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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Enhanced Food Package for Breastfeeding Women

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to better assist breastfeeding WIC participants. The Department is establishing and enhanced WIC food package (Food Package VII) for breastfeeding women whose infants do not receive formula from the WIC Program. The current types and quantities of supplemental foods are retained in Food Package V for pregnant women and for women who are supplementing breastfeeding with any amount of formula provided by WIC. New Food Package VII contains the same supplemental foods as are currently available to breastfeeding women in Food Package V, but with augmented amounts of juice, cheese, legumes (beans, peas and peanut butter) and with the addition of two new items: Carrots and canned tuna.

This final rule differs only slightly from the proposed rule published March 19, 1992 (57 FR 9505). The final rule differs in that Food Package VII clarifies that canned tuna may be packed in oil or water. Additionally, under this final rule dried beans and peas may be substituted for peanut butter.

EFFECTIVE DATE: This regulation is effective December 28, 1992, and must be implemented no later than December 28, 1993.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under Executive Order 12291, and has been determined to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have 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.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-12). The Administrator of the Food and Nutrition Service has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local agencies will be most affected because the addition of a food package increases program administrative activities. Breastfeeding participants who choose to receive this food package will be affected because of the additional amounts of food provided to them. Consequently, breastfeeding women's infants will also be affected because the breastfeeding participant will receive additional amounts of nutrients with the increased amount of foods. This increase in nutrients can positively influence the quality of breastmilk provided to the infant.

Paperwork Reduction Act

This final rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in

accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice at 48 FR 29114 (June 24, 1983)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows:

- (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18;
- (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9;
- (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and
- (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

The Department's Support of Breastfeeding

The Department is strongly committed to the support and promotion of breastfeeding. Breastfeeding promotion is a priority for many public health programs, including the WIC Program. Nutritional and medical research has shown that there is no better food than breastmilk for a baby's first year of life (Institute of Medicine Report, *Nutrition During Lactation*, 1991). Since a major goal of the WIC Program is to improve the nutritional status of infants, WIC

mothers are encouraged to breastfeed their infants. Additionally, the Administration established as a national goal the improvement of the incidence and duration of breastfeeding (Objective 14.9) in "Healthy People 2000—National Health Promotion and Disease Prevention Objectives." However, despite efforts to promote breastfeeding among a low-income target population, the incidence and duration of breastfeeding among this population in the United States are low (Institute of Medicine Report, *Nutrition During Lactation*, 1991). Consequently, in support of the Healthy People 2000 breastfeeding goals and to tailor food assistance to breastfeeding women more effectively, the Department establishes a new WIC food package for breastfeeding participants whose infants do not receive formula from the WIC Program—Food Package VII.

This is but one of several of the Department's initiatives to further support and promote breastfeeding. These initiatives are briefly discussed in appendix I to this preamble.

Background—The WIC Food Package

The authorizing legislation for the WIC Program, section 17 of the Child Nutrition Act of 1966, as amended (CNA), (42 U.S.C. 1786), established the WIC Program to provide supplemental foods and nutrition education to low income pregnant, breastfeeding, and postpartum women, infants, and children up to age 5 who are at nutritional risk. The Program also serves as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of Program participants.

The CNA clearly established the WIC program as "supplemental" in nature; that is, the WIC food packages, including Food Package VII designed for breastfeeding women whose infants receive no formula from the WIC Program, are not intended to provide a complete diet but are designed to provide additional wholesome foods needed for a balanced diet. In addition to WIC, the Department administers a variety of other complementary food assistance programs which can work together to provide a more nutritious diet to needy Americans. The largest of these programs, the Food Stamp Program, provides general food assistance in the form of food stamps which are used to increase the food buying power of low income households. The National School Lunch Program and the School Breakfast Program provide

free and reduced price meals to low income children in school. Also, the Child and Adult Care Food Program provides meals to persons in child and adult care centers and children in family day care homes. A variety of commodity donation programs are also available to low income persons.

In addition to food assistance, WIC provides nutrition education, including information about the dangers of drug and other harmful substances, to participants. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods which, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs.

Section 17(b)(14) of the CNA defines "supplemental foods" as "those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary." This legislation provides substantial latitude to the Department in designing WIC food packages, but obligates the Department to prescribe foods which effectively and economically supply those nutrients critical to growth and development and which are typically lacking in the diets of the WIC eligible population. The Department has designed the WIC food packages based on nutritional research and input from various sources, including State and local agencies, the health and scientific communities, industry and the general public.

WIC Food Package History

Food package requirements appear in 7 CFR 246.10 of the WIC Program regulations. The Department created six different monthly packages in a 1980 rulemaking (45 FR 74854 (1980)): One for infants 0-3 months; one for infants 4-12 months; one for children and women with special dietary needs; one for children 1-5 years of age; one for pregnant and breastfeeding women; and one for nonbreastfeeding postpartum women. These packages were designed to help accomplish the following: Meet participants' needs and to follow current medical and nutritional guidance; complement the eating patterns of preschool children; and, address the special requirements of pregnant and breastfeeding women. As described in the 1980 final rule (45 FR 74854), the food packages were initially designed and adopted with five considerations in mind. These considerations were also used in guiding decisions concerning the crafting of Food Package VII. These five factors are discussed below, with

particular emphasis on how they apply to Food Package VII.

1. Nutritional Integrity

Great consideration was given to the provision of foods that are rich sources of the nutrients that tend to be lacking in the diets of the WIC eligible population. The original legislation for the WIC Program, the Child Nutrition Act of 1966, as amended by the 1972 School Lunch Program-Summer Food Service Act (Pub. L. 92-433), specifically identified protein, iron, calcium and vitamins A and C as the target nutrients for WIC participants. However, subsequent legislation in 1975 (Pub. L. 94-105) and 1978 (Pub. L. 95-627) deleted the references to specific target nutrients and instead directed the Department to prescribe appropriate nutrients. The Department, consistent with this legislation, determined in October of 1978 that the original five target nutrients continued to be lacking among the WIC eligible population. The Department made this determination through an ongoing examination of nutritional research and with the assistance of State and regional representatives, representatives of industry, the nutrition community, advocacy groups, and program participants.

Section 123(c) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) required the Secretary to conduct a review of the appropriateness of foods eligible for purchase by WIC participants. The legislation specifically directed the Secretary to consider the nutrient density of such foods and how effectively nutrients for which WIC participants are most vulnerable to deficiencies are provided to participants. The findings from this review were published in November 1991—Technical Papers—Review of WIC Food Packages, USDA/FNS. The researchers concluded, based on a review of the scientific literature on the dietary adequacy of women and children in the United States and associated nutritional/health outcomes, that three nutrients may, in addition to the current five target nutrients, be of concern for WIC's vulnerable target group. These nutrients are folate, vitamin B-6 and zinc. In consideration of these findings, in its 1992 report to Congress, the National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended that WIC nutrition education focus on information to assist participants in selecting foods that supply these three nutrients, with special emphasis on zinc which is not

adequately supplied in the diet generally consumed by the overall United States population. The Department concurs and strongly encourages State agencies to promote the consumption of these three nutrients, as well as the current five target nutrients, through nutrition education provided to WIC participants.

Given the supplemental nature of the WIC Program, the food packages are not intended to supply 100 percent of the Recommended Dietary Allowances (RDAs) of each target nutrient, nor are they intended to meet any pre-established goals for RDAs. As mentioned previously, participants are expected to obtain the remainder of the nutrients from other food sources. These, in some cases, could include foods provided through the Department's other food assistance programs. However, the food packages do provide categories of foods which are high in one or more of the five targeted nutrients and are capable of providing a substantial portion, and in some instances the entire amount, of the RDAs for these five targeted nutrients.

2. Fat, Sugar, and Salt Content

The fat, sugar and salt content of foods in the WIC food packages is a consideration which is required by statute. Section 17(f)(12) of the CNA, among other provisions, directs the Secretary to assure that, to the extent possible, the fat, sugar and salt content of WIC foods is appropriate. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar allowable in WIC cereals.

