increase in expenses from the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.1825 per 25-pound container or equivalent for the 1994–95 fiscal year, which is the same assessment rate that was approved for the 1993–94 fiscal year. The assessment rate, when applied to anticipated shipments of 18,144,000 25-pound containers or equivalent of nectarines would yield $3,311,280 in assessment income. Adequate funds exist in the Committee's reserve to cover additional expenses.

Major expense categories for the 1994–95 nectarine budget include $447,118 for salaries and benefits, $1,402,000 for domestic market development, and $1,000,000 for inspection. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $363,483, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met May 4, 1994, and unanimously recommended total expenses of $3,967,335, for the 1994–95 fiscal year. In comparison, this is $113,790 more than the $3,853,545 expense amount that was recommended for the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.19 per 25-pound container or equivalent for the 1994–95 fiscal year, which is the same assessment rate that was approved for the previous fiscal year. The assessment rate, when applied to anticipated shipments of 17,571,000 25-pound containers or equivalent of peaches, would yield $3,338,490 in assessment income. Adequate funds exist in the Committee's reserve fund to cover additional expenses.

Major expense categories for the 1994–95 fiscal period are $447,118 in salaries and benefits, $1,402,000 for domestic market development, and $950,000 for inspection. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $578,639, will be within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was published in the **Federal Register** [59 FR 33897, July 1, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began March 1, 1994. The marketing order requires that the rate of assessment apply to all assessable nectarines and fresh peaches handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Pears, Peaches, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 916 which was published at 59 FR 33897 on July 1, 1994, is adopted as a final rule without change.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 917 which was published at 59 FR 33897 on July 1, 1994, is adopted as a final rule without change.

Dated: August 25, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–21673 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 922

[Docket No. FV94–922–1FIR]

Apricots Grown in Designated Counties in Washington; Revision in Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule that revised container regulations for apricots shipped to fresh market outlets under Marketing Order No. 922. This rule gives handlers greater flexibility in selecting containers to meet their packaging needs by eliminating the inside dimension requirements on each type of container that has a minimum apricot net weight requirement. This rule eliminates reference to the obsolete lidded four-basket crate, and replaces the term "closed L.A. lugs and equivalent cartons" with the term "closed containers" to simplify wording and improve clarity. This rule also includes a correction to the container regulations which had previously appeared in the **Federal Register** as a final rule, but did not appear in the annual Code of Federal Regulations.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 [7 CFR Part 922], regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the order. This 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.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule 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.

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 request 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 will 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 a 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 the 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 55 handlers of Washington apricots that are subject to regulation under the marketing order. In addition, there are approximately 400 producers in the regulated area. Small agricultural service firms, which include handlers of Washington apricots, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities.

Section 922.52 [7 CFR 922.52] authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 [7 CFR 922.53] authorizes the modification, suspension, or termination of regulations issued under section 922.52.

Container regulations are currently in effect under section 922.306. This rule finalizes an interim final rule that eliminated references to inside dimensions for each type of container that has a minimum apricot net weight requirement. This rule also finalizes the removal of references to the obsolete lidded four-basket crate and replaces the term "closed L.A. lugs and equivalent cartons" with the term "closed containers."

The Washington Apricot Marketing Committee (Committee) met on December 15, 1993, and unanimously recommended elimination of inside dimension requirements for each type of container that has a minimum apricot net weight requirement. The Committee also unanimously recommended deleting reference in the container regulation to the lidded four-basket crate, and that the term "closed L.A. lugs and equivalent cartons" be replaced with the term "closed containers."

Handlers have experienced difficulty in packing many of the new, larger varieties of apricots, particularly in row-faced and tray-packed containers because of the inside dimension requirements in effect. Container height limits, for example, can cause a higher incidence of compression damage in large apricots that are row-faced or tray-packed. In addition, the inside dimension requirements have prevented handlers from using many generic containers used in other fruit and vegetable industries.

This rule deletes references to designated container dimensions for each type of container that has a minimum apricot net weight requirement. The Committee believes that continued standardization of the minimum net weight requirements of the authorized containers is needed to prevent market confusion resulting from the use of deceptive containers.

This rule allows handlers greater flexibility in packaging. By allowing different container dimensions, as long as the minimum weight requirements are met, handlers will have the flexibility to use containers commonly used in other fruit and vegetable industries, to use different containers for different varieties of apricots, and to develop new containers.

This rule removes authority for the use of the obsolete lidded four-basket crate. The rule also removes reference in the regulation to the term "closed L.A. lugs and equivalent cartons" replacing it with the term "closed containers." This change is intended only to simplify wording and improve clarity.

This rule also corrects the container regulations in the Code of Federal Regulations for Apricots Grown in Designated Counties in Washington [7 CFR Part 922]. Changes to the container requirements appeared in the **Federal Register** [44 FR 37598, June 28, 1979] [Apricot Regulation 6, Amendment 4], but did not correspondingly appear in the annual Code of Federal Regulations.

