Food Program" in their place.

Dated: January 9, 1990.

George A. Braley,

Acting Administrator.

[FR Doc. 90-949 Filed 1-12-90; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO-162-A6; AMS-FV-88-039]

Fresh Peaches Grown in Georgia; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for peaches grown in Georgia. The amendments: (1) Limit the terms of office of Industry Committee (committee) members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; and (8) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements. All of these changes will improve the committee's operations and procedures.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone (202) 475-3919, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 Third Street NW., P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (813) 299-4770. Copies of this final rule may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued April 6, 1988, and published in the **Federal Register** (53 FR 11867) on April 11, 1988; Recommended Decision issued April 12, 1989, and published in the **Federal Register** (54 FR 15218) on April 17, 1989; and Secretary's Decision and Referendum Order issued August 21, 1989, and published in the **Federal Register** (54 FR 35348) on August 25, 1989.

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Byron, Georgia, on April 28, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 918 (7 CFR part 918), both as amended, regulating the handling of fresh peaches grown in Georgia, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained amendment proposals submitted by the committee, which locally administers the order. The notice also included proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on April 12, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by May 17, 1989. No exceptions were filed.

The Secretary's Decision was issued August 21, 1989, directing that a referendum be conducted during the period September 1 through September 22, 1989, among Georgia peach growers to determine whether they favored the proposed amendments to the order. This final rule includes these amendments, all of which received the approval of two-thirds by number of the growers who voted in the referendum and growers representing two-thirds of the volume of peaches voted in the referendum. The amendments: (1) Limit the terms of office of committee members to six consecutive one-year terms; (2) change committee voting procedures on size regulation recommendations by requiring at least one affirmative member vote from each of the three growing districts; (3) authorize container and pack regulations and container marking regulations; (4) add authority for positive lot identification procedures for inspected peaches; (5) authorize production research and marketing research and development projects; (6) require a referendum at least every six years to determine if growers are in favor of continuing the marketing order; (7) add provisions protecting the confidentiality of information provided by handlers; and (8) add provisions specifying that the Secretary and the Committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements. The marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of peaches covered by the marketing order.

Small Business Consideration

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons were invited in the Notice of Hearing to present evidence at the hearing on the probable regulatory and informational impact of the regulatory and informational requirements of the amendment proposals on small businesses. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marking orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

There are approximately 30 handlers of Georgia peaches subject to regulation under the marketing order and approximately 265 growers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of growers and handlers may be classified as small entities.

The amendment to the order limiting the terms of office of committee members to six consecutive one-year terms is expected to facilitate a regular rotation in committee membership and broaden industry participation in committee decision making. This amendment should strengthen the program with no adverse impact on small entities.

The amendment to alter committee voting procedures to require at least one affirmative vote from each of the three representation districts for any recommendation on size regulations will ensure that there is support for such recommendations in each district. This amendment should benefit small entities in all districts.

The amendment to authorize the committee, with the approval of the Secretary, to establish container, pack, and container-marking regulations in order to facilitate the efficient marking of Georgia peaches is expected to reduce container and other marketing costs. This should benefit small entities. Savings are expected to be directly proportional to the quantity of peaches handled. The impact of any such container, pack or container-marketing regulations will be considered at the time such proposals are made.

The amendment authorizing the committee, with the approval of the Secretary, to establish positive lot identification procedures for peaches inspected under the order should facilitate the committee's compliance effort. It will provide a reliable means of tying the inspection certificates received by the committee to the lots covered by the certificates. Both growers and handlers will benefit because minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing demand. Any additional costs are expected to be proportional to the quantity of peaches handled. The impact of implementing any such positive lot identification procedure would be considered at the time it is made.

The amendment authorizing the committee, with the approval of the Secretary, to establish or provide for the establishment of production research and market research and development projects should benefit growers and handlers by improving the production and marketing of Georgia peaches. Any costs associated with such production and marketing research are expected to be outweighed by the benefits of such research.

The amendment requiring a continuance referendum at least every six years will provide growers with a more frequent opportunity to periodically vote on whether the order should be continued. Such referenda will not adversely affect small entities.

The new provision requiring confidential handler information to be protected from disclosure is expected to improve operation of the order and will not adversely affect small entities.

The new provision authorizing the Secretary and the committee to verify the correctness of reports filed by handlers and check handler compliance with recordkeeping requirements should improve the operation of the order. It should not adversely affect small entities.

