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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, and 220

[Amdts. 52, 25, and 43 respectively]

State Plan of Child Nutrition Operations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule eliminates the state plan requirements for the National School Lunch Program, the Special Milk Program for Children, and the School Breakfast Program. Section 812 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) enacted August 13, 1981 required the elimination of all school nutrition program state plan requirements. This rule reduces the reporting burden currently placed on State agencies.

EFFECTIVE DATE: As of October 1, 1981, State agencies are no longer required to submit the above mentioned State Plans to FNS for review and approval. In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting reductions contained in §§ 210.4a, 210.5a, 210.14(a)(1), 210.17(a)(1), 215.11(a), 215.13(a)(1), 220.13(f)(1), 220.13(f)(2), 220.15(a)(1), and 220.15(b) of this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, Va. 22302 (703-756-3620).

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed

under Executive Order 12291 and has not been classified as major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The rule has also been reviewed with regard to the requirements of Pub. L. 96-354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Samuel J. Cornelius has determined pursuant to 5 U.S.C. 553 (b) and (d) that good cause exists for making this rule effective earlier than 30 days after publication because section 812 of Pub. L. 97-35 became effective on October 1, 1981. Solicitation of public comments is unnecessary and contrary to the public interest because the provisions of this rule are nondiscriminatory.

Background

Section 812 of Pub. L. 97-35 amended section 11 of the National School Lunch Act by eliminating the requirement for state plans in the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), and the Special Milk Program for Children (7 CFR Part 215).

The requirement for the submission of state plans has been eliminated to reduce the reporting burden on the States. However, the elimination of the state plans does not alter each State's responsibility to ensure compliance with program regulations. States should be aware that information necessary to demonstrate the sufficiency of State operations should be maintained on file to allow the Department to fulfill its responsibility of monitoring State level program administration.

Since state plans have been submitted

for School Year 1982, this final rule will affect submission of the 1983 state plan.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

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

7 CFR Part 220

Food assistance programs, School breakfast program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215, and 220 of Chapter II of Title 7, Code of Federal Regulations are amended as set forth below.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

§ 210.4a [Removed]

1. 7 CFR Part 210 is amended by removing § 210.4a, *State Plan of Child Nutrition Operations*.

§ 210.5a [Amended]

2. 7 CFR Part 210 is amended by removing the third sentence of § 210.5a, *Transfer of funds*.

3. 7 CFR Part 210 is amended by revising § 210.14(a)(1) to read as follows:

§ 210.14 Special responsibilities of State agencies.

(a) ***

(1) Each State agency or FNSRO where applicable, shall provide consultative, technical, and managerial personnel to administer programs and monitor performance and to measure progress towards achieving program goals.

4. 7 CFR Part 210 is amended by revising the first sentence of § 210.17(a)(1) to read as follows:

§ 210.17 Management evaluation and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this Part obtain audits as required by Office of Management and Budget Circulars A-102 or A-110, as applicable.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. 7 CFR Part 215 is amended by removing and reserving § 215.11(a) to read as follows:

§ 215.11 Special responsibilities of State agencies.

(a) [Reserved]

2. 7 CFR Part 215 is amended by revising the first sentence of § 215.13(a)(1) to read as follows:

§ 215.13 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this Part obtain audits as required by Office of Management and Budget Circulars A-102 or A-110, as applicable.

PART 220—SCHOOL BREAKFAST PROGRAM

1. 7 CFR Part 220 is amended by revising § 220.13(f)(1) and removing and reserving § 220.13(f)(2) to read as follows:

§ 220.13 Special responsibilities of State agencies.

(f) * * *

(1) Each State agency or FNSRO where applicable shall provide consultative, technical, and managerial personnel to administer programs, monitor performance, and measure progress toward achieving program goals.

(2) [Reserved]

2. 7 CFR Part 220 is amended by revising the first sentence of § 220.15(a)(1) to read as follows:

§ 220.15 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this Part obtain audits as required by Office of

Management and Budget Circulars A-102 or A-110, as applicable.

3. 7 CFR Part 220 is amended by removing and reserving § 220.15(b) as follows:

§ 220.15 Management evaluations and audits.