Additionally, FNS policy guidance permits WIC State agencies to issue lowfat, low cholesterol and low sodium forms of WIC cheeses to participants. The Department encourages local program administrators to tailor the WIC food packages to meet the individual nutritional needs of participants and, when appropriate, to adjust the types of WIC foods prescribed to help reduce the amount of fat, cholesterol, sodium and sugar the WIC food packages contribute to the diet. Through WIC nutrition education, participants also receive advice on how to further minimize intakes of fat, cholesterol, sodium and sugar and how to include adequate amounts of vegetables, fruits and whole grain products in their diets.

3. Cost

Aside from considerations which are specified in legislation, a prime consideration in the design of the WIC

food packages was cost. The Department is committed to serving as many eligible persons as possible while maintaining the nutritional integrity of the program. WIC is not an entitlement program, and the number of potentially eligible individuals who can be served is determined by the amount of funds appropriated by Congress. Therefore, efficiency in providing nutrients is important because increases in the total cost of the food packages reduce the number of participants served by the program. The packages are designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower cost food brands, types and container sizes within regulatory parameters.

4. Practicality

All WIC food packages are designed to address a number of practical considerations which reflect participant and program needs. For example, the WIC foods in Food Package VII are readily available, offer variety and versatility to participants, are relatively nutrient dense, and have broad appeal. Additionally, all WIC food packages, including Food Package VII, are individual food prescriptions which, in order to have full effect in improving nutritional status, are intended to be consumed by the participant only and not other family members.

Further, foods offered in Food Package VII are generally types of foods that are of domestic origin and which have undergone minimal processing. The WIC Program, along with other food assistance programs administered by the Department, participates in a longstanding partnership with American agriculture and endeavors to provide foods which support the nation's farming industry.

Lastly, Food Package VII, as well as all WIC food packages, was designed to be administratively manageable for State and local agencies and food vendors.

5. Food Package Flexibility and Meeting Participants' Special Needs

The quantities of foods provided by WIC food packages and participants' cultural eating patterns were significant considerations in the design of the food packages. State and local agencies can tailor the quantities of foods provided by the food packages to better meet participants' special needs. Additionally, they are permitted flexibility in designing their food packages within the parameters of Program regulations. The quantities in all WIC food packages are expressed as maximum levels which must be made

available to participants as needed to supplement their diets. However, State and local agencies have the authority to tailor quantities according to the needs of individual participants or categories of participants when based on a sound nutritional rationale. These tailoring provisions, established in Program regulations (§ 246.10) and supplemented by FNS Instruction 804-1 "WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring," are designed to permit State and local agencies to implement their own nutrition policies and philosophies within the parameters of food package requirements. Section 17(b)(14) of the CNA and § 246.10(e) of the WIC Program regulations also give the Department the authority to approve substitution of foods by State agencies to allow for different cultural eating patterns under certain circumstances. State agencies, however, must demonstrate that the substitute foods are nutritionally equivalent to those in the food package established by the Department.

Current WIC food packages are sufficiently flexible to meet the special needs of homeless persons in most instances. WIC State agencies have devised creative ways to accommodate homeless WIC participants within the framework of the existing WIC food package requirements. For example, some States provide WIC foods such as juice, cereal, cheese, and milk in smaller package sizes and issue more food instruments, each for a smaller part of the total food package. This is so the homeless can acquire WIC foods in smaller quantities and self-serving packages, thus reducing the need for conventional storage facilities.

Food Package VII—The Enhanced Breastfeeding Food Package

As stated previously in this final rulemaking, Food Package VII is designed for those breastfeeding women who elect not to receive infant formula through WIC for their infants and thus are exclusive of all infant formula provided by WIC. The current types and quantities of supplemental foods are retained in Food Package V for pregnant women and for women who are supplementing breastfeeding with any amount of infant formula provided by WIC.

Food Package VII contains the same supplemental foods as are currently provided to breastfeeding women in Food Package V, but with augmented amounts of juice, cheese and legumes (beans, peas and peanut butter), and

with the addition of two new items: carrots and canned tuna.

The selection of foods included in Food Package VII and their amounts were based on the rationale provided by the commenters on the Notice of Intent to Propose Rulemaking and Solicitation of Comments published December 2, 1991 (56 FR 61185) and the subsequent proposed rule published March 19, 1992 (57 FR 9505). In accordance with many comments in support of Food Package VII and with serious regard to the five principles of food package design enumerated previously in this preamble, this final rule, and consequently the foods selected for inclusion in Food Package VII, strongly support the provision of foods which are recognized as being a relatively good source of the nutrients most likely to be lacking in the diets of WIC breastfeeding women.

During the public comment period for the proposed Food Package VII rule, 161 comment letters were received. Some commenters neither supported nor opposed this initiative, but simply expressed concerns on various aspects of the proposed food package. Others supported the initiative, and also expressed assorted concerns on various issues. Of those commenters who did express a definite opinion in support or opposition, the majority (131) strongly supported the enhanced breastfeeding food package as presented in the proposed rule. Twenty-three commenters opposed the proposed enhanced breastfeeding food package.

Commenters in support of an enhanced breastfeeding food package consistently expressed concern about the special health and/or nutritional needs of the lactating woman. The majority to these commenters (73) referred to one or more nutrients or vitamins as being critical to the health/nutritional status of the breastfeeding woman. For example, many commenters referred to increased nutrient and caloric needs of breastfeeding women, particularly those who exclusively breastfeed. Thirty-nine also believed that this initiative is a meaningful step for the Department to take to encourage, support, and promote breastfeeding in the WIC Program.

The majority of commenters suggested 6-12 months as the time needed for State Agencies to implement Food Package VII. As noted in the Effective Date section of this preamble, State agencies have one year from the publication of this final rule to implement Food Package VII. Most commenters believed that a year would provide sufficient time for agencies to make the appropriate administrative

and program adjustments necessary to implement the food package.

a. Juice

The Department proposed that the allowable maximum quantity of juice in Food Package VII be 322 fluid ounces of single strength fruit or vegetable juice (or a combination of both) or 336 fluid ounces of reconstituted frozen concentrated fruit or vegetable juice (or a combination of both). The majority of commenters supported these proposed amounts of juice. Commenters believed that juice has good nutrient qualities. Additionally, since juice is already offered in some WIC food packages as an allowable food, commenters believed that it has proven participant acceptance and administrative feasibility.

Three commenters opposed the proposed amount of juice and believed that the amount currently offered in Food Package V (276 fluid ounces of single strength or 288 fluid ounces of reconstituted frozen concentrated juice) was sufficient for Food Package VII.

The Department concurs with the majority opinion of commenters on this issue. Consequently, as originally proposed, Food Package VII established in this final rule offers a maximum of 322 fluid ounces of single strength fruit or vegetable juice (or a combination of both) or 336 fluid ounces of reconstituted frozen concentrated fruit or vegetable juice (or a combination of both). As proposed, this juice must contain a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted or single strength juice.

b. Cheese

Cheese is currently provided in Food Packages IV, V, and VI only as a substitute for milk. The proposed rule stated that one pound of domestic cheese would be provided in Food Package VII as an independent food item. The majority of commenters on the proposed rule supported this provision and believed that cheese is a good source of target nutrients. Additionally they believed that for those breastfeeding women who may be intolerant of milk, cheese provides a good alternative source of protein and other target nutrients. Four commenters, however, had concerns about the addition of cheese affecting the overall fat content of Food Package VII.

Some cheeses, as well as many other dairy products, could be considered high fat foods. Through nutrition education, however, a participant can learn how to select cheeses and other dairy products that conform more closely to their dietary needs. For example, a

breastfeeding participant receiving Food Package VII, who may need to decrease fat intake, could choose lowfat cheeses and lowfat/skim milk which would help control the overall fat content of her diet.