All of the amendments and new provisions set forth in this document are designed to enhance the administration, operation and function of the order and should result in an overall positive economic impact on small business.

The amendments and new provisions will increase the recordkeeping burden of the Georgia peach industry. Section 918.77 would require information to be retained by handlers for at least two years. However, the evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. Such additional requirements have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), by the Office of Management and Budget (OMB) under OMB No. 0581-0135.

Order Amending the Order, as Amended, Regulating the Handling of Fresh Peaches Grown in Georgia

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed further amendment of the Marketing Agreement and Marketing Order No. 918 (7 CFR part 918) regulating the handling of fresh peaches grown in Georgia.

Upon the Basis of the Record, It Is Found That

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh peaches grown in the production area; and

(5) All handling of fresh peaches grown in the production area defined in the order is in the current of interestate of foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional Findings.* It is necessary and in the public interest to make this final order amending the order effective on the date of publication in the **Federal Register.** The committee may choose to meet and to recommend informal rulemaking actions pursuant to the amendment of § 918.61(a) regarding "Container regulation" contained herein for the upcoming season. Such actions should be completed in sufficient time to allow handlers, if a regulation is adopted, to order and receive new containers prior to the beginning of the harvest season in May, 1990. Thus, any delay beyond the date of publication would tend to interfere with the effective functioning and administration of the order.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register,** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register**

(Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

Determinations

It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Peaches Grown in Georgia" upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by said order as amended and as further amended) who, during the period August 15, 1988, through August 14, 1989, handled not less than 50 percent of the volume of such peaches covered by the said order as amended and as hereby amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval and who, during the period August 15, 1988, through August 14, 1989, (which has been deemed to be a representative period), have been engaged within the production area in the production of peaches for fresh market, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of fresh peaches grown in the State of Georgia shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows;

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on April 12, 1989, and published in the Federal Register (54 FR 15216) on April 17, 1989, and the Secretary's Decision and Referendum Order issued on August 21, 1989, and published in the Federal Register (54 FR 35348) on August 25, 1989, shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 918

Georgia, Marketing agreements and orders, Peaches.

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

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

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 918.26 is amended by adding a proviso at the end of the section to read as follows:

§ 918.26 Term of office.

* * * : *Provided,* That no member shall serve more than six full consecutive terms starting with the term beginning March 1, 1989.

3. The last sentence of § 918.30(a) is revised to read as follows:

§ 918.30 Procedure.

(a) * * * For any recommendation of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary: *Provided,* That any recommendation on minimum size regulations also shall require at least one (1) concurring vote from each district.

* * * * *

4. A sentence is added at the end of § 918.40 to read as follows:

§ 918.40 Expenses.

* * * For projects conducted pursuant to § 918.72, other funds approved by the Secretary may also be used.

5. A new § 918.61a is added to read as follows:

§ 918.61a Container regulation.

Whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, marking, or pack of the container, or containers, which may be used in the handling of these peaches. If the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act the Secretary shall establish such regulation. Notice thereof shall be sent by the Industry Committee to all handlers of record.

§ 918.63 [Amended]

6. Section 918.63 is amended by changing the words "pursuant to §§ 918.60 and 918.61," in the first sentence to "pursuant to §§ 918.60 through 918.61a."

7. Section 918.64 is amended by redesignating the current provisions as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 918.64 Inspection.

* * * * *

(b) The Industry Committee may establish with the approval of the Secretary positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements shall at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification recognized by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; that such identification shall be affixed to the container by the handler under the supervision of the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary; and that such identification shall not be altered or removed except as directed by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary. For the purposes of this section, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

8. Add the undesignated center heading, **"Research and Development,"** after § 918.71 and add a new § 918.72 to read as follows:

Research and Development

§ 918.72 Production research and market research and development.

The Industry Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production thereof. The expenses of such projects shall be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

9. A new § 918.76 is added to read as follows:

§ 918.76 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Industry Committee, and information whch would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

10. A new § 918.77 is added to read as follows:

§ 918.77 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Industry Committee through its duly authorized employees shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Industry Committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

11. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c) of this section. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

12. Section 918.81 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the effective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However, when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c) of this section. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit in the production area, except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

Dated: January 5, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

OMB Approval No. 0581–0135

Expiration Date: 06/31/91

Marketing Agreement, as Further Amended, Regulating the Handling of Fresh Peaches Grown in Georgia

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. *et seq.*), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement further amending the marketing agreement regulating the handling of fresh peaches grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to and in compliance with the provisions of said marketing agreement as hereby further amended.

