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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

[No. LS–94–009]

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule, postponement of effective date.

SUMMARY: This document postpones the effective date of the final rule (61 FR 2891–2898) to revise the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle from July 1, 1996, until January 31, 1997. Upon the effective date, the changes eliminate ''B'' maturity (approximately 30–42 months of age) carcasses with small or slight marbling degrees from the Choice and Select grades and include them in the Standard grade. This action is being taken because carcasses with these characteristics have been shown to be both variable and often unacceptable in palatability, which contributes significantly to inconsistent palatability of Choice and Select grade beef. The standards for grades of slaughter cattle, which are based on the beef carcass grades, are revised to parallel the changes in the beef carcass grade standards. The extension of the effective date is in response to several requests asking for additional time to make needed adjustments to management strategies in order to respond to the grade change.

EFFECTIVE DATE: The effective date of the final rule is postponed from July 1, 1996, to January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Herbert C. Abraham, Chief, Livestock and Meat Standardization Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456, 202/720–4486.

SUPPLEMENTARY INFORMATION: On January 19, 1995, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, under authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), published a proposed rule (60 FR 3982–3986) to revise the official U.S. standards for grades of carcass beef and the related slaughter cattle standards by eliminating ''B'' maturity (approximately 30–42 months of age) carcasses with small or slight marbling degrees from the Choice and Select grades and including them in the Standard grade. In consideration of the over 400 written comments received on the proposal, and all other available information, the proposed rule was adopted and a final rule was published on January 30, 1996, (61 FR 2891–2898). To allow the industry time to adjust its production and marketing practices and to market beef currently in the pipeline, implementation was scheduled for July 1, 1996.

Since the publication of the final rule, AMS has received several requests from several State cattle associations, a national packer organization, and several members of Congress to delay the effective date. The requests for a delay primarily focused on the belief that it is in the industry's best interest to provide a ''full'' adjustment period of 18 months prior to implementation, which they indicated was provided for in the AMS economic analysis. They stated this would allow the industry to better adjust management strategies to conform to the new revised standards. In the published final rule, the Department did not conclude that an 18-month adjustment period was necessary prior to implementation of the changes. The reference to an 18-month period in the final rule was one of the periods of time after implementation used to calculate the economic impact of the changes rather than a period of time for delaying implementation. It was concluded that during the 18-month period following implementation, there would be a net positive impact of $86-million if only 25 percent of the B-maturity carcasses were eliminated through improved management practices. Greater benefits would accrue if more than 25 percent of the B-maturity carcasses were eliminated. A 5-month period prior to implementation was provided so many of the cattle now in feedlots could be marketed before the changes became effective. Although an 18-month adjustment period was never intended, AMS recognizes there may be some confusion about establishment of the implementation date, and that implementation of the changes at a time of large beef supplies and high grain prices may not be in the best economic interest of the industry. Consequently, AMS has decided to delay implementation of the beef grade changes. Although the sooner that changes in production and management practices are implemented, the greater the total benefits to the entire beef industry, AMS recognizes that there are some situations where short-term economic losses might occur and this additional delay should allow market forces to adjust by the implementation date. The delay in no way prevents cattle producers and feeders from adopting new management strategies at this time to minimize the production of B-maturity carcasses.

Therefore, the effective date of the final rule that was published at 61 FR 2891–2898 on January 30, 1996, is postponed until January 31, 1997.

Authority: 7 U.S.C. 1621–1627.

Dated: April 24, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–10712 Filed 4–30–96; 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 369]

RIN 0584–AC08

Food Stamp Program: Failure to Comply with Federal, State, or Local Welfare Assistance Program Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program regulations to prohibit an increase in food stamp benefits when a household's benefit from another

Federal, State or local means-tested assistance program decreases as a result of a penalty imposed on the household for intentionally failing to comply with a requirement of the other program. This regulatory change is necessary to more fully implement congressional intent that the Food Stamp Program reinforce, not mitigate, another program's penalties.