The interim final rule which revised container regulations for apricots shipped to fresh market outlets under Marketing Order No. 922, and included a correction to the container regulations which previously appeared in the **Federal Register** as a final rule, but did not appear in the annual Code of Federal Regulations, was published in the **Federal Register** [59 FR 30672, June 15, 1994]. That rule provided a 30-day comment period which ended July 15, 1994. No comments were received.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that the finalization set forth below will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. Accordingly, the interim final rule amending 7 CFR Part 922, which was published at 59 FR 30672 on June 15, 1994, is adopted as a final rule without change.

Dated: August 25, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division

[FR Doc. 94–21635 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 928

[Docket No. FV94-928-1FIR]

Papayas Grown in Hawaii; Expenses and Assessment Rate for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculutre (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Papaya Administrative Committee (Committee) under Marketing Order (M.O.) No. 928 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 928 [7 CFR Part 928], regulating the handling of papayas grown in Hawaii. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1994–95 fiscal year, beginning July 1, 1994, through June 30, 1995. 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. Such 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 or her 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 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 rule 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 120 handlers of papayas regulated under the marketing order each season and approximately 400 papaya producers in Hawaii. 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 $5,000,000. A majority of these handlers and producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaii papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on April 22, 1994, and unanimously recommended expenses totaling $589,200 for its 1994–95 budget. This is a $3,260 reduction in expenses compared to the 1993–94 budget of $592,460.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1994–95 fiscal year, which is a $.0024 increase in the assessment rate from the $.0065 per pound that was approved for the 1993–94 fiscal year. The assessment rate, when applied to anticipated shipments of 48 million pounds, would yield $427,200 in assessment income. Other sources of program income include $60,000 from the Hawaii Department of Agriculture, $57,000 from the USDA's Foreign Agricultural Service, $25,000 from the GACC, $7,800 from the Japanese Inspection program, $7,200 in interest income, and $5,000 from the County of Hawaii. Income from all sources will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include $240,000 for the market expansion program, $68,000 for research and development, and $78,600 for salaries. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $37,356 will be within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was published in the **Federal Register** [59 FR 33898, July 1, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began July 1, 1994. The marketing order requires that the rate of assessment apply to all assessable papayas handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim final rule amending 7 CFR part 928 which was published at 59 FR 33898 on July 1, 1994, is adopted as a final rule without change.

Dated: August 25, 1994.

Eric M. Forman,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–21636 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 947

[Docket No. FV94–947–2FIR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Oregon-California potato handlers are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1994–95 fiscal period, which began July 1, 1994, and ends June 30, 1995. 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 8c(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. Such 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 or her 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 the date of the entry of the ruling.

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 rule 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 the 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 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. 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 $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee unanimously recommended a budget of $45,100, $1,500 more than last season. Increases in expenditures, which include $150 for the Committee's annual report, $50 for the Committee's audit, $1,000 for inspection fees, $500 for investigation and compliance, and $50 for miscellaneous, will be partially offset by a decrease of $250 in staff travel. Major expense items include $24,000 for the Oregon Potato Commission (Commission) contract agreement, $4,500 for Committee expenses, $3,000 each for investigation and compliance and staff travel, $2,000 for inspection fees, $1,500 for telephone, $1,400 for the annual report, $1,250 for postage, and $1,000 each for Committee compensation and office supplies. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, $0.001 more than last season. This rate, when applied to anticipated shipments of 7,500,000 hundredweight, will yield $45,000 in assessment income. This, along with $100 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 fiscal period, estimated at $6,561, will be within the maximum permitted by the order of one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on July 1, 1994 (59 FR 33900). That interim final rule added § 947.245 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through August 1, 1994. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, those costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on July 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and confirmed by a mail vote and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 59 FR 33900 on July 1, 1994, is adopted as a final rule without change.

Dated: August 25, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–21674 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 955

[Docket No. FV94–955–2IFR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 955 for the 1994–95 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 16, 1994, through September 15, 1995. Comments received by October 3, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue 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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994–95 fiscal period, which begins September 16, 1994, and ends September 15, 1995. This interim 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 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 provisions 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. Such handler is afforded the opportunity for a hearing 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 or her 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 the date of the entry of the ruling.

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 rule 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 the 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 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. 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 $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 14, 1994, and unanimously recommended a 1994–95 budget of $332,000, $69,050 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Travel & auto expenses, $6,000 ($4,000), liability insurance and bonds, $1,000 ($500), professional fees, $2,500 ($2,000), office supplies, $3,000 ($1,300), telephone, $4,000 ($3,500), Committee member expense, $1,000 ($500), contract management, wages, and salaries, $60,000 ($59,600), miscellaneous general and administrative, $1,000 ($500), research, $80,000 ($78,500), marketing, $132,000 ($82,500), and $4,250 for FICA employer, $13,500 for employee benefits, and $8,000 for contract outside labor, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Equipment purchases, $3,000 ($4,500), office overhead, $3,000 ($12,900), and $150 in interest, and $250 for petty cash, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 2,867,500 50-pound bags or equivalents of Vidalia onions, would yield $286,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $5,250 in interest income and $35,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of $167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter 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 putting this rule into effect 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) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 16, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 955.207 is added to read as follows:

§ 955.207 Expenses and assessment rate.

Expenses of $332,000 by the Vidalia Onion Committee are authorized, and an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions is established for the fiscal period ending September 15, 1995. Unexpended funds may be carried over as a reserve.