Program regulations can also influence the types of foods a participant chooses. For example, in § 246.10(b)(1) of the current WIC regulations, State agencies are responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in federal regulations, including cheese. State agency decisions as to which items to include may be influenced by factors such as food prices, product distribution within a State, WIC participant acceptance, and costs.

Because cheese is a good source of WIC target nutrients and State agencies have the flexibility to influence the types of foods a participant chooses through nutrition education and the types of foods authorized, as proposed, the Department authorizes up to 1 pound of domestic cheese as an independent food item in Food Package VII.

c. Legumes

The proposed rule would have allowed both one pound of mature dried beans or peas and 18 ounces of peanut butter per month in Food Package VII (as opposed to one pound of mature dried beans or peas or 18 ounces of peanut butter as is currently provided in Food Package V). The majority of commenters believed this proposed change to be administratively feasible because legumes are widely available and relatively low cost. These commenters believed the legumes are nutrient dense and generally a good source of the WIC target nutrients.

However, some commenters suggested that in order to offer more flexibility to State and local agencies, mature dried beans and peas should be offered as a substitute for peanut butter. The Department agrees with these commenters.

As proposed, Food Package VII, as established in this final rule, provides a maximum of both one pound of mature dried beans or peas and 18 ounces of peanut butter per month. In recognition of the comments, in this final rule the Department is allowing mature dried beans and peas to be substituted for peanut butter at the rate of 1 pound of dry beans or peas per 18 ounces of peanut butter. Peanut butter, however, may not be substituted in place of mature dry beans or peas at any rate.

d. Canned Tuna

In the proposed rule up to 26 ounces of canned tuna was included in Food Package VII based on commenters' recommendations on the Notice of Intent to Propose Rulemaking and Solicitation of Comments. These commenters suggested canned tuna due to its wide availability, ease of apportionment, anticipated participant acceptance, ease and versatility in preparation, and nutrient content. Commenters on the proposed rule also strongly supported the inclusion of tuna for the same reasons and also raised some other issues.

The most commonly stated concerns of commenters (17) in regard to the inclusion of canned tuna in Food Package VII were related to environmental issues. For example, commenters were most concerned with the safety of dolphin and regulating the use of dolphin safe nets in the harvesting of tuna. Commenters believed that only tuna which is dolphin safe should be allowed in Food Package VII.

The Department, being sensitive to this issue, researched federal statutory and regulatory safeguards and found extensive controls in existence to protect dolphin. For example, on November 28, 1990, the Fishery Conservation Amendments of 1990 (Pub. L. 101-627, 104 Stat. 4436) were enacted. Title IX of the Amendments, entitled the Dolphin Protection Consumer Information Act, among other things, regulates the use of labels suggesting that tuna is "dolphin safe," defining misuse of such labels as an unfair or deceptive trade practice. Consequently, symbols or wording displayed on the label of canned tuna which suggest that the product is dolphin safe indicate that the product was processed according to the conditions delineated in the Dolphin Protection Consumer Information Act. However, there is no standard dolphin safe symbol which is used by all manufacturers.

On October 26, 1992, the International Dolphin Conservation Act of 1992 (Pub. L. 102-523), which amended the Marine Mammal Protection Act of 1972, was enacted. This Act authorizes the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets. Additionally, this law makes it unlawful for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna product that is not dolphin safe.

The Department believes that the existing federal statutory provisions (Pub. L. 102-523 and Pub. L. 101-627) dismiss the need for programmatic restrictions at this time. However, as permitted in § 246.10(b)(1) of WIC Program regulations, State agencies continue to be responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in Federal regulations. State agencies have the flexibility to limit the foods authorized for use in their States. Consequently, States agencies can limit the type (e.g., dolphin safe) or the brand of canned tuna (e.g., least expensive) allowed in their food packages.

Another environmental issue that commenters were concerned about was the possibility of canned tuna having unsafe levels of mercury (methyl mercury). The Department consulted with the U.S. Food and Drug Administration (FDA) on this issue. FDA advised that very few cases of methyl mercury poisoning have ever occurred, and there has never been an instance of health problems caused by methyl mercury at the levels it appears in canned tuna. Most seafood contains minute amounts of methyl mercury. The mercury level of seafood can be influenced by the size and age of the fish and the area where it was caught. The naturally occurring levels of mercury in deep ocean-dwelling fish, such as tuna, have not changed appreciably in the past 90 years.

FDA regulates canned tuna through spot checks, during which it checks for foreign matter, decomposition, chemicals (e.g., methyl mercury) and microbiological contaminants. FDA then takes action according to whether the product examined is adulterated by foreign matter or if a potential health hazard may exist. FDA may inspect seafood processors, shippers, packers, labelers, and warehouses to ensure maintenance of good manufacturing practices and to monitor the quality of their products; it can have seafood that does not meet standards removed immediately from interstate commerce. Tuna available to WIC participants, therefore, will be subject to the same guarantees of wholesomeness as other seafood consumed in the United States.

The proposed rule stated that Food Package VII would allow up to 26 ounces of canned tuna packed in water only. Many commenters suggested that the Department should allow canned tuna packed in oil as well as water. Commenters believed that offering both water and oil packed tuna would permit

more flexibility for State agencies and participants.

As with all WIC foods allowed by Program regulations, including canned tuna, WIC nutritionists may tailor a food package to meet the specific food needs of individuals, as long as at least one type of food from each group is available to participants. Further, States may entirely preclude the use in their State of certain types of tuna allowed by Federal regulations based on their own nutrition policies as well as cost considerations. Therefore, the Department has decided to provide State agencies with maximum flexibility on this matter and this final rule permits canned tuna packed in water or oil. Under this final rule, a State agency may determine whether both water and oil packed tuna could be available in Food Package VII to WIC participants in their State, based on nutrition policy, cost, or other rationales.

The Department is also clarifying in this final rule that up to 26 ounces of canned tuna provided in Food Package VII may be white, light, dark or blended tuna, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; or grated.

e. Carrots

The proposed rule included up to 2 pounds of raw carrots as allowable in Food Package VII. The selection of carrots for inclusion in the proposed food package was based on their nutrient content, administrative feasibility, availability, recommendations of commenters to the original notice, and broad appeal. Some commenters (17) suggested an additional modification to the proposed Food Package VII be the addition of other vitamin A-rich vegetables and fruits. The rationale offered by commenters was generally to provide more flexibility and allow a greater variety of choices for WIC agencies and participants.

After extensive deliberations, the Department decided that no other vitamin A rich vegetable or fruit surpassed the beneficial qualities of carrots. Further, the Department concurs with commenters who believed that carrots are relatively low in cost, nutrient dense, administratively feasible, widely available in various forms, and have broad appeal to program participants. Consequently, this final rule provides that Food Package VII includes up to 2 pounds of raw carrots. As in the proposed rule, raw carrots may be substituted with frozen carrots at a pound for pound rate or with canned carrots at a rate of one 12-ounce can per 1 pound of raw carrots.

The carrots must be raw, canned, or frozen carrots containing only the mature root of the carrot plant packed in water.

Other Issues

a. Cost

Some commenters (5) also expressed concern about the cost of Food Package VII to the WIC Program. These commenters were concerned that Food Package VII would increase food costs to the Program and subsequently adversely affect participation rates. However, the Department believes that since Food Package VII is available to only breastfeeding women whose infants do not receive formula from the WIC Program, a portion of the potential increase in food cost will be offset by the overall reduction in the amount of formula to be purchased by the Program.

The Department's goal in developing Food Package VII is to compose a package that would be as cost neutral as possible and thus, have minimal effect on overall WIC costs and participation levels. USDA estimates that the cost of Food Package VII is approximately equivalent to WIC's net cost to provide monthly food packages to both a mother and her infant receiving the maximum amount of formula.