The provisions of §§ 918.1 through 918.92, inclusive, of Marketing Order 918 (7 CFR part 918) as amended, and as further amended by the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to the marketing agreement and order regulating the handling of fresh peaches grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof, and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein.

Section 918.93 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

Section 918.94 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Section 918.95 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of peaches in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their signatures and seals.

____

(Firm Nane)

By: ____________________

(Signature) [1]

____

(Mailing Adress)

____

(Title)

(Corporate Seal; if none, so state)

____

(Date of Execution)

____

The Administrator, Agricultural Marketing Service, United States Department of Agriculture, acting pursuant to the provisions of the Act and the regulations issued thereunder, and having reason to believe that the execution of an agreement amending the marketing agreement, as amended, and the issuance of an order amending the marketing order, as amended regulating the handling of fresh peaches grown in the production area in the State of Georgia would tend to effectuate the declared policy of the Act, caused a notice of public hearing thereon to be issued (53 FR 11867, April 11, 1988), and pursuant thereto a hearing was held on April 28, 1988, at which hearing all interested persons in attendance were afforded due opportunity to be heard.

Upon the basis of the record it is found that:

(1) The marketing agreement, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

(2) The marketing agreement, as amended, and as hereby further amended, regulates the handling of fresh peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement upon which hearings have been held;

(3) The marketing agreement, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several agreements applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh peaches grown in the production area; and

(5) All handling of fresh peaches grown in the production area defined in the order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is hereby further found and determined that this "Marketing Agreement, As Further Amended, Regulating The Handling Of Fresh Peaches Grown In Georgia" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping covered by the said agreement, as amended, and as hereby further amended) who, during the period August 15, 1988, through August 14, 1989, handled not less than 50 percent of the volume of such peaches.

Therefore, this marketing agreement, further amending said marketing agreement, is entered into at Washington, DC, to become effective upon the effective date of the final order further amending the marketing order.

Witness my hand and the official seal of the United States Department of Agriculture.

Dated:

[FR Doc. 90-903 Filed 1-12-90; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 1]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with clarifying revisions, an interim rule published on December 31, 1987 (52 FR 49347), concerning, for the 1987 through 1990 crops of peanuts, the circumstances in which crushing of sound mature kernels (SMK) and sound split (SS) kernels may be used to satisfy handler obligations for the disposition of contract additional peanuts for a handler operating under nonphysical supervision. Subject to certain restrictions, under the rule such handlers may crush milled peanuts for credit against the export obligation for SMK and SS peanuts when the peanuts to be crushed are ineligible for edible use due to aflatoxin contamination. Also, subject to certain restrictions handlers may, as a one-time option during each marketing year, choose to crush edible-quality milled or farmers stock peanuts for contract additional peanut SMK and SS export credit.

DATE: This final rule is effective January 16, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-382-0152.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512-1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560-0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

In response to requests for changes in the regulations with respect to nonphysical supervision and crushing of milled SMK and SS kernels for export credit or for crushing farmers stock peanuts for export credit, an interim rule was published in the **Federal Register** on December 31, 1987 (52 FR 49347). The rule amended regulations at 7 CFR part 1446 by adding § 1446.141 to permit, for those handlers operating under nonphysical supervision, export credit on a portion of aflatoxin-contaminated SMK and SS kernels crushed under supervision of the area association in the manner specified by that section. Also, for one time only for each marketing year, such handlers may crush edible quality SMK and SS kernels for contract additional peanut export credit, provided the peanuts are crushed under supervision as specified in the regulations. The only peanuts to which the aflatoxin allowance applies are milled peanuts. This rule has no effect on handlers choosing physical supervision.

Comments

Six comments were received in response to the interim rule.

Credit for Crushing Aflatoxin Peanuts

On respondent recommended that the export credit for crushing of aflatoxin peanuts be limited to the proportion of the crushed quantity of contaminated SMK and SS kernels equal to the proportion that the purchases of contract additional peanuts by the handler bore to the total purchases of peanuts by such handler. That adjustment was provided for in the interim rule and the allowance of the adjustment has been clarified in the final rule.

Another suggestion was to allow a handler to receive full export credit for all aflatoxin peanuts that are crushed by such handler. This suggestion was not adopted since it would unnecessarily permit contract additional peanuts to be sold into the domestic edible market as replacements for aflatoxin contaminated quota peanuts that were crushed and would conflict with the statutory scheme