Dated: August 25, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–21675 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93-022F]

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its final nutrition labeling regulations, which were published in the **Federal**

Register on January 6, 1993. FSIS is taking this action to address inconsistencies in the regulations, improve their accuracy, and correct unintended technical consequences of the regulations. Most of the changes are designed to parallel technical amendments the Food and Drug Administration (FDA) made to its final nutrition labeling regulations.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1993, FSIS published in the Federal Register final regulations on nutrition labeling for meat and poultry products (58 FR 632). FSIS's nutrition labeling regulations are designed to parallel, to the extent possible, FDA's final regulations on nutrition labeling. FDA's regulations were published in the Federal Register simultaneously with FSIS's publication.

Following publication of its final regulations, FSIS received comments from various interested parties contending that portions of its regulations were unclear, contained technical unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS issued technical amendments to its final regulations in an interim final rule published on September 10, 1993 (58 FR 47624).

On August 18, 1993, FDA published corrections and technical amendments (58 FR 44020, 44039, and 44063) to its final regulations in response to comments received on its final rule. Many of the provisions amended in the August 18, 1993, publication were cross-referenced by FSIS in its final nutrition labeling regulations. The provisions related to nutrient declarations, label format, serving sizes, equivalent metric quantity, servings per container, reference amounts, nutrient content claims, saturated fat free claims, foods for infants and children under 4 years of age, and packages with less than 12 square inches of space. FSIS conducted a thorough review of FDA's amendments and comments received and concluded that additional amendments to the FSIS nutrition labeling regulations were necessary to provide greater clarity, accuracy, and consistency with FDA's regulations, and to satisfy concerns of commenters.

Accordingly, FSIS is amending its final nutrition labeling regulations by adopting certain changes made by FDA in cross-referenced provisions and amending certain of its own provisions to be consistent with those changes. In addition, FSIS is correcting the terminology for extra lean ground beef in a provision of the final nutrition labeling regulations and correcting an oversight in the Federal poultry products inspection regulations related to product analyses.

Proposed Rule

On March 16, 1994, FSIS published in the Federal Register a proposed rule (59 FR 12472) to amend its final nutrition labeling regulations (58 FR 632). A summary of the proposed technical amendments follows.

Serving Sizes

FSIS acknowledged in its proposed rule (59 FR 12472) that the variety of specifications for products in discrete units, contained in a single paragraph at 9 CFR 317.309(a)(3) and 381.409(a)(3), may be confusing. FSIS proposed to subdivide the single paragraphs of 9 CFR 317.309(a)(3) and 381.409(a)(3) into 9 CFR 317.309(a)(3)(i) through (iv) and 381.409(a)(3)(i) through (iv), reordering some of the information, and making minor editorial changes for clarity.

In its final nutrition labeling rule, FSIS inadvertently omitted provisions on how to declare serving sizes for products made up of distinct and separate foods packaged together in the same container and intended to be consumed together when the manufacturer chooses to list the nutrition information separately for each component. These products include mixes and kits and cuts of meat or poultry packaged with sauce or gravy packets.

For a number of these products, the serving size can be expressed as the amount of the main ingredient plus proportioned minor ingredients based on the "reference amount for the combined product." FSIS proposed to add new paragraphs at 9 CFR 317.309(a)(3)(vi) and 381.409(a)(3)(vi) to provide the option described above for serving sizes for products that consist of two or more foods that are packaged and presented to be consumed together. FDA amended provisions at 21 CFR 101.9(b)(2)(ii) and (iii) to provide the same option for products in large discrete units usually divided for consumption and nondiscrete bulk products, respectively. In order to accommodate this option in 21 CFR 101.9(b)(5), as well as other changes, FDA revised the section considerably. For clarity, FSIS proposed to delete its cross-reference to 21 CFR 101.9(b)(5) at 9 CFR 317.309(a)(1) and 381.409(a)(1) and incorporate the pertinent provisions into 9 CFR 317.309(a)(6) and 381.409(a)(6). Also, FSIS proposed to delete reference to the term "portion" at 9 CFR 317.309(a)(1), 317.312(a), 381.409(a)(1), and 381.412(a) because it is no longer defined in the nutrition labeling regulations.

By cross-referencing 21 CFR 101.9(b)(6), FSIS provided that single-serving containers of products with large reference amounts, i.e., equal to or greater than 100 grams or milliliters, may declare one or two servings per container if they contain more than 150 percent but less than 200 percent of the reference amount. Similar provisions at 9 CFR 317.309(a)(3) and 381.409(a)(3) for products within multi-serving packages were inadvertently omitted. To correct this oversight, FSIS proposed to add a new paragraph at 9 CFR 317.309(a)(3)(v) and 381.409(a)(3)(v) to permit products within multi-serving packages to be declared as one or two servings if they meet the criteria described above.

The provisions for single-serving containers at 21 CFR 101.9(b)(6) and the provisions for individually packaged products within multi-serving containers at 9 CFR 317.309(a)(3) and 381.409(a)(3) could produce inconsistent labeling on the inner and outer packaging of these products. To prevent this inconsistency, FSIS proposed to add a new paragraph at 9 CFR 317.309(a)(3)(vii) and 381.409(a)(3)(vii) to provide for a serving size declaration of one unit for products containing several individual single-serving containers that are fully labeled, and to adopt the change to 21 CFR 101.9(b)(8)(iv) on the number of servings when a product contains such individually labeled containers.