The foods selected for inclusion were carefully reviewed and analyzed in terms of their cost to the program, their cost relative to the other food packages and how the cost of the food package could affect program participation. The amounts of the foods included in Food Package VII were consequently guided by this analysis. Additionally, the Department continues to be committed to serving the largest number of eligible persons with the funds available for the Program and realizes that a major increase in the total cost of the food packages could affect the number of participants the Program serves. For this reason, the foods in Food Package VII are relatively low in cost and will have a minimal cost impact.

b. Breastfeeding Aids

A number of commenters (15) believed that breastpumps and/or breastfeeding aids should be made available through Food Package VII as an allowable food cost. These commenters believed that breastfeeding aids are a critical component of any breastfeeding promotion and support initiative.

Section 246.14(b) of the WIC regulations allows food funds to be spent on food and warehouse facilities costs only. The purchase of non-food items is not allowed because the

Department believes that food funds should be carefully preserved for the purposes of maximizing participation. Therefore, breastfeeding aids are not an allowable WIC Program food cost.

The Department would like to point out, however, that a section, 123(a)(6), of the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101-147, added section 17(h)(4)(B) to the CNA, which mandates that the Secretary authorize the purchase of breastfeeding aids by WIC State and local agencies as an allowable expense under nutrition services and administration. A proposed regulation to implement this provision was issued on July 9, 1990 (55 FR 28033). Consequently, since Fiscal Year 1990 State agencies have had the authority to use WIC nutrition services and administration funds for the purchase of breastfeeding aids. On January 17, 1991, the Department issued a policy memorandum which provided State and local agencies with guidance on the use of WIC nutrition services and administrative funds for the purchase of breastfeeding aids.

Breastfeeding aids include, but are not limited to, devices such as breast pumps, breastshells, and nursing supplementers. All of these items directly support the initiation and/or continuation of breastfeeding.

c. Definition of Breastfeeding

Some commenters (7) requested that the Department establish a more clear definition of breastfeeding. Section 123(a)(6) of Public Law 101-147 added a new section 17(h)(4)(A) to the CNA to require the Secretary in consultation with the Secretary of Health and Human Services, to develop a definition of "breastfeeding" for the purposes of the WIC Program. The Committee on Breastfeeding Promotion of the National Association of WIC Directors (NAWD), along with other experts on breastfeeding and representatives from USDA and the Maternal and Child Health Bureau in the Department of Health and Human Services (DHHS), was asked by the Department to provide input on developing a national definition of breastfeeding. The NAWD Committee has recommended that "breastfeeding" be defined as the provision of mother's milk to her infant on the average of at least once a day. Both the Department and DHHS have concurred with this recommended definition for WIC Program purposes. This information has been shared with WIC State agencies and the definition will soon be finalized in a separate rulemaking. States are permitted and encouraged to adopt this definition prior to the issuance of the

forthcoming final regulation expected early in 1993.

Except as may otherwise be specified, this definition will be consistently applied to all aspects of the WIC Program, including the evaluation of promotional efforts and the determination of categorical eligibility as a breastfeeding woman. The definition recommended by the NAWD Committee conforms to the Healthy People 2000—National Health Promotion and Disease Prevention Objectives established by the Administration. This definition also recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits which would otherwise not be provided to an infant. In addition, there are significant psychological benefits of breastfeeding to both mother and infant. Breastfeeding plays a critical role in the transition to motherhood and the formation of strong bonds between the mother and her infant.

As stated previously, this definition will consistently apply to all aspects of the WIC Program, including the determination of categorical eligibility as a breastfeeding woman. In the context of this regulation, this means that mothers who are breastfeeding on an average of at least once a day, and not receiving formula from the WIC Program, would be eligible to receive Food Package VII as a breastfeeding woman.

d. Evaluation Component

Seven commenters were concerned about measuring the effects of this food package initiative. Some suggested that focus group testing be done at some point, but most did not refer to a particular type of evaluation of the effects of Food Package VII. It is the Department's desire to strongly support any and all State agency efforts to evaluate this food package or other components of the WIC Program. Regardless, it is not the intent of this final rule to create the burden of routine State evaluations of Food Package VII for breastfeeding women. For this reason this final rule does not mandate an evaluation component. However, the Department may explore the use of this food package as a component of the upcoming WIC Nutrition Education Assessment Study.

The Department continues to be committed to providing support to agencies for evaluation of the effects of this food package as well as others. Further, State agencies are free to evaluate the effects of this food package within their own jurisdiction. The

Department recognizes that many types of program evaluation can be labor intensive and administratively demanding. Additionally, the Department appreciates and recognizes the many evaluation efforts previously undertaken by State agencies. The Department would also greatly appreciate learning of any efforts in this regard and the findings.

e. Other Suggested Modifications

A wide range of other modifications were suggested by commenters including various non-food items. For example, some commenters suggested for inclusion in Food Package VII the following: U.S. Savings Bonds for children and/or infants; gift certificates to local restaurants; gas for transportation; money for child care; diapers; vitamin supplements; cash rebates for breastfeeding; and others. According to WIC Program regulations at § 246.14(b), (c), and (d), these items are not allowable and the Department considers them inappropriate for inclusion as allowable food or administrative costs in Food Package VII or any of the WIC food packages. Additional food items suggested by commenters were dry instant soup mix and dried codfish. After consideration, the Department declined to include these food items in Food Package VII.

Standard Food Package Policy

As permitted in § 246.10(b)(1) of the WIC regulations, State agencies continue to be responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in Federal regulations. The decision may be influenced by a number of factors such as cost, product distribution within a State, and WIC participant acceptance.

State agencies have the flexibility to limit the number of foods authorized for use in their States. They are not obligated to authorize every available food that meets Federal requirements. Pursuant to § 246.10(b)(2)(i), however, they are obligated to ensure that local agencies make available at least one food from each group in each food package, including Food Package VII for breastfeeding women presented in this final rule. This includes all the categories of foods listed in Food Package VII: Milk, cheese, eggs, cereal, juice, legumes, fish, and vegetable. Additionally, the State can limit the type (e.g. fresh, canned or frozen) or the brand (e.g. the least expensive). As stated previously in this preamble, a State agency may determine whether both water and oil packed tuna could be

available in Food Package VII to VIC participants in their State, based on nutrition policy, cost, or other rationales.

Food Package VII Graph

An analysis of Food Packages V and VII is provided as the appendix II to this preamble. This chart compares two hypothetical food packages for breastfeeding women in the first six months of lactation. Food Package V for breastfeeding women is indicated in the chart as "BF (Basic)." This is a new title for the food package, and is the only change made to Food Package V in this final rulemaking. Food Package VII for breastfeeding women whose infants do not receive formula from the WIC program is indicated as "BF (Enhanced)." The percent RDAs for both food packages are for breastfeeding women during the first six months of lactation. This analysis is based on maximum amounts of foods allowed in the food packages.

Appendix I—The Department's Support of Breastfeeding

Current Federal Requirements

Current Federal requirements for the WIC Program include various provisions to encourage participating women to breastfeed their infants. For example: The current WIC food package for breastfeeding participants (Food Package V) provides a greater variety and quantity of food than that for nonbreastfeeding postpartum participants (Food Package VI); breastfeeding women are always considered to be at a higher level of nutritional risk than nonbreastfeeding postpartum women (a nutritional risk priority system is used to determine position on the waiting list when a local agency has reached maximum caseload, and those persons in the highest priorities are served first); information on the benefits of breastfeeding must be included in WIC nutrition education sessions; WIC breastfeeding women may receive program benefits for up to 1 year while nonbreastfeeding participants are eligible for only 6 months postpartum; funding initiatives are made available to WIC State agencies serving large proportions of high risk persons, which include breastfeeding women and their breastfed infants; and a breastfeeding woman with no nutritional risk of her own may receive program benefits based on the eligibility of her at-risk breastfed infant. Furthermore, the WIC Program provides funding incentives to WIC State agencies to support and promote breastfeeding initiatives in WIC.

