

applicable, may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole dry, or nonfat milk in the preparation of the lunch.

7. Paragraph (f) of § 210.10 is amended to read as follows:

§ 210.10 Requirements for lunches.

(f) In American Samoa, Puerto Rico, and the Virgin Islands, schools may serve a starchy vegetable, such as yams, plantains, or sweet potatoes, to meet the bread/bread alternate requirement.

8. Paragraph (i) of § 210.10 is amended to read as follows:

§ 210.10 Requirements for lunches.

(i) The Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, has established a meal pattern which is consonant with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The requirements for that pattern are attached to and made a part of the written agreement required under § 210.3.

9. A new paragraph (f) is added to § 210.14 to read as follows:

§ 210.14 Special responsibilities of State agencies.

(f) *School Food Authorities with poor management practices.* In a School Food Authority where the State agency, or FNSRO where applicable, has found poor food service management practices leading to (1) decreasing or low student participation and/or (2) poor student acceptance of the Program or of foods served, the State agency, or FNSRO where applicable, in cooperation with the School Food Authority, shall develop, implement, and monitor a system to improve the School Food Authority's management practices. Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time: (1) Do not favorably accept a particular menu item; (2) return foods; or (3) under paragraph (4) of § 210.10, choose less than all five food items. The system to improve the School Food Authority's food service management practices shall include the promotion of student and parent involvement in program activities. This student and parent

involvement shall be designed to assist in the correction of the School Food Authority's particular management problems and shall be in addition to the general requirement of student and parent involvement for all School Food Authority set forth in § 210.9a(a).

10. The language under "Milk, Fluid" in the table, "School Lunch Pattern Requirements" in § 210.19b is amended to read as follows:

§ 210.19b Field testing and interim lunch patterns.

Unflavored fluid lowfat milk, skim milk, or buttermilk must be offered as a beverage. If a school serves another form of milk (whole or flavored), it must offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice.

(Catalog of Federal Domestic Assistance No. 10.555)

Authority.—Sec. 9, Pub. L. 79-396, 60 Stat. 233, (42 U.S.C. 1758(a)).

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from the person identified in the "address" section above.

Dated: August 10, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-25220 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 220

[Amdt. 29]

School Breakfast Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the School Breakfast Program regulations to accomplish the following: (1) changes the designation "especially needy school" to "school in severe need" pursuant to section 12 of Pub. L. 95-166; (2) establishes minimum eligibility criteria for States to use in determining schools in severe need pursuant to section 6(c) of Pub. L. 95-627; (3) allows program costs for severe need schools to be determined at the School Food Authority level; and (4) clarifies the reimbursement formula for School Food Authorities which include schools with and without severe need. The first and

second changes are required by Public Law 95-166 and the Child Nutrition Amendments of 1978 (Pub. L. 95-627), and the third and fourth changes clarify the regulations to reflect current cost accounting methods.

EFFECTIVE DATE: This rule shall be effective as of July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret Glavin, Director, School Programs Division, USDA-FNS, Washington, D.C. 20250 (202) 447-8130.

SUPPLEMENTARY INFORMATION: On January 26, 1979 there was published in the Federal Register (44 FR 5449) a proposed amendment to the regulations to implement the severe need provisions of Pub. L. 95-166 and Pub. L. 95-627.

These changes are designed to provide greater national consistency of severe need determination, more efficient program operation, and inducement for increased participation by schools in the School Breakfast Program.

Interested persons and groups were given 60 days in which to submit comments, suggestions or objections regarding the proposed amendment. A total of 14 comments were received by the close of the official comment period, March 27, 1979. Two of these comments fully supported the proposal, while the remaining comments objected to one or more components of the proposal and most offered alternative suggestions.

Changes in Terminology

Two commentators objected to the term "schools in severe need" as having a negative connotation. This term is included in the authorizing legislation and is retained in the final rule as a technical amendment.