FSIS proposed to cross-reference 21 CFR 101.9(b)(2)(ii), which was amended to allow products requiring further preparation, where the entire contents of the package, e.g., a pizza kit, are used to prepare a large discrete unit usually divided into fractional slices for consumption, e.g., a pizza, to use a household measure for the serving size that is the fraction of the box that makes the "reference amount for the unprepared product." FSIS also proposed to add new paragraphs at 9 CFR 317.309(a)(6)(v) and 381.409(a)(6)(v) to provide that, in these circumstances, the fraction of the package is to be used to express the serving size.

FSIS proposed to amend 9 CFR 317.309(a)(6) and 381.409(a)(6) to allow use of the fractions 1/3, 1/2, and 2/3 tablespoons between 1 and 2 tablespoons. This action is consistent with an FDA amendment to make the same allowance.

FSIS proposed to add new paragraphs at 9 CFR 317.309(a)(6)(iv) and 381.409(a)(6)(iv), which state that household units for serving sizes of single-serving containers, meal-type products, and individually packaged products within multi-serving containers must be stated using a description of the container, e.g., can, box, package, meal, or dinner, and that the serving sizes of other discrete units must be stated using a description of the individual unit; e.g., wing, slice, link, or patty.

Equivalent Metric Quantity

A manufacturer is not required to declare the metric equivalent weight on single-serving containers and meal-type products if it appears in the net quantity of contents statement. However, FSIS has determined that if a manufacturer optionally declares the metric equivalent, the serving size declaration should agree with the net contents declaration. FDA created a new provision at 21 CFR 101.9(b)(7)(i) that ensures agreement between serving size and net quantity values. FSIS proposed to adopt this new provision.

To achieve greater consistency with FDA provisions, FSIS proposed to adopt the change made at 21 CFR 101.9(b)(7)(ii), to correct for the omission of rounding rules for milliliters for liquids. The equivalent should be rounded to the nearest whole number, except for quantities that are less than 5 milliliters. Milliliter amounts between 2 and 5 should be rounded to the nearest 0.5 milliliter, and amounts less than 2 should be expressed in 0.1-milliliter increments.

Also, FDA divided 21 CFR 101.9(b)(7) into subparagraphs and made minor editorial changes to improve clarity. FSIS agreed with the changes and proposed to cross-reference 21 CFR 101.9(b)(7), except the new provision at 21 CFR 101.9(b)(7)(v).

Servings Per Container

To improve the clarity of the provisions on servings per container, FDA divided 21 CFR 101.9(b)(8) into subparagraphs and made minor editorial changes. FSIS agreed with these changes and proposed to cross-reference this section, as amended.

FSIS noted a problem in the provisions of its final regulations for declaring the number of servings per container for some individually packaged products containing at least 200 percent of the reference amount and packaged within multi-serving packages. To correct this problem, FSIS proposed to cross-reference a new provision at 21 CFR 101.9(b)(8)(v) that provides that the number of servings be determined by multiplying the number of servings per individual inner unit by the total number of inner units.

Nutrient Declarations

In order to ensure that calorie declarations are calculated with as much precision as possible, FDA amended 21 CFR 101.9(c)(1) to state that where specific or general food factors are used, the factors should be applied to the unrounded amounts of the food components. FSIS proposed to cross-reference this provision, as amended.

Because the saturated fat criterion in the definition of "lean" is a maximum of 4.5 grams or less, provisions at 21 CFR 101.9(c)(2)(i), (ii), and (iii) have been amended to require half-gram reporting increments below 5 grams for fat, saturated fat, and poly- and monounsaturated fat so that declared values on labels are consistent with the definitions of nutrient content claims. FSIS proposed to cross-reference these provisions, as amended. In addition, FSIS proposed to amend 9 CFR 317.309(d) and 381.409(d) to provide the same consistency in declared values for stearic acid.

FDA has revised 21 CFR 101.9(c)(2)(ii) and (iii), to remove the required disclosure of poly- and monounsaturated fat when fatty acid or cholesterol claims are made on products that meet the criteria for a "fat free" claim. FSIS proposed to cross-reference these provisions, as amended.

To provide consistency with the incremental rounding at 2-, 5-, and 10-percent increments required for vitamins and minerals, 21 CFR 101.9(c)(8)(vi) has been revised to require that the vitamin A that is present as *beta*-carotene is to be declared in the same increments as provided for vitamins and minerals instead of to the nearest 10-percent increment. FSIS proposed to cross-reference this provision, as amended.

FSIS also proposed to cross-reference 21 CFR 101.9(c)(8)(vi), as amended, to require that, when vitamins and minerals are arranged in a single column, the information on *beta*-carotene is to be indented under the information on vitamin A, and, when vitamins and minerals are arrayed horizontally, the declaration of *beta*-carotene is to be placed in parenthesis after the declaration of vitamin A.

Format

Section 101.9(d)(1)(ii)(D) of FDA's regulations limited the proximity of one letter to another with a numeric kerning value of −4 setting. However, there is no single numeric kerning value applicable to all type systems, and FDA has replaced the requirement to state instead that "Letters should never touch." FSIS proposed to cross-reference this provision, as amended.