EFFECTIVE DATE: This final action is effective May 31, 1996. State agencies must implement no later than November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Questions regarding the rulemaking should be addressed to Margaret Batko, Supervisor, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Ms. Batko may also be reached by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rulemaking has been determined to be significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. The rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service (FCS), has certified that this action would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients who intentionally fail to comply with other Federal, State or local welfare assistance program requirements. The rulemaking also affects State and local welfare agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This rulemaking does not contain additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Section 164 of the Food Stamp Act Amendments of 1982 (Pub. L. 97–253, Title I, Subtitle E, Sept. 8, 1982) amended Section 8 of the Food Stamp Act of 1977 (Act) to add a new paragraph (d) which prohibits an increase in food stamp benefits due to a decrease in household income resulting from a penalty levied by a Federal, State, or local welfare or public assistance program for an intentional failure to comply with the other program's requirements. 7 U.S.C. 2017(d). Currently, the regulations at 7 CFR 273.11(k) limit the prohibition against increasing food stamp benefits to situations in which a household's welfare or public assistance benefits have been reduced because of agency recoupment. If the recoupment was precipitated by a finding of an intentional program violation, food stamp eligibility and benefit levels are calculated without regard for the amount of the reduction in assistance due to the recoupment. On

August 8, 1995, at 60 FR 40311, we proposed to expand the current prohibition on increases in food stamp benefits to include all situations in which a decrease (reduction, suspension or termination) in assistance income occurs as a result of a penalty being imposed for an intentional failure to comply with a Federal, State, or local welfare or public assistance program requirement. The proposal provided that State agencies would calculate food stamp benefits using the benefit amount which would have been issued by the other program if no penalty had been applied against that program's benefit amount.

Comments on the proposed rulemaking were solicited from interested parties for 45 days. A total of 30 comment letters were received; 26 from State and local welfare agencies, three from legal aid groups, and one from the general public. All letters which specifically addressed the provisions of the proposed rulemaking were considered in developing the final rule. The remaining sections of the preamble address the significant issues raised by commenters.

State welfare agencies generally supported the proposed rule but had varying degrees of concern relative to: the lack of a definition of ''intentional failure to comply''; what constitutes a penalty; and the food stamp benefit calculation procedure. The legal aid groups opposed the provision stating concern about the impact on the nutritional levels of children and lack of due process protection for the affected households.

Who Does the Provision Apply To?

The proposed rule specified that the expansion in the prohibition on increases in food stamp benefits based on a reduction in income from assistance programs would apply to acts of intentional noncompliance with Federal, State, or local welfare or public assistance programs which are means-tested and distribute publicly funded benefits. Historically, we have always made a distinction between welfare or public assistance programs and other types of Federal, State or local programs by categorizing welfare and public assistance programs as ''means-tested'' programs. It has come to our attention that there may be Federal, State or local programs in existence which are means-tested but are not generally considered to be welfare or public assistance. Therefore, it is not enough to provide that this rule affects ''means-tested'' programs only. The final clarifies that the provision only applies to means-test programs governed by welfare or public assistance laws or regulations.

One commenter asked that the final provision be revised to require that individuals who are receiving Social Security Disability Insurance (SSDI) payments because of drug addiction and/or alcoholism and who do not comply with Federal treatment requirements be covered by the final rule. Since SSDI is not means-tested

assistance or generally considered to be welfare or public assistance, the final rule would not apply when a reduction in SSDI benefits occurs for failure to comply with a Federal treatment program requirement. We believe it would not be administratively permissible to create an exception for this particular benefit program situation without express congressional direction.

At least one State agency and the legal aid groups recommended that the term ''intentional'' be defined. Some of these commenters also recommended that we require the other Federal, State and local agencies to use clear and convincing evidence in making a determination of intentional noncompliance or that the food stamp caseworker be required to at least take into consideration the Food Stamp Program's ''good cause'' provisions prior to taking action to prohibit an increase in food stamp benefits.

As stated in the preamble of the proposed rulemaking, the Food Stamp Program will not be involved in the determination of whether or not an individual intentionally failed to comply with another program's requirement and whether or not there was good cause for the noncompliance. It should be noted, however, that a State or local worker may be responsible for many of the other welfare or public assistance programs. Thus, it is conceivable that such worker may be directly/indirectly involved in the determination of intentional failure to comply with another program's requirements. For the purpose of determining individual food stamp benefit levels, we intend that food stamp workers only verify if a known decrease in a household's benefits under another welfare or public assistance program is due to a determination by the other program of intentional failure to comply. If the determination is not specifically identified by the other program as an ''intentional'' failure to comply, the prohibition on increased food stamp benefits would not apply.

One commenter recommended that the word ''intentional'' be dropped from the final rule so that it would apply to all acts of noncompliance. Another commenter also stated that the prohibition on increases in food stamp benefits should apply to any act of noncompliance provided there are appropriate opportunities to establish good cause and to ensure that the household was aware of the obligation before sanctions were imposed. We do not have the discretion to expand the coverage of the prohibition to any act of noncompliance. Section 8(d) of the Act applies only to acts of intentional failure to comply with another welfare or public assistance program's requirements. These commenters may be interested to know that there is pending legislation being considered by Congress that, if passed, would expand the coverage of Section 8(d) to include any act of noncompliance.

One commenter noted that penalties for noncompliance with certain child support enforcement provisions do not result in actual reductions of benefits; instead, the penalty imposed is a denial of benefits. For example, the Aid to Families with Dependent Children (AFDC) program in some States requires that an unmarried parent identify a child's other parent. If the applicant-parent refuses to provide the requested information, benefits are denied. The commenter suggested that § 273.11(k) be applied to these situations. In the scenario suggested by this commenter, household income for purposes of determining eligibility for food stamp benefits would be the amount of AFDC the household would have received had the household provided the requested information.

We do not have the discretion to adopt this suggestion. The language of section 8(d) of the Act provides that there be no increase in food stamp benefits when benefits under another Federal, State or local welfare or public assistance program are *decreased* due to intentional noncompliance. It is clear from the statutory language that Congress' intent was to limit the application to situations where benefits are being received and then decreased due to an intentional act of noncompliance. In the suggested situation benefits are never received so they can not be decreased. However, there is pending legislation under consideration by Congress that would make compliance with child support enforcement requirements a condition of eligibility for food stamp benefits.

In reviewing comments on who the provision should apply to, it came to our attention that in the preamble of the August 8 proposed rule we made reference to welfare assistance and public assistance interchangeably. Yet we inadvertently failed to include a reference to public assistance in the actual regulatory text of the proposed rule. We are correcting this oversight in this rulemaking. In addition, the final rule clarifies that State agencies shall define what constitutes a welfare assistance program or a public assistance program. The only requirement for the State agency selection of appropriate programs is that they be means-tested and distribute public funds.

How Should the Provision Be Applied?

Household vs. Individual

One commenter noted that AFDC programs in certain States allow State agencies to terminate cash assistance to not only an individual who has failed to comply with program requirements, but also to other household members. This commenter recommended that the prohibition on increases in food stamp benefits for deceases in other types of assistance be limited to that part of the welfare benefit decrease representing the benefit share of the individual who intentionally failed to comply, not the entire household's benefits. We are not adopting this suggestion. It is clear from the language of the Act that the prohibition on increased food stamp benefits required by Section 8(d) applies to a household and not simply individual household members. We do not have the authority to create regulatory distinctions in conflict with the express language of the Act.

Family Cap

Some State agencies are implementing welfare reform programs which include a ''family cap'' requirement. The family cap requirement provides that if an individual has another child while receiving assistance under the program, the family will not receive an increase in assistance for the additional child. One commenter suggested that some State agencies may consider the act of having the additional child to be an ''intentional failure to comply'' with the rules and regulations of the assistance program. This commenter claimed that under the terms of the August 8 proposed rule, an increase in food stamp benefits for the additional member would not be allowed. This commenter suggested that we modify the proposed rule to allow increases in food stamp benefits in these situations regardless of State penalties.