Rate Assignment

Two commentators expressed concern that State agencies and local officials do not fully understand that State options for reimbursement rate assignment differ from the National School Lunch Program (NSLP) to the School Breakfast Program (SBP). Under the NSLP, schools may be assigned rates of reimbursement in excess of the National Average Payment (NAP) factors in effect at the time as long as the statewide average payment for all lunches served does not exceed the NAP factors. Thus, if a school is assigned a reimbursement in excess of the NAP factors, it becomes necessary for another school within the State to earn at a rate less than the NAP factors. This is not the case with the School Breakfast Program. Under the SBP, a school not determined to be in severe need may not be assigned rates

of reimbursement in excess of the NAP factors for breakfast. Only those schools determined to be in severe need may be assigned rates of reimbursement in excess of the NAP factors. However, only those breakfasts served in, and payments received by, schools not determined to be in severe need are included in the computation of the State's NAP earnings. Thus, the assignment of reimbursement rates in excess of NAP factors to a school determined to be in severe need *does not* necessitate that reimbursement rates assigned to schools not determined to be in severe need be less than the NAP factors. While FNS does not dispute that misunderstanding may exist in some cases, a detailed technical discussion of this point is not appropriate to this rule change and has not been included in the final rule.

Implementation Date

One commentator requested that the implementation date be delayed sufficiently to accommodate any change necessary in the State computer system. The legislative mandate for this change was enacted in November 1978 and these criteria were included in the guidance for the State Plan for fiscal year 1980; therefore, the effective date of this rule will remain July 1, 1979.

State Plan

One commentator suggested that this section refer to Part 210.4a regarding State Plans. Such a reference was included in the proposed rule and is retained in the final rule.

Eligible Schools

The proposed amendment would have made two categories of schools eligible for additional reimbursement when regular per meal reimbursement did not cover costs: (1) schools required by State law to serve breakfast and (2) schools which have a high number of needy children as defined by State criteria. The minimum State criteria is set by Pub. L. 95-627 at 40 percent of a school's lunches served free or at a reduced price in the second preceding year.

In addition to the above explicit requirements of the law, the Department proposed to extend severe need reimbursement to schools which serve a high number of needy children but which did not have a lunch program in previous years upon which a forecast of participation by needy children could be made. Congressional intent is clearly to offer incentives for the expansion of the breakfast program, particularly in areas of economic need. Although the

percentage of free and reduced price lunches served is a good indication that needy children will be reached in a breakfast program, administrators must rely on alternate guidelines when lunch statistics are not available. The regulations as proposed allowed alternative bases upon which a determination of need might be made in the absence of such data.

Two commentators wanted the inclusion of all schools with a State mandated breakfast program as being eligible for severe need rates. Two other commentators wanted the inclusion of all schools which served 40 percent of lunches free or at a reduced price in the second preceding year. Three commentators objected to the use of two year old participation data as a basis for eligibility and suggested that more recent data be used, if available. Public Law 95-627 provides that States are to use data including data from the second preceding school year in determining a school's eligibility for severe need funds. Therefore schools determined to be eligible on the basis of that data cannot be denied severe need status. However, if a school is not eligible based on data for the second preceding school year, but is eligible based on data for the first preceding school year or the present school year it will be eligible for participation. The Department considers this to be in accordance with the statute and the Congressional intent.

Two commentators objected to the mandated minimum of 40 percent of lunches served free or at a reduced price, suggesting that a minimum of 25 percent be required. One commentator suggested that such a minimum was required by the order issued in *Charette vs. Bergland* (Civil Action No. CA 76-0145). In fact, this order required that each State, as part of its State Plan of Child Nutrition Operations, report its definition of "schools in need of a breakfast program". These criteria by regulation (§ 210.4a), must include, as a minimum, all schools in which 25 percent of the enrollment is eligible for free or reduced price meal service. This order (and the ensuing regulations) was intended to mandate priority groups of schools to be included in a State's breakfast expansion plan. Amendment 30 to 7 CFR Part 210, which was published in the *Federal Register* on January 26, 1979 (44 FR 5387), amends 7 CFR 210.4a to comply with this order. However, this rule change regarding severe need eligibility is intended to implement legislative mandates concerning the eligibility of certain schools for severe need reimbursement rates. These rates are available to assist

schools in meeting the State's criteria and in need of *extra revenue* to support the program. Thus, the two criteria address entirely different aspects of the breakfast program. The 40 percent minimum criterion for severe need reimbursement rates is mandated by the legislation and is retained in the final rule.

Three commentators suggested that the 40 percent criterion apply to breakfast, rather than lunch, service. This is in conflict with the language of the law and is not included in the final rule.

One commentator suggested that the proposed rule was not sufficiently clear as to the State's option to adopt a minimum eligibility factor lower than 40 percent. The final rule clarifies this option.