FDA corrected the provision at 21 CFR 101.9(d)(1)(iii) to specify that 6-point type shall be used for all information contained within the nutrition information display, except for the heading "Nutrition Facts" which must be set in a type that is larger than all other print in the display, and for the information required at 21 CFR 101.9(d)(3), (5), (7), and (8), which must be no smaller than 8-point type. FSIS proposed to cross-reference this provision, as amended. FSIS also proposed to adopt a change made to 21 CFR 101.9(c)(8)(iii) that removes a conflicting sentence.

FSIS proposed to cross-reference the provision at 21 CFR 101.9(d)(7), as amended, to include all nutrients that can be declared in the nutrition information display, not only those that are required. The wording of the provision has been changed from "nutrients required by paragraph (c) of this section" to "nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label." The provision clarifies that the listing of some nutrients is required, and the listing of others is voluntary by inserting the word "as" before "specified."

FSIS proposed to adopt 21 CFR 101.9(d)(7)(ii) which was amended to require that the percent Daily Value (DV) for all nutrients, other than protein, be calculated by dividing either the rounded amount of the nutrient declared on the label or the actual, unrounded amount of the nutrient by the Daily Reference Value (DRV) for that nutrient. Manufacturers should use whichever value will provide for the greatest consistency on the product labeling.

FSIS believes the footnote required by 21 CFR 101.9(d)(10) stating that fat, carbohydrate, and protein furnish 9, 4, and 4 calories per gram, respectively, can create consumer confusion because the regulations allow for different methods of calculating calorie content. The provision at 21 CFR 101.9(d)(10) has been amended to make use of the footnote voluntary and 21 CFR 101.9(d)(1)(iii) and (11)(i) has been amended to delete the reference to the footnote with caloric conversion information as a requirement. FSIS proposed to cross-reference these provisions, as amended, and adopt changes to 21 CFR 101.9(d)(11)(ii) to allow for the presentation of the information described above. FSIS also proposed to amend 9 CFR 317.309(f)(3) and 381.409(f)(3) to delete reference to the footnote as required information.

FDA redesignated the provision at 21 CFR 101.9(d)(11) as 21 CFR 101.9(d)(11)(i) and added a new provision at 21 CFR 101.9(d)(11)(iii) to state that when there is insufficient continuous vertical label space, i.e., approximately 3 inches, to accommodate the required components of the nutrition information up to and including the mandatory declaration of iron, the nutrition information may be presented in a tabular display. In this display, the footnote listing DRV's for 2,000 and 2,500 calorie diets is given to the far right of the display, and additional vitamins and minerals beyond vitamin A, vitamin C, calcium, and iron are arrayed horizontally following the required vitamin and mineral declarations. A new provision has been added at 21 CFR 101.9(d)(11)(ii) that provides for an additional break to allow the continuation of the list of vitamins and minerals beyond the declaration of iron to be moved to the right, just above the footnote listing the DRV's. FSIS proposed to adopt these changes and cross-reference the amended provisions.

Because the format requirements in its final rule did not provide for listing of nutrition information within a single nutrition display for packages containing more than one food product, FSIS proposed to correct this oversight by providing for the use of an aggregate display of nutrition information in new provisions at 9 CFR 317.309(e)(2) and 381.409(e)(2). FSIS also proposed to adopt a new provision at 21 CFR 101.9(d)(14) to provide for the inclusion and display of two languages under a single "Nutrition Facts" heading.

Modified Format

FSIS proposed to amend 9 CFR 317.309(f)(1) and 381.409(f)(1) to clarify that package shape or size is the determining factor whether nutrition information may be given in a linear fashion when the tabular display cannot be accommodated. FSIS proposed to add new paragraphs at 9 CFR 317.309(f)(1)(ii) and 381.409(f)(1)(ii) to define the linear display and direct that any subcomponents declared may be listed parenthet'cally after principal components

FSIS proposed to amend 9 CFR 317.309(f)(2) and 381.409(f)(2) to include new abbreviations as follows: Calories from saturated fat—Sat fat cal; Monounsaturated fat—Monounsat fat; Polyunsaturated fat—Polyunsat fat; Soluble fiber—Sol fiber; Insoluble fiber—Insol fiber; Sugar alcohol—Sugar alc; and Other carbohydrate— Other carb.

Reference Amounts

FSIS proposed to cross-reference 21 CFR 101.12(c), as amended, to improve clarity, except for the words "but not the unprepared" referring to the form of a reference amount. FSIS does not require manufacturers to use reference amounts for unprepared forms of products when those reference amounts are contained in the tables at CFR 317.312(b) and 381.412(b).

At 9 CFR 317.312(b) and 381.412(b), Table 2.-Reference Amounts Customarily Consumed-General Food Supply, FSIS proposed to remove bagel dogs and poultry bagel dogs as examples under the product category of entrees without sauce, and at 9 CFR 317.312(b), to remove "freeze dry, dehydrated, and concentrated soup mixes" as examples under the product category of "Seasoning mixes dry" because the products are not deemed amenable to FSIS inspection.