Section 123(a)(6) of the Child Nutrition WIC Reauthorization Act of 1989 (Pub. L. 101-147) amended section 17(h) of the CNA to require the Department to promote breastfeeding among WIC participants by: (1) Establishing, in consultation with the Secretary of Health and Human Services, a standard definition for the term "breastfeeding"; (2) establishing breastfeeding promotion and support standards for State and local agencies; and (3) authorizing the purchase of breastfeeding aids by State and local agencies as an allowable administrative cost. A proposed rule to implement these legislative provisions was published on July 9, 1990 (55 FR 28033). A final rule is expected by early 1993. In addition, Public Law 101-147 requires each State agency to annually spend an amount equal to its share of the \$8,000,000 specifically distributed by the Department for breastfeeding promotion and support. This provision became effective October 1, 1989.

Initiatives

The Department also encourages the promotion of breastfeeding in the WIC Program through a number of activities, including the following:

1. The Department funds a variety of breastfeeding projects, including grants to WIC State and local agencies and a study to demonstrate and evaluate effective breastfeeding promotion approaches in the WIC program. The study's final report, entitled WIC Breastfeeding Promotion Study and Demonstration—Phase IV Report Volume I, showed that interventions improved breastfeeding rates among WIC participants. Currently, eight local WIC agencies have received approximately \$100,000 in grants to study the effectiveness of using locally donated tokens and gifts as incentives to promote breastfeeding. Results from this study are expected to be available in the Summer of 1993.

2. The Department developed publications on breastfeeding for participants and technical assistance materials to give WIC State and local agency staff ideas on how to better promote breastfeeding. Some of the more recent publications are: *Promoting Breastfeeding in WIC: A Compendium of Practical Approaches* and *WIC Breastfeeding Promotion Study and Demonstration Report* (for agency staff), and *How WIC Helps—Eating for You and Your Baby and Pregnant? Drugs and Alcohol Can Hurt Your Unborn Baby* (for participants).

3. The Department has participated in numerous cooperative efforts with other Federal agencies and private

organizations to promote breastfeeding. Examples include:

(1) The Department cooperated with the Department of Health and Human Services in sponsoring conferences to train health care providers and local agency staff in lactation management;

(2) The Department is active in the Healthy Mothers, Healthy Babies Coalition Breastfeeding Promotion Subcommittee; and

(3) The Department is working with UNICEF on its Baby Friendly Hospital Initiative, which would further support hospital breastfeeding initiation.

4. The Department hosts ongoing semi-annual meetings of the Breastfeeding Promotion Consortium to exchange information on how government and private health interests, including major health professional and non-profit organizations, can work together to promote breastfeeding.

5. As a result of information gained at the Breastfeeding Promotion Consortium meetings, the Department discerned a need to develop a national media campaign to promote the concept that breastfeeding is the optimum choice for infant feeding for both mother and baby. The Department is developing plans for such a comprehensive media campaign. Legislation entitled the Child Nutrition Amendments of 1992 (Pub. L. 102-342), signed into law August 14, 1992 added a new section 21 to the CNA which establishes a breastfeeding promotion initiative. This new provision authorizes the Secretary of Agriculture to utilize private funding and in-kind contributions from the private sector to conduct a national campaign and educational program to promote breastfeeding.

6. The Department cooperated with the National Association of WIC Directors to develop and distribute voluntary guidelines for use by WIC State agencies in promoting and supporting breastfeeding in the WIC Program.

7. Pursuant to the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) the Department issued Program guidance on allowable breastfeeding aids and has authorized the use of WIC administrative funds to purchase breastfeeding aids such as: breast pumps, breastshells, and nursing supplementers. These allowable aids directly support the initiation and continuation of breastfeeding.

8. The Department contracted for a detailed analysis of breastfeeding rates and patterns of WIC mothers and eligible, non-WIC mothers using data from the National Maternal and Infant Health Survey.

Appendix II

The amounts of foods selected for the following analyses are based on the maximum quantities of supplemental foods authorized per month for Food Package V and Food Package VII. These are sample food packages, and the types of foods chosen do not necessarily represent the most frequently prescribed or selected WIC foods. The mean nutritional values were calculated from these sample food packages; the percent RDAs displayed in the following chart labeled "Chart 1." are based on these means.

Table 1. lists the specific foods and their amount for both Food Packages V and VII. Table 2. lists the percent RDAs for select nutrients of the foods allowed in Food Package V and VII. For the convenience of State and local agencies these percent RDAs are also graphically displayed in Chart 1.

Chart 1. compares two hypothetical food packages for breastfeeding women in the first six months of lactation. Food Package V for breastfeeding women is indicated in the chart as "BF (Basic)." Food Package VII for breastfeeding women whose infants do not receive formula from the WIC program is indicated as "BF (Enhanced)."

TABLE 1

Food package V— Pregnant and breastfeeding women (basic)		Food package VII— Breastfeeding women (enhanced)	
Food	Amount	Food	Amount
Milk (2% lowfat).	28 qts.	Milk (2% lowfat).	28 qts.
Cheese (cheddar).	0	Cheese (cheddar).	1 lb.
Eggs (fresh, raw).	2 doz.	Eggs (fresh, raw).	2 doz.
Cereal (Kix, RTE).	36 oz.	Cereal (Kix, RTE).	36 oz.
Juice (orange).	288 oz.	Juice (orange).	336 oz.
Legumes:	Legumes:		
Red kidney, dry.	1 lb.	Red kidney, dry.	1 lb.
Peanut butter.	0	Peanut butter.	18 oz.
Canned Tuna (water).	0	Canned Tuna (water).	28 oz.
Carrots (canned).	0	Carrots (canned).	32 oz.