(b) [Reserved]

(Sec. 812, Pub. L. 97-35; 95 Stat. 521-535; (42 U.S.C. 1759a))

(Catalog of Federal Domestic Assistance numbers 10.553, 10.555, and 10.556)

Signed on April 23, 1982.

Samuel J. Cornelius,
Administrator, Food and Nutrition Service.

[FR Doc. 82-11674 Filed 4-29-82; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Parts 210, 215, 220, and 235

[Amdts. 53, 26, 44 and 8 respectively]

Private School Tuition Limitations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule excludes private schools with an average yearly tuition exceeding \$1,500 per child from participating in programs authorized by the Child Nutrition Act (CNA) and the National School Lunch Act (NSLA). These amendments are required by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) and are intended to reduce Federal expenditures.

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and has not been classified as major because it does not meet any of the three criteria of the Executive Order. This rule will not have an annual effect on the economy of \$100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign

based enterprises in domestic or export markets.

The rule has also been reviewed with regard to the requirements of Pub. L. 96-354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

This final rule does not contain any reporting or recordkeeping provisions which are subject to approval by the Office of Management and Budget (OMB).

Comments Regarding Limits to Private School Participation

On October 20, 1981 the Department published an interim rule (46 FR 51363) regarding the exclusion of private schools with an average yearly tuition exceeding \$1,500 per child. For purposes of consistent nationwide application of this rule, the Department defined "average yearly tuition." Seven written comments concerning the private school tuition limitation were received.

Five out of the seven comments received recommended changes to the "Tuition" definition. Three of the five commenters opposed the proposed tuition definition because it encompassed a number of expenses they believed should not be considered a part of tuition, such as books, fees and supplies. The Department agrees that the part of the tuition definition regarding other educational expenses should be changed as the commenters indicated. Tuition is an educational expense, but not all educational expenses are necessarily part of tuition. The final tuition definition does not include books, laboratory fees, school supplies, transportation fees for school related trips, or fees for equipment or consumable goods used as part of a class or shop instruction.

Three commenters stated that the average yearly tuition should not eliminate those private schools which operate a program on a system-wide basis. Two of the three commenters suggested that the average tuition should be calculated by determining the total tuition received on a system-wide basis divided by the number of students enrolled in the system. The Department does not agree that the average yearly tuition should be averaged on a system-wide basis instead of a school basis. It is the intent of Congress (Pub. L. 97-35, Section 808) that individual private schools with an average yearly tuition exceeding \$1,500 per child be excluded from the Programs. Averaging tuition charged by private schools on a system-wide basis to reach a lower average

tuition cost (below \$1,500 per child) is defeating the intent of Congress.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

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

7 CFR Part 220

Food assistance programs, School breakfast program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 235

Food assistance programs, National school lunch program, School breakfast program, Special milk program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, Parts 210, 215, 220, and 235 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

§ 210.2 [Amended]

1. In § 210.2, *Definitions*, the first sentence in paragraph (o) is revised to read as follows:

(o) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding \$1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings.

2. In § 210.2, *Definitions*, new paragraphs (v) and (w) are added to read as follows:

(v) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) State, county or local funds provided

to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds \$1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(w) "Special needs children" means children who are emotionally, mentally or physically handicapped.

PART 215—SPECIAL MILK PROGRAM

§ 215.2 [Amended]

1. In § 215.2, *Definitions*, the first sentence in paragraph (v) is revised as follows:

(v) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding \$1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings.

2. In § 215.2, *Definitions*, new paragraphs (bb) and (cc) are added to read as follows:

(bb) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) State, county or local funds provided for schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds \$1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(cc) "Special needs children" means children who are emotionally, mentally or physically handicapped.

PART 220—SCHOOL BREAKFAST PROGRAM

§ 220.2 [Amended]

1. In § 220.2 the first sentence in paragraph (u) is revised, as follows:

(u) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding \$1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings.

2. In § 220.2, *Definitions*, paragraph (z-1) is redesignated as paragraph (aa). New paragraphs (bb) and (cc) are added to follow paragraph (aa) to read as follows:

(bb) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds \$1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(cc) "Special needs children" means children who are emotionally, mentally or physically handicapped.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

§ 235.2 [Amended]

1. In § 235.2, *Definitions*, the first sentence in paragraph (o) is revised as follows:

(o) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding \$1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings.

2. In § 235.2, *Definitions*, new paragraphs (u) and (v) are added to read as follows:

(u) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child: (1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds \$1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(v) "Special needs children" means children who are emotionally, mentally or physically handicapped.

(Sec. 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760))

(Catalog of Federal Domestic Assistance Nos. 10.555, 10.556, 10.553, 10.560)

Dated: April 23, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-11673 Filed 4-29-82; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 235

[Amdt. No. 7]

State Administrative Expense Funds; Carryover Authority and Revised Minimum Funding Levels

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations concerning State administrative expense funds (SAE) to allow State agencies to carry over unused SAE funds from one fiscal year to the following fiscal year and to revise the minimum SAE allocations for the National School Lunch Program, School Breakfast Program and Special Milk Program. Additionally, this amendment removes Food Service Equipment Assistance Program (FSEAP) funds from

consideration in the allocation of SAE funds and makes minor conforming revisions in the annual SAE plan requirements. These changes are required under Pub. L. 97-35, the Omnibus Reconciliation Act of 1981. The carryover authority will provide State agencies with added flexibility in the programming and use of SAE funds. Under the new minimum allocation level beginning with fiscal year 1982, all States will be allocated at least \$100,000 or the amount allocated in fiscal year 1981, whichever is greater. For a State exceeding these minimums, the removal of FSEAP funds from consideration in the allocation formula will mean a slight reduction in the amount of SAE funds allocated.

EFFECTIVE DATE: October 1, 1981 except § 235.4 paragraphs (d) and (e) which contains information collection requirements which are under review at OMB.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service, has certified that this emergency final rule does not have a significant economic impact on a substantial number of small entities.

The Administrator has determined pursuant to 5 U.S.C. 8553 (b) and (d) that good cause exists for making this rule effective earlier than 30 days after publication because under Pub. L. 97-35, the effective date of the provisions contained in this rule is October 1, 1981. Solicitation of public comments is unnecessary and contrary to the public

interest because the provisions of this rule are nondiscretionary.

Background

Under section 7(a) of the Child Nutrition Act (CNA) of 1966, as amended, each State is allocated an amount of SAE funds each fiscal year for the administration of the National School Lunch, School Breakfast and Special Milk Programs (school nutrition programs) that is equal to 1) not less than one percent of the school nutrition program funds expended in that State in the second preceding fiscal year, or 2) a specified minimum amount, whichever is greater. Section 814 of Pub. L. 97-35 which amends section 7(a)(1) of the CNA establishes the minimum amount at the larger of \$100,000 or the amount allocated under section 7(a)(1) of the CNA in Fiscal Year 1981. Prior to enactment of Pub. L. 97-35, the minimum was the larger of \$100,000 or the amount allocated in Fiscal Year 1978. The Department has determined that only one State will be affected by this particular change and that State will receive the same amount that it received in Fiscal Year 1981.

Sections 805 and 819 of Pub. L. 97-35 terminate the FSEAP and remove the reference to the FSEAP from the allocation formula of section 7(a)(1) of the CNA. Since the allocation of SAE funds under section 7(a)(1) of the CNA is based on school nutrition program funds expended in the second preceding fiscal year, the elimination of the FSEAP will cause a reduction in SAE allocations for those States who exceeded the minimum allocation. No State will receive, for Fiscal Year 1982 and thereafter, less than it received in Fiscal Year 1981. This will provide State agencies with a guaranteed funding level (subject to the availability of appropriations) with which to maintain their administrative support of the school nutrition programs.

Section 814 of Pub. L. 97-35 amended section 7(e) of the CNA to provide for the carryover, by States, of unexpected SAE funds from one fiscal year to the following fiscal year. This carryover authority is limited to SAE funds which are allocated under Section 7 of the CNA for administration of the school nutrition programs, the Child Care Food Program and the Food Distribution Program in schools. The carryover authority does not apply to State administrative funds which are allocated under Section 13 of the National School Lunch Act (NSLA) for administration of the Summer Food Service Program for Children. Unexpected SAE funds carried over from one fiscal year must be obligated