FSIS proposed to cross-reference a new provision at 21 CFR 101.12(c)(2) that provides for a reference amount for an unprepared product that reflects the fraction of the prepared product closest to the reference amount for the prepared product for the specific product category. For example, when a product, such as a pizza kit, is used to prepare a large discrete unit, the reference amount for the unprepared product would be the amount of the pizza kit needed to make 1/8 pizza, the optional second column could provide nutrition information for 1/8 pizza, and the number of servings would be listed as 8. This approach is consistent with that for arriving at the serving size for ready-to-serve products; that is, the fraction of a large discrete unit that comes closest to the reference amount for the prepared product for the specific product category.

To ensure that the serving size declaration will not be improperly influenced by minor dense ingredients, and that the number of servings will be consistent for all ingredients, FSIS proposed to amend 9 CFR 317.312(c) and 381.412(c) by adding new paragraphs at (c)(1) and (c)(2) for bulk products and discrete units, respectively. The proposed paragraphs clarify that a "reference amount for the combined product" that consists of two or more distinct foods packaged separately within the same container, intended to be consumed together, and without established reference amounts, be derived based on the reference amount of the ingredient that is represented as the main ingredient. Other ingredients within the container are proportioned to fit the serving size of the main ingredient.

FSIS proposed to amend 9 CFR 317.312(c) and 381.412(c) to provide a procedure for determining reference amounts for products intended to be combined and consumed together and for which the combination is not listed as a reference amount at 9 CFR 317.312(b) and 381.412(b). For products with reference amounts in compatible units, the units can be directly summed. For products with incompatible units that cannot be directly summed, i.e., grams and milliliters, FSIS proposed to add a new paragraph at 9 CFR 317.312(c)(3) and 381.412(c)(3) to incorporate the approach of summing the weights of the relevant amounts of the foods that are combined to make the "reference amount for the combined product."

Nutrient Content Claims; General Principles

FDA amended the provision at 21 CFR 101.13(b) to include a new paragraph at (b)(4), which states that the use of reasonable variations in the spelling of the various descriptive terms and their synonyms, such as "hi" and "lo," are permitted provided that these variations are not misleading. FSIS proposed to cross-reference 21 CFR 101.13(b), as amended.

FSIS proposed to cross-reference 21 CFR 101.13(f), as amended, which clarifies that a nutrient content claim is required to be in type size no larger than two times the statement of identity and not be unduly prominent in type style compared to the statement of identity.

In its final rule, FSIS did not prescribe minimum type sizes for all the accompanying information for relative claims. FSIS proposed to amend 9 CFR 317.313 and 381.413 by adding a new paragraph (g) so that all information appearing on the principal display panel or the information panel will appear in letters and/or numbers not less than 1/16-inch minimum height unless otherwise specified in the nutrient content claims regulations.

FSIS proposed to cross-reference 21 CFR 101.13(j)(1)(ii)(B), as amended, except comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B) to permit comparisons to a single manufacturer's product using either the values declared in the nutrition labeling or the actual nutrient values, provided that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause confusion when compared, and that the actual modification is at least equal to the percentage specified in the definition of the claim.

Extra Lean Ground Beef

FSIS identified extra lean ground beef as one of 35 major cuts of meat products at 9 CFR 317.344 that would be used in evaluating significant participation for voluntary nutrition labeling of single-ingredient, raw meat products. FSIS proposed to amend this section by changing the name "ground beef extra lean without added seasoning" to "ground beef about 17% fat" because the term "extra lean" will no longer be applicable to the product listed at 9 CFR 317.344 after July 6, 1994. While the final rule allows the term "extra lean" to be used on individual food products containing, among other criteria, less than 5 grams of fat per reference amount customarily consumed and per 100 grams, ground beef and hamburger seldom contain this level of fat. Also, the phrase "without added seasoning" is unnecessary because ground beef containing a seasoning is not a single-ingredient product.

Nutrient Content Claims About Sugars and Salt

In its final nutrition labeling regulations, FSIS specified requirements for nutrient content claims for calories and sugars at 9 CFR 317.360 and 381.460, which cross-reference 21 CFR 101.60 for the requirements, and for sodium and salt at 9 CFR 317.361 and 381.461, which cross-reference 21 CFR 101.61 for the requirements. FDA added explicit mention of sugars at 21 CFR 101.60(a) and salt at 21 CFR 101.61(a) to clarify that the general requirements also apply to sugars and salt. FSIS proposed to cross-reference 21 CFR 101.60 and 101.61, as amended.

Criteria for Free Claims

FSIS proposed to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended, to restrict the amount of nutrient per labeled serving, as well as per reference amount customarily consumed, for "free" claims for calories, sugars, sodium, fat, fatty acids, and cholesterol.

In its final nutrition labeling regulations, FSIS defined the term "saturated fat free" at 9 CFR 317.362 and 381.462 by cross-referencing 21 CFR 101.62(c)(1). FDA changed the criterion at 21 CFR 101.62(c)(1) to require that the product contain less than 0.5 grams trans fatty acids. FSIS agreed with this change and proposed to cross-reference 21 CFR 101.62(c), as amended.