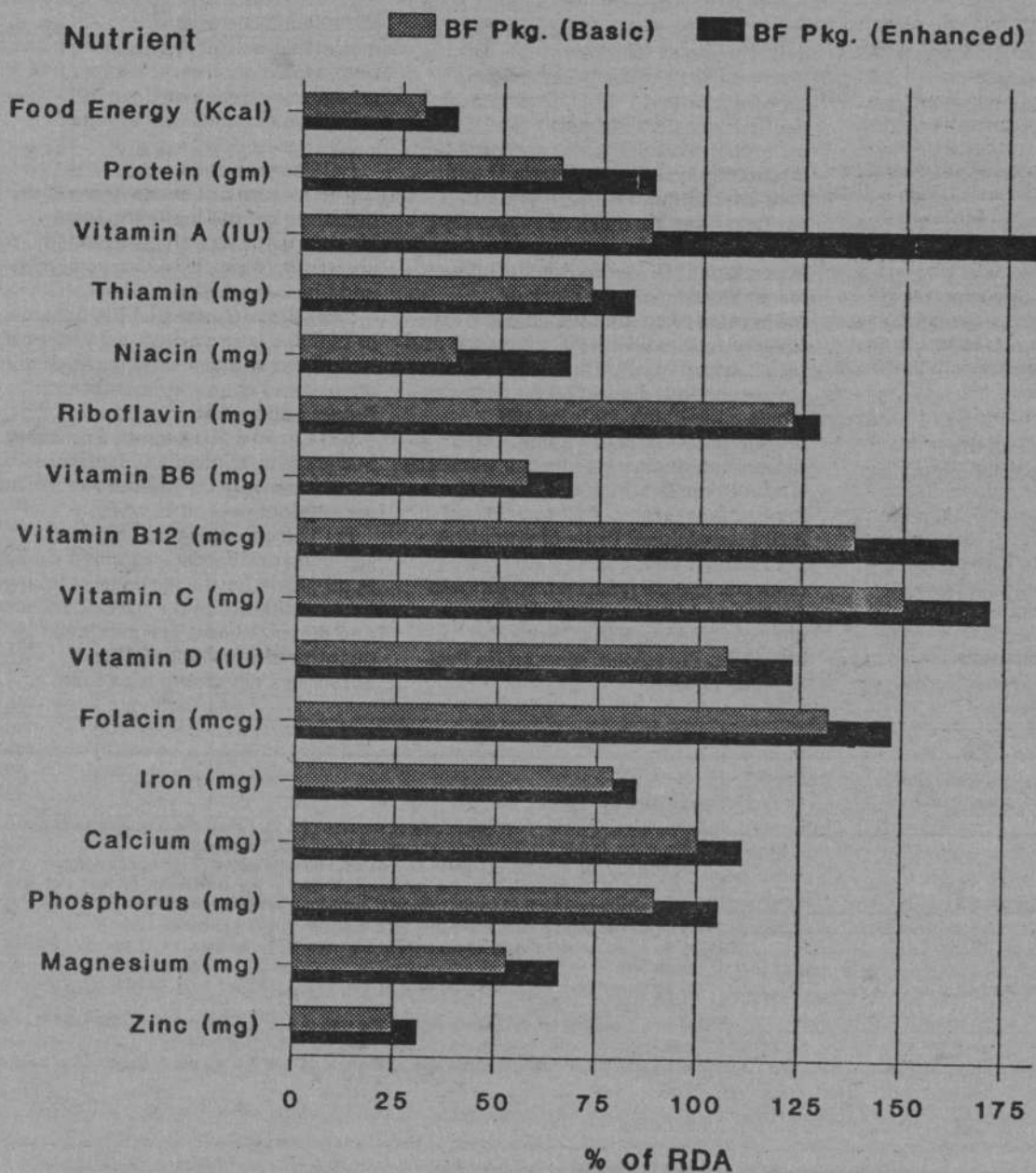
TABLE 2

Nutrient	Percent RDA	
	Food package V (percent)	Food package VII (percent)
Food energy (Kcal)	30.2	38.3
Protein	64.3	87.6
Vitamin A	86.8	182.2
Thiamin	72.1	82.7
Niacin	38.7	67.0
Riboflavin	122.3	128.7
Vitamin B6	56.8	67.8
Vitamin B12	137.8	163.1
Vitamin C	150.1	171.2
Vitamin D	106.8	122.7
Folacin	131.8	147.3
Iron	78.9	84.7
Calcium	100	110.8
Phosphorus	89.3	105.2
Magnesium	52.9	66.0
Zinc	24.8	30.9

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Chart 1.

Daily % of RDA in Fd. Pkgs. V and VII Breastfeeding Women <6 months lactation



Source: USDA/FNS

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and Child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101-147, 103 Stat. 877 (42 U.S.C. 1786); sec. 3201, Pub. L. 100-690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100-460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100-435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100-356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8-12, Pub. L. 100-237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341-353, Pub. L. 99-500 and 99-591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97-35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96-499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.10:

a. The first sentence of the introductory text in paragraph (c) is revised;

b. The heading of paragraph (c)(5) is revised; and

c. A new paragraph (c)(7) is added. The revisions and addition read as follows:

§ 246.10 Supplemental foods.

* * *

(c) *Food packages.* There are seven food packages available under the Program which may be provided to participants. * * *

(5) *Food Package V—Pregnant and Breastfeeding Women (Basic).* * * *

(7) *Food Package VII—Breastfeeding Women (Enhanced).* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skim milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(iii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iv) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(v) Eggs or dried egg mix.

(vi) Peanut butter.

(vii) Mature dry beans or peas, including but not limited to lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(viii) Tuna: Canned white, light, dark or blended tuna packed in water or oil, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; and grated.

(ix) Carrots: Raw, canned or frozen. Mature raw; canned and frozen carrots containing only the mature root of the carrot plant packed in water.

(x) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk or	28 qt. (26.5 L).
Cheese or	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted. Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.
Fluid skim or lowfat milk or	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
Cultured buttermilk or	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
Evaporated whole milk or	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
Evaporated skimmed milk or	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
Dry whole milk or	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
Cheese:	
Cheese	1 lb. (.4 kg).
Eggs:	
Eggs or	2 doz. or 2½ doz.
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals:	
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice:	
Single strength juice or	322 fluid oz. (9.6 L).

Food	Quantity
Frozen concentrated juice	336 fluid oz. reconstituted (10.0 L). Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.
Legumes:	
Dry beans or peas and	1 lb. (.4 kg). May be substituted for peanut butter at the rate of 1 lb. of dry beans or peas per 18 oz. of peanut butter.
Peanut butter	18 oz. (.5 kg). Peanut butter may not be substituted for mature dry beans or peas at any rate.
Fish:	
Tuna	26 oz. (.8 kg).
Vegetable:	
Raw carrots or	2 lb. (.9 kg).
Frozen carrots or	May be substituted for fresh at the rate of 1 lb. frozen per 1 lb. fresh.
Canned carrots	May be substituted for fresh at the rate of 1 16-20 ounce can of carrots per 1 lb. fresh.

Dated: November 20, 1992.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92-28738 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-029FR]

Establishment of Pit and Pit Fragment Tolerances for Dried Prunes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes pit and pit fragment tolerances for pitted and macerated dried prunes. Currently there is no required tolerance for pit or pit fragments under the marketing order. The Dried Fruit Association (DFA), the inspection agency established under the marketing order, inspects for pits and pit fragments only on handler request based on a 2 percent tolerance established by the Food and Drug Administration (FDA). This action was unanimously recommended by the Prune Marketing Committee (Committee) which is responsible for local administration of the marketing order at its February 11, 1992, meeting. This action establishes that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the pitted prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments, and any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the macerated prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. The tolerances will benefit prune producers, handlers, and consumers, and foster continued growth

of the market for pitted and macerated prunes.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite, 102B, Fresno, California 93721, telephone (209) 487-5901; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 993 (7 CFR part 993), both as amended, hereinafter referred to as the "order", regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing

the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of prunes who are subject to regulation under the marketing order and approximately 1,400 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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 handlers and producers of California dried prunes may be classified as small entities.

This action revises paragraph (f)(1) of § 993.150 of Subpart-Administrative Rules and Regulations (7 CFR 993.101-993.174) and is based on a unanimous recommendation of the Prune Marketing Committee (Committee) and other available information.

Paragraphs (a) and (b) of § 993.50 provide authority for the establishment of more restrictive regulations with respect to prunes that may be shipped or

otherwise disposed of by a handler if such action tends to effectuate the declared policy of the Act. Section 993.150(f)(1) specifies minimum requirements for pitted prunes for human consumption as pitted prunes and for pitted prunes for use and used in prune products for human consumption.

Pitted dried prunes (with their shape maintained) are preferred for snacking by consumers due to their attractive appearance, but are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out). Pitted macerated prunes are characterized by a flattened appearance with slightly more skin break where the pit has been removed because the pitting machine used employs rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking, where appearance and identity are not important, but can also be used for snacking. Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut/diced into small pieces or by being block pressed into cakes of pitted flesh. Cut/diced prunes generally are used as ingredients for cooking and baking, and block pressed prunes are used in prune products, such as prune butter, prune paste, and puree.

According to the Committee, pitted prunes offer consumers a high quality product and provide the industry with its best opportunity for future growth. California pitted dried prune shipments have increased by 10 percent annually over the last 10 years (91,512 tons in 1990-91 versus 34,314 tons in 1980-81), and currently represent nearly 49 percent of total dried prune shipments. Ten years ago pitted prune shipments represented less than 23 percent of total dried prune shipments.

Currently, the presence of pits and pit fragments in pitted and macerated prunes is not scored as defect when inspecting such prunes under the marketing order. The DFA, the inspection agency under the marketing order for prunes, currently inspects pitted prunes and macerated prunes for pits and pit fragments only on request of the handler. The tolerance imposed is the tolerance implemented by the U.S. Food and Drug Administration as a food defect action level. Pursuant to the FDA requirements, pitted prunes cannot contain more than an average of 2 percent by count with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted prunes cannot have more than 2 percent by count with

whole pits and/or pit fragments 2 mm or longer.

The most common consumer complaints received by California prune handlers concern pitted prunes and macerated prunes containing pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry has information indicating that this figure significantly underestimates the magnitude of the problem. Many consumers finding pits and pit fragments simply discontinue purchasing a brand or all prune brands. Thus, the industry recommended the establishment of a tolerance for pits and pit fragments after pitting, differentiating between pitted prunes, macerated prunes, and well macerated prunes.