The commenter misinterpreted the intent and impact of the proposed rule. In the situation noted by the commenter, the family's current assistance would not be decreased; rather, the family would not be entitled to increased assistance for the additional member. The proposed rule specifically stated that the prohibition on increased food stamp benefits would not apply in situations where the household's benefits under another program are frozen at the current level due to an act of intentionally failing to comply with a requirement of that program.

Food Stamp Program Work Sanctions

Current rules at 7 CFR 273.7(g)(2) provide that individuals who fail to comply, whether intentionally or not, with a work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement, where such work requirement is comparable to a food stamp work requirement, shall be treated as though the individual had failed to comply with the food stamp requirement and the client shall be subject to a food stamp penalty. One commenter questioned if the August 8 proposed rule would take precedence over 7 CFR 273.7(g)(2). It would not. The provision at 7 CFR 273.7(g)(2) imposes a food stamp sanction for noncompliance with certain work requirements. The proposed changes to 7 CFR 273.11(k) would have prevented an increase in food stamp benefits when a household was sanctioned by another Federal, State or local means-tested welfare or public assistance program for noncompliance. We have revised the final rule to clarify that § 273.11(k) does not apply in cases where individuals or households are sanctioned for noncompliance with a food stamp work requirement pursuant to 7 CFR 273.7(g)(2).

Administrative Problems

Some commenters claimed that they would not be able to comply with § 273.11(k) in situations involving intentional failures to comply with the requirements for receiving Supplemental Security Income (SSI) benefits because SSI benefits are not determined by the State or local welfare agency. These commenters believe they will not receive cooperation from SSI offices in obtaining the necessary information. One commenter suggested exempting SSI from the programs covered by § 273.11(k). Another commenter suggested we incorporate § 273.11(k) a mandate that the necessary information be included in the SDX data base maintained by SSA.

Section 8(d) of the Act does not provide us with the latitude to treat SSI differently than other means-tested welfare or public assistance programs. Further, the statute does not give us the latitude to require adjustments in the SDX data base. States and localities will have to work with all the associated programs to share the information necessary to comply with the requirements of this final rule. However, we do recognize that the other agencies may not cooperate in providing the necessary information, or cannot do so due to information disclosure laws. Therefore, we are amending the final rule to provide that if a State agency is unsuccessful in obtaining information from another program necessary to enable it to comply with this rulemaking, the State agency will not be held responsible for such noncompliance.

Most commenters believed the requirements of the August 8 proposed rule would be too complex to administer, would result in the need to make costly changes to computer systems, and would be prone to error. Alternatives suggested by commenters included: Allowing State agencies an option to implement or not implement the provision; allowing State agencies to implement in a manner which works best for the State—such as allowing a State option to determine what constitutes a penalty; or allowing a State option to use a standard amount to be deemed as food stamp income through the duration of the penalty period imposed by the other program; or allowing a State to impose the same penalty against food stamp benefits as imposed against the benefits of the other program; or allowing a State agency to freeze the amount of the benefits under the affected program through the duration of the penalty.

We cannot allow a State agency to choose not to implement § 273.11(k). Section 8(d) of the Act clearly *mandates* that there will be no increase in food stamp benefits when a household's benefits under another program are decreased due to an intentional failure to comply with a requirement of that program. This rulemaking expands on the current provision to more fully reflect congressional intent.

We also cannot adopt the suggestion of allowing a State agency to impose the same penalty against the food stamp benefit as was imposed against benefits under the program in which the noncompliance occurred. The statute does not provide an option to reduce, suspend or terminate the household's current food stamp benefit level; the statute only prohibits an increase in food stamp benefits for noncompliance with another program's requirements. However, pending legislation, if passed as currently written, would provide such flexibility to a State agency.