One commentator suggested that the guidelines mandate that a minimum percentage of schools in each State be certified as being in severe need. This is contrary to the legislative intent of establishing national minimum eligibility standards and is therefore not included in the final rule.

One commentator suggested Congress intended that each of the three criteria (State mandated program, high incidence of needy children, and excessive breakfast costs) stand alone in determining eligibility for severe need rates. However, Pub. L. 95-627 clearly provides that each of the first two be considered only in conjunction with breakfast program costs. In any event, program reimbursement may not exceed program costs, thus requiring that costs be considered in conjunction with any other criteria. Therefore, the provision of the proposed rule which requires that the two basic criteria be considered in conjunction with cost remains unchanged in the final rule.

One commentator suggested that current regulatory language allowing especially needy rates of reimbursement for schools determined by the State agency to have excessive program costs in spite of good management practices be retained. The language was developed in the absence of specific legislative guidelines as to eligibility criteria. Pub. L. 95-627 provided these specific guidelines. For this reason, this language was not included in the proposed rule and does not appear in the final rule.

Cost Determination

The Department proposed to continue to require the determination of eligibility for severe need funds to be made on a school by school basis. The language of the Child Nutrition Act, as amended, as well as the intent of Congress revealed

in Congressional debate, dictate that severe need funds be targeted to schools serving a substantial number of needy children. However, the Department proposed to allow costs to be determined on a School Food Authority basis, in keeping with the cost accounting requirements of FNS(CN) Instruction 796-1 (Rev. 2). School Food Authorities maintaining costs on an individual basis may continue to do so. The proposal did not change the existing requirement that reimbursement not exceed cost. The Department also proposed to amend that part of the regulations governing the reimbursement formula for School Food Authorities which include both schools with and without severe need by clarifying the regulations.

Several commentors felt that in rewording the regulation in the proposal to include "revenues from other sources" in the reimbursement formula, the Department changed the substance of the formula. The Department did not intend to change the formula. Therefore, the final regulation is redrafted to maintain the status quo of existing regulations; that is, to include only "children's payments" in the formula.

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220, School Breakfast Program is amended as follows:

1. In § 220.2, a new definition (v-1) is added to read as follows:

§ 220.2 Definitions

(v-1) "School in severe need" means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(d) and in a State's Plan of Child Nutrition Operations.

2. In § 220.9, paragraphs (b) and (c) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 220.9 Reimbursement payments.

(b) The maximum rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the

School Breakfast Program shall be prescribed semi-annually by the Secretary in the **Federal Register**.

(c) The total reimbursement for breakfasts served to eligible children during the school year in any School Food Authority shall be the lesser of the following amounts:

(1) The total cost of such breakfasts minus the sum of the products obtained by multiplying (i) the total number of paid breakfasts served to eligible children, during the school year by the full charge to children, and multiplying (ii) the total number of reduced price breakfasts served in schools during the school year by the highest reduced price charge to children. If the School Food Authority reduces the highest charge to children as a result of a change in breakfast reimbursement, the lower reduced price charge may be used in the above calculation in lieu of the highest reduced price charge. However, the reduction must remain in effect for the remainder of the school year; or

(2) The sum of the product obtained by multiplying (i) the total number of paid breakfasts by the applicable rate of reimbursement for paid breakfasts, (ii) the total number of reduced price breakfasts served to eligible children in schools not determined to be in severe need by the applicable rate of reimbursement for reduced price breakfasts, (iii) the total number of free breakfasts served to eligible children in schools not determined to be in severe need by the applicable rate of reimbursement for free breakfasts and, if the School Food Authority includes schools determined to be in severe need, (iv) the total number of reduced price breakfasts served to eligible children in schools determined to be in severe need by the applicable severe need rate of reimbursement for reduced price breakfasts, and (v) the total number of free breakfasts served to eligible children in schools determined to be in severe need by the applicable severe need rate of reimbursement for free breakfasts.

(d) The State agency, or FNSRO where applicable, shall determine to its satisfaction that Federal reimbursement earned for the service of free and reduced price breakfasts in schools determined to be in severe need is not utilized to support the service of full priced breakfasts.