Because this appears to be the most likely reason to hinder the continued growth of this important market for dried prunes, the Committee recommended this action pursuant to the authority in paragraphs (a) and (b) of § 993.50. Experience has shown that the machines used to pit prunes for use as pitted prunes occasionally leave prunes with whole pits or large pit fragments, and that the machine used for macerated prunes occasionally leaves prunes with shattered pits.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments. Consequently, the Committee recommended that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes cannot have more than 0.5 percent by count with whole pits and/or pit fragments 2 mm or longer.

For pitted macerated prunes, the Committee recommended that such prunes contain no more than an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted macerated prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. The Committee recommended a more lenient tolerance for macerated prunes because such prunes are used mostly as ingredients in cooking and baking and any pit or pit fragments are more easily noticed by the consumer. The latter tolerance is the same as that implemented by the Food and Drug Administration.

No tolerance was recommended for well macerated prunes because these

prunes are only used in prune products and there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, any pit fragments are generally so small that they cause no problems.

In order to obtain more information regarding pits and pit fragments, the DFA conducted a study between December, 1991, and January, 1992. The study revealed that 91 percent and 88 percent of the pitted prunes inspected met the 0.5 percent by count tolerance and that 99 percent of macerated prunes inspected met the 2 percent by count tolerance. On the basis of the information, the Committee believes that handlers may experience a slight increase in pitter maintenance and hand sorting costs in order to consistently meet the new tolerances, but that these costs should not disproportionately impact small entities.

The estimated incremental inspection cost for these tests is \$2.50 per ton. This cost was based on 1 sample taken from each 1,000 pounds of prunes in the lot. DFA indicated that the cost could be reduced to \$1.25 per ton, if a 1 sample taken from each 2,000 pounds sampling procedure were adopted, without harming the validity of the inspection results.

The recommended tolerances are expected to ensure a consistently higher quality product for consumers which will benefit all producers and handlers through increased prune sales, higher handler profits, and improved grower returns. The tolerances are equitable because all handlers who market pitted prunes have similar equipment and are capable of meeting the tolerances with other proper equipment maintenance and hand sorting of pitted and macerated prunes. The tolerances apply uniformly to all California pitted prune handlers.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for dried prunes under a domestic marketing order, imported dried prunes must meet the same or comparable requirements. Hence, pit and pit fragment tolerances must be established for imported pitted dried prunes and pitted macerated prunes in section 999.200. The import regulation change has been concurred in by the United States Trade Representative (USTR). An interim final rule, to change the import regulation will be issued as a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant

economic impact on a substantial number of small entities.

A proposed rule concerning this action was published in the **Federal Register** on August 26, 1992 (57 FR 38621). Comments on the proposed rule were invited from interested persons until September 10, 1992. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) California pitted and macerated prunes are marketed throughout the year and the pit and pit fragment tolerances need to be in effect as soon as possible to be of benefit and encourage further market growth; (2) handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements; and (3) no useful purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes. Reporting and recordkeeping.

For the reasons set forth in the preamble, 7 CFR part 993 is amended to read as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

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

2. In § 993.150, paragraph (f)(1) is redesignated as paragraph (f)(1)(i) and new paragraphs (f)(1)(ii) and (f)(1)(iii) are added to read as follows:

§ 993.150 Disposition of prunes by handlers.

(f) * * *

(1) *For human consumption as such.*

(i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) the applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) the requirements specified in § 993.50 (c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of

pitted prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

* * *

Dated: November 16, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 92-28286 Filed 11-25-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 999

[Docket No. FV-92-039]

Interim Final Rule Establishing Pit and Pit Fragment Tolerances for Dried Prunes Imported Into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes pit and pit fragment tolerances for imported pitted and pitted macerated dried prunes. Currently, no tolerance is specified for pits or pit fragments under the import regulation. This rule establishes that no lot of pitted dried prunes, destined for human consumption as pitted prunes, shall be imported if the lot exceeds an average of 0.5 percent by count of prunes with whole pits and/or pit fragments. In addition, no lot of pitted macerated dried prunes, destined for human consumption as pitted macerated prunes, shall be imported if such prunes

exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the import requirements for dried prunes into conformity with the requirements of the marketing order for dried prunes produced in California. Pitted and pitted macerated prunes are not subject to size and undersized requirements because such requirements under the order are applied to prunes before pitting and cannot be applied after the pits have been removed.

DATES: This action is effective November 30, 1992. Comments which are received by December 28, 1992, will be considered prior to the issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issuance of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This interim final rule amending the prune import regulation (section 999.200) is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity Marketing Order No. 993, as amended (7 CFR part 993), prescribes grade and size requirements for dried prunes produced in California.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not

intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than \$3,500,000. Currently, pitted and pitted macerated dried prunes are not imported into the United States, and thus, at this time no importers would be affected by the regulations implemented by this action.

Grade and size requirements are included in section 999.200 covering prunes imported into the United States. However, these requirements do not set standards for pitted and pitted macerated dried prunes. This action establishes the requirements specified in Marketing Order No. 993 for California dried prunes as the comparable grade requirements for pitted and pitted macerated dried prunes imported into the United States. This action also does not subject imports of pitted and pitted macerated prunes to the size and undersized requirements specified in M.O. No. 993 because these requirements are applied prior to pitting and cannot be applied after the pits have been removed.

Imported prunes meeting grade and size requirements for such prunes are designated as standard prunes. Imported pitted and pitted macerated dried prunes meeting these grade requirements will be designated as standard pitted or standard pitted macerated dried prunes, as applicable. Prunes failing to meet either of those requirements will be designated as manufacturing grade substandard prunes if the prunes meet the maximum tolerances specified in paragraphs 1, 2, and 3 of Exhibit A of the grade requirements for mold, imbedded dirt, insect infestation, and decay. Manufacturing grade substandard prunes are used for human consumption outlets as prune products. Such prunes lose their form and character as prunes during processing.

This interim final rule modifies paragraphs (a), (b), (c), (e), and (f) of the prune import regulation (7 CFR 999.200). Imported prunes will have to meet the same pit and pit fragment tolerances required of pitted and pitted macerated dried prunes that are specified under M.O. 993. Also, it is necessary to add definitions regarding pitted and pitted macerated dried prunes. Recently, the Department modified the quality requirements under the marketing order for dried prunes produced in California based on a recommendation by the Prune Marketing Committee (Committee). The Committee works with the Department in administering the marketing order program for dried prunes produced in California. Section 8e of the Act requires the import requirements for dried prunes to be in conformity with the requirements of the marketing order for dried prunes produced in California.

Paragraphs (a) and (b) of section 999.200 provide definitions and grade and size requirements for the importation of dried prunes, respectively. This action differentiates pitted and pitted macerated dried prunes imported into the United States and sets pit and pit fragment tolerances for pitted and pitted macerated dried prunes.

Due to their attractive appearance, pitted dried prunes, with their shape maintained, are preferred by consumers for snacking. Such prunes are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out).

Pitted macerated dried prunes are characterized by a flattened appearance with slightly more skin break where the pit has been mechanically removed using rollers to squeeze the pits out. Such prunes are preferred as an

ingredient for cooking and baking (appearance and identity are not as important) but can also be used for snacking.

Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut or diced into small pieces or by being block pressed into cakes of pitted prune flesh. Cut or diced prunes generally are used as ingredients for cooking and baking. Block pressed prunes are used in prune products such as prune butter, prune paste, and prune purees.

The most common consumer complaint received by California prune handlers concerns pitted prunes and macerated prunes which contain pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry believes this figure significantly underestimates the magnitude of the problem. Many consumers who find pits and pit fragments simply discontinue purchasing a brand or all prune brands. Therefore, the Committee recommended establishing tolerances for pits and pit fragments for California prunes regulated under the marketing order. Pursuant to section 8e, the same or comparable requirements must be applied to prune imports. Thus, tolerances are established for pitted and pitted macerated dried prunes.

Prior to changing the requirements under the marketing order, the presence of pits and pit fragments in pitted and pitted macerated dried prunes was not scored as a defect under the marketing order. The Dried Fruit Association (DFA), the inspection agency employed under the marketing order, inspected pitted prunes and pitted macerated prunes for pits and pit fragments only at the request of the handler. The tolerance level used was the level set by the U.S. Food and Drug Administration (FDA) as a food defect action level. Pursuant to FDA requirements (The Food Defect Action Level), pitted prunes cannot contain more than an average of 2 percent by count whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted prune samples cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The Committee recommended applying the FDA's pitted prune tolerance to California produced pitted macerated prunes because such prunes are used mostly as ingredients in cooking and baking where pit or pit fragments are more easily noticed by the consumer. Thus, lots of California grown pitted macerated dried prunes shall contain no more than 2 percent by count

of prunes with whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted macerated dried prunes shall contain no more than 2 percent by count of whole pits and/or pit fragments 2 mm or longer. This interim final rule applies the same standard to pitted macerated dried prunes imported into the United States.

No tolerance was recommended for well macerated prunes because these prunes are used only in prune products where there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, pit fragments are generally so small that they are not noticed by consumers and thus, cause no problems.

There will be no size and undersized requirements for pitted and pitted macerated prunes. The size requirements under the marketing order regulations are applied prior to pitting and cannot be applied after the pits are removed. However, lots of pitted and pitted macerated prunes must meet the applicable minimum grade requirements set forth in section 999.200 (exhibit A), except that skin and flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments remaining in the product. Consequently, the Committee recommended establishing a tolerance for California produced pitted dried prunes by requiring that no lot of such prunes, intended for human consumption as pitted prunes, shall be handled unless such prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes contain no more than 0.5 percent by count of whole pits and/or pit fragments 2 mm or longer. This interim final rule applies the same standard to pitted dried prunes imported into the United States.

This action is being taken by the Department so that the prune import requirements will be comparable to those applied to domestic production regulated under the marketing order—as required by section 8e of the Act. While there is no evidence that pitted and pitted macerated dried prunes are imported into the United States, such prunes could be imported in the future.

These tolerances will ensure a consistently higher quality product for consumers, which is expected to benefit importers, when and if they begin importing such prunes. The tolerances

will apply uniformly to all pitted and pitted macerated dried prunes.

Minor conforming changes are also made in the import regulation to update the language and to reflect coverage of pitted and pitted macerated prunes.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the import regulation have been approved previously by the Office of Management and Budget.

After consideration of all relevant matter presented, it is found that the action, as set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action will improve the quality of prunes for importation; (2) a domestic regulation has been recommended and implemented; (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule; and (4) section 8e of the Act requires import requirements for dried prunes to be into conformity with the requirements of the marketing order for dried prunes produced in California.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

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

2. Section 999.200 is amended by revising paragraphs (a) and (b); amending paragraph (c)(2)(iv) by adding after the words “for standard prunes” the words “, standard pitted and

standard pitted macerated prunes”; by amending the fourth sentence of paragraph (e)(1) by revising the phrase “paragraph (b)(2)” to read “paragraph (b)(5)”; and revising paragraph (f) to read as follows:

§ 999.200 Regulation governing the importation of prunes.

(a) Definitions.

(1) *Prunes* means and includes all sundried or artificially dehydrated plums, of any type or variety, produced from plums, except: (i) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver plums; and (ii) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packing, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as “high moisture content prunes”, but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

(2) *Pitted prunes* means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(3) *Macerated prunes* means dried prunes with the pit removed that are characterized by a flattened appearance with slightly more skin break where the pit has been removed than with pitted prunes.

(4) *Standard prunes* means any lot of prunes meeting the grade and size requirements prescribed in paragraph (b)(1) of this section.

(5) *Standard pitted prunes* means any lot of pitted prunes meeting the grade requirements prescribed in paragraphs (b)(2) and (b)(3) of this section.

(6) *Standard pitted macerated prunes* means any lot of pitted macerated prunes meeting the grade requirements in paragraphs (b)(2) and (b)(4) of this section.

(7) *Manufacturing grade substandard prunes* means any lot of prunes which meets the grade requirements prescribed in paragraph (b)(5) of this section but fails to meet the requirements for

standard prunes, standard pitted prunes and standard pitted macerated prunes.

(8) *Size* means the number of prunes contained in a pound.

(9) *Person* means any individual, partnership, corporation, association, or other business unit.

(10) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

(11) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, or any other duly authorized employee of the USDA.

(12) *Importation* means release from custody of the U.S. Bureau of Customs.

(13) *Undersized prunes* means those prunes that pass freely through a round opening 23/32 of an inch in diameter.

(b) *Grade and size requirements.*

(1) Except as provided in paragraph (b)(5) or paragraph (d) of this section, no person may import any lot of prunes into the United States unless the prunes are inspected and an inspection certificate issued with respect thereto, and the lot meets the applicable grade requirements specified in exhibit A of this section and the average count (i.e., number) of the prunes in such lot is 100 or less per pound. In determining whether any lot conforms to the size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of smallest prunes may not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points.

(2) No person may import any lot of pitted prunes or pitted macerated prunes for human consumption as pitted or pitted macerated prunes unless the lot meets the applicable minimum grade requirements set forth in § 999.200 (exhibit A), except that skin or flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements. Pitted and pitted macerated prunes shall not be subject to size and undersized requirements.

(3) No person may import any lot of pitted prunes for human consumption as pitted prunes unless the lot does not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer.

(4) No person may import any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the lot does not exceed an average of 2 percent by count of prunes

with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

(5) Any person may import any lot of prunes, except any lot containing undersized prunes, pitted prunes or pitted macerated prunes, into the United States for use in human consumption outlets as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption if the prunes are inspected and an inspection certificate issued with respect thereto, and each lot meets the grade requirements set forth in paragraphs (1), (2), and (3) of exhibit A of this section, and the importer first files as a condition of such importation an executed "Prune Form No. 1 Prunes-Section 8e Entry Declaration".

(f) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of prunes, prior to importation, so that such prunes may be made eligible to meet the requirements prescribed pursuant to paragraphs (b)(1) through (5), as applicable, of this section.

Dated: November 16, 1992.
Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-28578 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-17-AD; Amendment 39-8313; AD 92-16-04]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the compliance time information for the above-captioned Airworthiness Directive that was published in the *Federal Register* on September 16, 1992 (57 FR 42892). The specific compliance time was inadvertently omitted in the final rule as published. In all other respects, the original document is correct.

DATES: Effective October 21, 1992.

The incorporation by reference of certain publications listed in the

regulations was previously approved by the Director of the Federal Register as of October 21, 1992 (57 FR 42692, September 16, 1992).

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, was published in the *Federal Register* on September 16, 1992 (57 FR 42692). That action was issued to provide alternative methods for accomplishing certain structural modification and replacement requirements that were previously required by AD 89-25-12, Amendment 39-6414 (54 FR 50343, December 6, 1989).

The specific compliance time requirement for AD 92-16-04, as published in the final rule, was inadvertently omitted. The final rule indicated only that the compliance time for accomplishing the required modifications and replacements was "required as indicated;" however, a specific compliance time requirement was not indicated elsewhere in the final rule. In order to ensure that affected airplane operators perform the required modification and replacement actions in a timely manner, this document clarifies that the compliance time is as follows:

"Compliance: Required prior to the accumulation of 10,000 landings, or within the next 300 landings after January 12, 1990 (the effective date of AD 89-25-12, amendment 39-6414), whichever occurs later, unless accomplished previously."

This correct compliance time requirement appeared in the notice that preceded the final rule, as well as in the previously-issued AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington, on November 19, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 92-28753 Filed 11-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Docket No. 27054; Amendment No. 71-18]

RIN 2120-AB95

Airspace Reclassification; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the