While we cannot adopt some of the alternatives suggested by commenters, some of the other alternatives mentioned may be more feasible and cost-effective than our proposed procedures. In the interest of State flexibility and our intent to eliminate prescriptive regulations where possible, we are revising the final provision to allow State agencies to implement the prohibition on food stamp benefit increases in a manner which works best for that State. However, to ensure that State agencies implement the provision within the confines of the current statutory parameters, we are revising proposed § 273.11(k) to include the following minimum requirements:

1. State agencies shall apply § 273.11(k) to prevent increases a household's food stamp benefits when benefits under another Federal, State or local means-tested welfare or public assistance program are decreased (reduced, terminated, or suspended) due to a determination by the other program of an act of intentional failure to comply with a requirement of such program. Section 273.11(k) does not apply with regard to cases of noncompliance which meet the requirements of 7 CFR 273.7(g)(2). If the State agency is not successful in obtaining the necessary cooperation from the other program to enable it to comply with the requirements of § 273.11(k), the State agency shall not be held responsible for noncompliance so long as the State agency has made a good faith effort to obtain the information.

2. State agencies shall not reduce, suspend or terminate a household's current food stamp benefit level when the household's benefits under another means-tested welfare or public assistance program have been decreased due to an intentional failure to comply with a requirement of that program, except as provided at 7 CFR 273.7(g)(2).

3. State agencies must adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the member under another Federal, State or local means-tested welfare or public assistance program.

4. Changes in household circumstances which are not related to a penalty imposed by another Federal, State or local means-tested welfare or public assistance program shall not be affected by this provision.

Cases of Recoupment and Reduction

One commenter noted that the proposed rule implied that it only applied in situations where overissued benefits received due to intentional noncompliance with a program requirement are being recouped or a reduction in benefits is being applied as a fiscal penalty for intentional noncompliance. This commenter questioned how food stamp benefits would be calculated in situations in which a household is subject to both a recoupment and a reduction for the same act of intentional noncompliance.

As stated earlier, the final rule will allow State agencies to implement the provision in a manner which works best for that State agency. Thus, State agencies would establish their own procedures to address this situation.

Notice to Clients

The legal aid groups that commented believed that households affected by application of § 273.11(k) should receive a food stamp notice from State agencies explaining why their food stamp benefits are not going up, and informing them that they are entitled to a hearing on the issue of whether their program violation was intentional.

Current regulations at 7 CFR 273.13 require State agencies to provide households with timely and adequate notice when reducing or terminating food stamp allotments. Section 273.11(k) does not result in a reduction, termination, or suspension of a household's current food stamp benefit amount. Thus, State agencies are not obligated to provide a notice of adverse action or adequate notice. However, the State agency may provide such a notice at its option.

Additionally, a household would not be entitled to a separate and distinct food stamp fair hearing on the issue of intent. The determination of intentional failure must be made by the other program for the food stamp prohibition to take affect. A separate and distinct food stamp fair hearing to appeal another program's determination of intent would place the Food Stamp Program in a position of second guessing another program's determination. Of course, a State or local worker who deals with multiple welfare or public assistance programs may be directly or indirectly involved in the initial determination of intent or client appeal of such determinations.

Several commenters raised concerns about how to calculate the food stamp benefit in situations where the person's benefits from another program are suspended or terminated due to an intentional failure to comply, especially in cases of long periods of suspension or indefinite termination of benefits. The commenters were particularly concerned about cases for which benefits are terminated indefinitely and the recipient never reapplies for those program benefits again. They felt that it would be virtually impossible to track such cases. One commenter suggested exempting such cases from the provision. Another commenter recommended placing a time limit on the prohibition on increased food stamp benefits in § 273.11(k) for such cases. Still another commenter recommended limiting the application of § 273.11(k) to the time it takes to repay the overpayment or to the time the recipient begins to cooperate, whichever is less.

Section 8(d) of the Act clearly states that the prohibition against increasing food stamp benefits shall apply for the duration of the penalty imposed by the welfare or public assistance program. Therefore, we do not have the discretion to allow State agencies to place time restrictions on the application of § 273.11(k). Moreover, we do not agree that cases with long penalties should be exempt from the prohibition. Generally, the more serious the act of intentional noncompliance, the more serious the fiscal penalty and/or the longer the penalty period. To do as the commenter has asked would result in the more serious cases of intentional noncompliance receiving an increase in food stamp benefits, while persons still receiving benefits even though reduced for a much lesser degree of intentional noncompliance could not receive an increase in food stamp benefits.

Implementation

The proposed rule provided that State agencies would be required to implement the rule when final on the first day of the first month beginning 120 days after publication of the final rulemaking. The 120-day time period between publication and required implementation was proposed to provide State agencies with sufficient lead time to reprogram or train employees before implementing the new Program requirement. It has come to our attention that some State agencies may be able to implement sooner and would like to do so while other State agencies believe the lead time is too short. We agree that State agencies should have the flexibility to either implement soon after publication or to have more lead time. Accordingly, this final rule provides that State agencies must implement § 273.11(k) ''no later than'' 210 days from the date of publication in the Federal Register.

In addition, one commenter asked if we intend that § 273.11(k) apply to pending cases of intentional failure to comply with another program's requirements. The final rule also clarifies that § 273.11(k) only affects those cases where a pertinent decrease in the household's benefits from another program occurs on or after the effective date of this final rulemaking.

Some State agencies commented that their computer systems are designed to automatically update food stamp benefits when public assistance benefits change. Until their computers can be reprogrammed, the State agencies would have to manually bypass this automatic update process which will increase administrative burden and result in errors. These commenters suggested that variances in food stamp allotments due to this regulation be excluded from the quality control error determination. In accordance with Section 16(c)(3) of the Act, variances resulting from implementation of a new rule change are excluded from error analysis for 120 days from the required implementation date of the rule change. Some State agencies may implement earlier than the required implementation date, in such cases the 120-day count begins on the actual date of implementation by the State agency. We do not have the discretion to exclude variances for a longer period of time. State agencies which plan to implement earlier than the required date are reminded to follow the procedures at 7 CFR 275.12(d)(2)(vii)(A).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 272.1, a new paragraph (g)(145) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(145) *Amendment No. 369.* The provisions of *Amendment No. 369* are effective May 31, 1996. State agencies must implement no later than November 27, 1996. The provisions of this amendment are applicable for determinations of intentional failure to comply made on or after the effective date of the amendment.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.9 [Amended]

3. In § 273.9, the second sentence of paragraph (b)(5)(i) is amended by removing the words ''for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements''.

4. In § 273.11, paragraph (k) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(k) *Failure to comply with another assistance program's requirements.* A State agency shall not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds, have been decreased (reduced, suspended or terminated) due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This provision does not apply in the case of individuals or households subject to a food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). State agency procedures shall adhere to the following minimum conditions:

(1) This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information.

(2) A State agency shall not reduce, suspend or terminate a household's current food stamp allotment amount when the household's benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.

(3) A State agency must adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means-tested program.

(4) Changes in household circumstances which are not related to a penalty imposed by another Federal, State or local welfare or public assistance means-tested program shall not be affected by this provision.

Dated: April 23, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–10786 Filed 4–30–96; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–5FR]

Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes, for the 1996 season only, the quality requirements for California nectarines and peaches. This rule establishes a ''CA Utility'' quality requirement, based on minimum quality standards established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. This final rule also requires that containers of nectarines and peaches meeting the ''CA Utility'' quality requirement be clearly marked ''CA Utility.'' This final rule will allow more nectarines and peaches into fresh market channels, and is designed to benefit growers and consumers.

EFFECTIVE DATE: This final rule becomes effective May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the orders. The orders 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 final rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and 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 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 to review the Secretary's ruling on the petition, provided an action 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 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 about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. 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