Nutrient Content Claims for Rehydrated Products

For dehydrated products that typically must be rehydrated with water before consumption, FSIS at 9 CFR 317.360, 317.361, 317.362, 381.460, 381 461, and 381.462 provides that the 50-gram criterion be based on the "as prepared" form by cross-referencing applicable provisions in 21 CFR 101.60, 101.61, and 101.62. FDA amended its regulations to extend to rehydration with diluents, such as vinegar, that have insignificant amounts of all nutrients per reference amount. FSIS proposed to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended.

Foods for Infants and Children Under 4 Years of Age

To address a conflict in nutrition labeling rules for foods intended for infants and children less than 4 years of age, FSIS proposed to amend 9 CFR 317.400(c) and 381.500(c) to state that foods represented or purported to be specifically for infants and children less than 4 years of age shall not include declarations of percent Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber. FSIS proposed additional format specifications in the amended provisions.

Packages With Less Than 12 Square Inches of Space

FSIS proposed to redesignate 9 CFR 317.400(d) and 381.500(d) as 9 CFR 317.400(d)(1) and 381.500(d)(1), respectively, and add new paragraphs at 9 CFR 317.400(d)(2) and 381.500(d)(2) to provide for the optional use of 6-point type or all uppercase type of 1/16-inch minimum height for packages with less than 12 square inches available to bear labeling and to permit a type size of 1/32-inch minimum height when packages have a total surface area to bear labeling of 3 square inches or less. Such options allow nutrition information to be presented on more packages and provides manufacturers flexibility when provision of nutrition information becomes mandatory.

Product Analyses

FSIS proposed to remove 9 CFR 381.133(b) of the poultry products inspection regulations to correct an oversight relating to product analyses. This section specifies that when labels for poultry products bear a chemical analysis, such products must be analyzed on a lot basis by an impartial laboratory to determine whether the products conform to the analysis shown. The section is now obsolete because, under the nutrition labeling regulations, companies are required to maintain records that support nutrient information and may base nutrient information on data bases and on recipe analysis using data bases, as well as on laboratory analyses. FSIS will use specific methods to analyze samples for enforcement purposes. Section 381.133(b) (9 CFR 381.133(b)) should have been removed as part of the nutrition labeling rulemaking. As noted in the proposed rule, there is no similar provision in the Federal meat inspection regulations.

Discussion of Comments

FSIS received two comments in response to the March 16, 1994, proposed technical amendments rule (59 FR 12472). Both comments were from trade associations and supported the proposed technical amendments. Two suggestions were made relating to technical issues that were not raised for comment in the proposed amendments.

One commenter requested that FSIS amend Table 2 at 9 CFR 317.312(b) and 381.412(b) to include FDA's product category of major condiments with a reference amount of "1 tablespoon" for use with meat hotdog sauce or for chili products promoted for use as a hotdog condiment. The commenter noted that FDA included hotdog chili sauce as an example of products in the category of major condiments, but did not provide information showing that nonmeat and meat hotdog chili sauces are the same type of products or are used in similar amounts.

Because no information was submitted upon which FSIS could make a determination that the USDA-regulated products should be classified as major condiments, it will not take action to modify Table 2 at this time. To the extent that manufacturers believe their products are not properly categorized, they should avail themselves of the process established in the regulations to seek to establish or amend a product category and/or reference amount.

One commenter stated that the requirements for nutrient content claims about sodium at 9 CFR 317.361 and 381.461, which cross-reference 21 CFR 101.61 for the requirements, are redundant in certain circumstances when claims are made about salt. The provisions require that when references to salt content such as "unsalted," "without added salt," or "no salt added" are made on the labeling of a product which is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" must appear on the information panel. The commenter contended that when labeling bears a reference to salt content, and also bears a "low," "very low," or "reduced" sodium content claim on the same panel, it is clear to consumers that the product is not sodium free.

While FSIS finds merit with this observation, it did not provide an opportunity for interested parties to comment on the issue in its proposed rule. Therefore, in order to ensure full public consideration of this comment, FSIS will consider taking action on the matter in future rulemaking.

After careful consideration of the comments received in response to the proposed rule, FSIS is adopting the provisions as published in the **Federal Register** on March 16, 1994 (59 FR 12472).

Paperwork Requirements

At the time FSIS published its final regulations on nutrition labeling, the Agency advised the public that the paperwork requirements contained in the final rule had been submitted to the Office of Management and Budget (OMB) for approval. FSIS is advising the public that OMB has approved the paperwork requirements under control number 0583-0088.

The OMB control number must be included as part of the regulatory language of each section that contains a paperwork requirement. Therefore, a statement identifying the OMB control number that signifies approval of the paperwork requirements has been added to the end of 9 CFR 317.309, 317.312, 317.369, 381.409, 381.412, and 381.469.

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule clarifies and improves understanding of certain provisions of the nutrition labeling regulations. The Administrator finds that this final rule will result in positive benefits because it will enable official establishments to more easily comprehend the regulations and facilitate their implementation. The final rule will not impose any new requirements on the affected establishments. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or information. Therefore, most small establishments will not be affected by this final rule.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

2. Section 317.309 is amended by revising paragraphs (a)(1), (a)(3), (a)(6), (d), (e), (f)(1), (f)(2), and (f)(3), and by adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 317.309 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b)(1) and (2), except (b)(2)(i), and 21 CFR 101.9(b)(6) through (9), except (b)(7)(v).

* * * * *

(3) For products in discrete units (e.g., hot dogs, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category.

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size.

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit.

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliters) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 317.312(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 317.309 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., 1/4 pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in 1/4- or 1/3-cup increments, tablespoons in whole number of tablespoons for quantities less than 1/4 cup but greater than or equal to 2 tablespoons (tbsp), 1, 1 1/3, 1 1/2, or 1 2/3 tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in 1/4-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., chop, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 317.309(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., ham with a glaze packet), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2)(ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 317.312(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9(d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of meat products that contain two or more meat products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., meat salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size
Servings per container	Servings
Calories from fat	Fat cal
Calories from saturated fat	Sat fat cal
Saturated fat	Sat fat
Monounsaturated fat	Monounsat fat
Polyunsaturated fat	Polyunsat fat
Cholesterol	Cholest
Total carbohydrate	Total carb
Dietary fiber	Fiber
Soluble fiber	Sol fiber
Insoluble fiber	Insol fiber
Sugar alcohol	Sugar alc
Other carbohydrate	Other carb

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088)

3. Section 317.312 is amended by revising paragraphs (a) and (c), and by adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 317.312 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12 (a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

* * * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., lunch meat with cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088)

4. Table 2 in § 317.312(b) is amended by removing the words "bagel dog" from the Product Category "Entrees without sauce" and by removing the words "freeze dry, dehydrated, and concentrated soup mixes" from the Product Category "Seasoning mixes dry."

5. Section 317.313 is amended by adding paragraph (g) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 317.313, 317.354, 317.356, 317.360, 317.361, 317.362, and 317.380, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

§ 317.344 [Amended]

6. Section 317.344 is amended by replacing the words "ground beef extra lean without added seasoning" with the words "ground beef about 17% fat."

7. Section 317.369 is amended by adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 317.369 Labeling applications for nutrient content claims.

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088)

8. Section 317.400 is amended by revising paragraphs (c) and (d) to read as follows:

§ 317.400 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 317.309(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labeling for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of 1/16-inch minimum height, except that individual serving-size packages of meat products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than 1/32-inch minimum height.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

9. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.133 [Amended]

10. Section 381.133 is amended by revising the section title to read "Requirement of formulas," by removing the paragraph (a) designation of the first paragraph, and by removing paragraph (b).

11. Section 381.409 is amended by revising paragraphs (a)(1), (a)(3), (a)(6), (d), (e), (f)(1), (f)(2), and (f)(3), and adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 381.409 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b)(1) and (2), except (b)(2)(i), and 21 CFR 101.9(b)(6) through (9), except (b)(7)(v).

* * * * *

(3) For products in discrete units (e.g., chicken wings, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category;

(ii) If a unit weighs more than 50 percent but less than 67 percent of the

Reference Amount, the manufacturer may declare one unit or two units as the serving size;

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit;

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 381.412(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 381.409 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., 1/4 pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in 1/4- or 1/3-cup increments, tablespoons in whole number of tablespoons for quantities less than 1/4 cup but greater than or equal to 2 tablespoons (tbsp), 1, 1 1/3, 1 1/2, or 1 2/3 tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in 1/4-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., wing, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 381.409(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., chicken wings and barbecue sauce), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2) (ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 381.412(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9(d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of poultry products that contain two or more poultry products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., poultry salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size
Servings per container	Servings
Calories from fat	Fat cal
Calories from saturated fat	Sat fat cal
Saturated fat	Sat fat
Monounsaturated fat	Monounsat fat
Polyunsaturated fat	Polyunsat fat
Cholesterol	Cholest
Total carbohydrate	Total carb
Dietary fiber	Fiber
Soluble fiber	Sol fiber
Insoluble fiber	Insol fiber

Sugar alcohol	Sugar alc
Other carbohydrate	Other carb

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088.)

12. Section 381.412 is amended by revising paragraphs (a) and (c), and by adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 381.412 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12 (a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

* * * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., poultry lunch meat with cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088.)

13. Table 2 in § 381.412(b) is amended by removing the words "poultry bagel dogs" from the Product Category "Entrees without sauce."

14. Section 381.413 is amended by adding paragraph (g) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 381.413, 381.454, 381.456, 381.460, 381.461, 381.462, and 381.480, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

15. Section 381.469 is amended by adding the OMB control number for paperwork requirements at the end of the section to read as follows:

§ 381.469 Labeling applications for nutrient content claims.

* * * * *

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088.)

16. Section 381.500 is amended by revising paragraphs (c) and (d) to read as follows:

§ 381.500 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 381.409(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labeling for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of $^1/_{16}$-inch minimum height, except that individual serving-size packages of poultry products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than $^1/_{32}$-inch minimum height.

Done at Washington, DC, on: August 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–21577 Filed 8–31–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–39]

Establishment of Class D and Modification of Class E Airspace; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class D and modifies Class E airspace at Eagle, Colorado. An airport traffic control tower (ATCT) has been commissioned at Eagle County Regional Airport. The intended effect of this action is to provide adequate Class D airspace for instrument flight rules (IFR) operations, require two-way communications, and provide adequate Class E airspace for instrument approach procedures at Eagle County