(e) The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on eligibility criteria established by the State educational agency, in the annual State Plan as required under § 210.4a. At a minimum, a school shall be

determined to be a school in severe need if the rate per meal established by the Secretary is insufficient to cover the costs of its breakfast program and (1) it is required by State law to serve breakfasts, or (2) if under the National School Lunch Program, it served 40 percent or more if its lunches free or at a reduced price in the second preceding school year, or (3) if it does not have a lunch program but does have or did have a breakfast program in the second preceding school year, it served 40 percent or more of its breakfasts free or at a reduced price, or (4) if it has neither a lunch nor a breakfast program, it would estimate it would serve 40 percent of its breakfasts free or at a reduced price. A school which did not serve 40 percent or more if its lunches free or at a reduced price in the second preceding school year may be determined to be a school in severe need if the rate per meal established by the Secretary is insufficient to cover the costs of its breakfast program and it did or does serve 40 percent or more of its lunches free or at a reduced price in the first preceding school year or in the present school year. Provided, however, that no school shall be eligible to receive severe need rates of reimbursement if it does not meet the eligibility criteria established by the State. A State educational agency may establish eligibility criteria which include schools serving less than 40 percent of lunches free or at a reduced price to eligible children. State agencies shall submit for approval their eligibility criteria for the determination of severe need of a school and the source of their data to be used in making the determinations in their annual State Plan.

Authority: Sec. 6, Pub. L. 95-627, 92 Stat. 3620, (42 U.S.C. 1776).

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified significant. An approved final impact statement is available at the Office of the Director, School Programs Division, USDA-FNS, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

Dated: August 10, 1979.

Carol Tucker Foreman,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-25221 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service**7 CFR Part 910****[Lemon Reg. 212]****Lemons Grown in California and Arizona; Limitation of Handling****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 19-25, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 19, 1979.**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202-447-5975.**SUPPLEMENTARY INFORMATION: Findings.**

This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on August 14, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been

apprised of such provisions and the effective time.

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

§ 910.512 Lemon Regulation 212.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 19, 1979 through August 25, 1979, is established at 254,233 cartons.

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

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

Dated: August 15, 1979.

William J. Doyle,

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

[FR Doc. 79-25752 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-02-M**Animal and Plant Health Inspection Service****7 CFR Part 301****Domestic Quarantine Notices, Japanese Beetle; Final Rule To Amend Program Manual: Correction****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Final rule.

SUMMARY: This notice corrects a previous *Federal Register* document (FR Doc. 79-20410), published July 3, 1979, beginning at 44 FR 38828. On page 38829, in the fourth paragraph, "Accordingly, 7 CFR Part 330 * * *" should be corrected to read "Accordingly, 7 CFR 301.48-1 * * *." The original cite to Part 330 was an editorial error and the cite should be § 301.48-1.

EFFECTIVE DATE: July 3, 1979.**FOR FURTHER INFORMATION CONTACT:** H. V. Autry, 301-436-8247.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-25396 Filed 8-16-79; 8:45 a.m.]

BILLING CODE 3410-34-M**Farmers Home Administration****7 CFR Parts 1910 and 1980****Financial Disclosure****AGENCY:** Farmers Home Administration, USDA.**ACTION:** Final rule.

SUMMARY: The Farmers Home Administration amends its regulations concerning financial disclosure. This action is taken to comply with a public law. The intended effect is to protect applicants from unauthorized use or disclosure of information regarding their financial status obtained by FmHA from financial institutions such as banks or savings and loan associations. This Act prohibits financial institutions from releasing financial records to a Government authority without first obtaining written notice that the government agency has complied with the applicable provisions of the Act.

EFFECTIVE DATE: August 17, 1979.**FOR FURTHER INFORMATION CONTACT:**

Nancy Monesson, Rural Housing Specialist, Single Family Housing, Home Ownership Loan Division (202-447-4295) or Ronald Thelen, Production Loan Officer, Production Loan Division 202-447-2288.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends various sections of Parts 1910 and 1980, Chapter XVIII, Title 7 in the Code of Federal Regulations. These revisions are made to comply with the requirements of the "The Right to Financial Privacy Act of 1978" (Pub. L. 95-630, Title XI) which became effective March 11, 1979, and to make minor editorial changes.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published as a proposed rule since the change is made to comply with a public law. Failure to comply with this law may result in penalties to the Government and the employee involved. Publication for comment is unnecessary. This determination was made by James E. Lee, Assistant Administrator for Farmer Programs.

Therefore Subchapter H of Chapter XVIII is amended as follows: