

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 235

[Amdt. No. 14]

#### Child Nutrition Programs; Revision of Requirements Governing Availability of State Administrative Expense Funds

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** In this rule the Food and Nutrition Service (FNS) changes the manner in which State Administrative Expense (SAE) funds are made available for payment to State agencies by integrating a broadened State agency SAE plan into the SAE funding process. This rule provides the regulatory basis for an overall SAE Management System which will enable FNS to more effectively manage SAE funds. Under this rule, the amount of SAE funds made available for payment to a State agency in any fiscal year will be based on the amount justified in the annual State agency plan (including any amendments thereto) as approved by FNS, but shall not exceed the total of amounts allocated, reallocated or transferred to the State agency during the year plus prior year carryover. FNS will monitor State agency implementation of annual plans as an integral part of its ongoing management evaluation process and State agencies may be subject to the SAE sanction provisions for failure to implement approved plans to the extent practicable. This rule also includes provisions regarding the reallocation of SAE funds, State funding requirements, and the transfer of SAE funds to distributing agencies.

**EFFECTIVE DATE:** August 29, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lou Pastura, Chief, Policy and Program

Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone (703) 756-3620.

#### SUPPLEMENTARY INFORMATION:

##### Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it 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 requirement of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the recordkeeping and reporting requirements contained in § 235.5 (b), (c) and (d) and in § 235.7(b) of this final rule have been submitted to the Office of Management and Budget (OMB) for approval. Current recordkeeping and reporting requirements for Part 235 were approved by OMB for use through September 30, 1986. (OMB Nos. 0584-0067 and 0584-0319.)

This activity (SAE) is listed in the Catalog of Federal Domestic Assistance under No. 10.560 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

##### Background

On March 25, 1986, FNS published a proposed rule in the *Federal Register* (51 FR 10214) that was primarily concerned with revising existing SAE plan provisions. These changes were

considered essential to the successful implementation of an overall SAE management system that was under development by FNS. Under this system, the annual SAE plan would be integrated into the SAE funding process. It would, upon approval by FNS, serve as the basis for determining the amount of SAE funds actually made available for payment to a State agency. The plan would contain information, not previously provided, but considered necessary for meaningful plan review and approval by FNS. The revised plan would also assist FNS in assessing State agency use of SAE funds as part of its Federal oversight responsibility.

Under the proposed rule a State agency could amend its annual plan at any time during the fiscal year to justify additional SAE funds up to the amount allocated to it for the year plus carryover from the previous year. Amendments could also be made to incorporate reallocated SAE funds or to address any other changes in funding or funding needs. Amendments would be subject to the same review and approval process as the plan itself. The proposed rule would also require a State agency to implement its annual plan to the extent practicable and cited failure to substantially implement the plan as cause to subject the State agency to the existing SAE sanction provisions.

The proposal also contained several other provisions not directly related to the annual plan. They were: a reduction in the number of authorized SAE reallocations from two to one per year; incorporation of Office of Management and Budget (OMB) and the United States Department of Agriculture (USDA) cost-sharing and matching requirements within the SAE State funding (maintenance of effort) provisions; a provision that in-kind contributions may not be counted toward the SAE State funding requirement; a provision requiring the reporting of State funds usage; and a provision removing certain restrictions on the transfer of SAE funds to distributing agencies.

In response to the proposed rule, FNS received 26 non-USWDA comments—25 from State agencies and 1 on behalf of the State Child Nutrition Directors in one FNS Region. These comments represent input from 27 of the 83 State agencies that are currently eligible to receive SAE funds and thus subject to the provisions of Part 235. FNS would

like to thank all commenters who responded to the proposal. Generally, commenters were opposed to the proposed rule with the degree of opposition ranging from dissatisfaction with the entire proposal to concern over one or more specific provisions. All comments received were carefully considered in formulating this final rule. Every effort was made to incorporate into the rule commenter recommendations which improved or clarified the overall approach to improving the management of SAE funds that was set forth in the proposed rule. Although several commenters felt that no change should be made in the manner in which SAE funds are currently managed, FNS is committed to the belief that an integrated SAE Management System, by providing better accountability and control, will promote more effective and efficient use of these resources.

The remainder of this preamble will address general and specific commenter concerns relative to the various provisions of the proposed rule and will discuss modifications or clarifications that are being made under this final rule. For ease of reference, commenter concerns and changes made, as applicable, are presented under headings which represent the significant provisions of the proposed rule.

#### 1. Method of Payment.

The proposed rule would revise the method of payment provision of the SAE regulations to reflect the grant award process currently in use for all Child Nutrition Programs. The proposal specified that the availability of SAE funds through Letters of Credit would be dependent on the approval of annual plans and provided for advances in the event that plan approval was delayed. Eight commenters addressed this provision. Six expressed concern that approval delays and uncertainties over the availability of SAE funds would adversely affect program administration. Commenters cited additional paperwork and decreases in FNS staff as potential causes for delay and pointed out that no turn-around time for approval was given, that State agencies would have no assurances that their plans/amendments would be approved, and that no guidelines for advances were provided. Three commenters felt that limiting State agency access to SAE funds was contrary to section 7 of the Child Nutrition Act (CNA).

In response, FNS would like to alleviate commenter concerns in this area. As discussed later in this preamble, this final rule has been modified to minimize additional

paperwork burdens. Furthermore, FNS Regional Offices will be coordinating closely with State agencies while plans are being prepared and cleared within the States in order to facilitate the clearance and approval of the plans when they are submitted to FNS. The timely clearance and approval of these plans will be given high priority. However, if approval is delayed, advances of SAE funds can be made under this rule. The amount of such advances will be determined based on consideration of a State agency's past as well as anticipated SAE funds usage. Finally, FNS believes that the method of making SAE funds available for payment to States under this rule is in conformity with section 7 of the CNA. Section 7 requires the Secretary to make SAE funds available to the States but also requires that States submit to the Secretary for approval annual plans for the use of SAE funds. This is the basis for the current rule which requires plan approval prior to the release of SAE funds. While the proposed rule would go one step further, limiting the amount of SAE funds put into a State's Letter of Credit, this does not serve to limit State agency access to the funds. Upon proper justification through plans and amendments, the entire SAE allocation is available. FNS believes that this linking of SAE funds availability to funding requirements reflected in SAE plans under this rule is consistent with these legislative provisions. Therefore, § 235.5(a) has been retained essentially as proposed. Minor changes have been made, however, to make it clear that the State agency's grant of SAE funds is based on amount allocated, reallocated and transferred to it; and to include references to plan amendments in provisions dealing with plan approval and availability for payment of SAE funds.

#### 2. Expanded Administration Plan

The proposed rule contained provisions that would require the reporting of additional information by State agencies. Specifically, it was proposed that State funds be included in the plan and that projected expenditures by program and activity be provided. Comments from 23 of the 26 commenters were received on these provisions with 3 commenters expressing their support and 20 expressing opposition or concern. Several commenters questioned either the authority or appropriateness of FNS to require the additional information. Some of these expressed the view that such additional information was excessive and unnecessary and would create a paperwork burden that was contrary to the intent of the Paperwork

Reduction Act of 1980 and/or Pub. L. 97-35 which eliminated the annual State Plan of Child Nutrition Operations. Several commenters indicated that for a variety of reasons it would be difficult for them to provide the additional information to the level of detail that they believed was required by the proposed rule. Some commenters stated that projecting expenditures by program and/or activity was not necessary for effective planning and management. Finally, a few commenters suggested an addition to or clarification of information required in the plan.

FNS recognizes the concerns of commenters in this area and, as such, will require only such additional information as it considers necessary to carry out an effective SAE Management System that is consistent with its overall Federal administrative responsibility. This final rule amends § 235.5(b) to require State agencies to include State provided funds in their plans since FNS believes that a meaningful assessment of planned SAE funds usage cannot be conducted without considering *all* funds that are available to the State agency. Similarly, information on State agency activity and overall program levels is needed not only to assess planned SAE usage but also to serve as a reference source when evaluating State agency performance during FNS conducted management evaluations. FNS acknowledges that the proposed rule was not clear as to the degree of detail to which activity and program information was to be reported. As a consequence, some commenters interpreted the proposal as requiring budget breakdowns by cost category within activity for each program. This final rule makes it clear that cost category information is not required for each activity or program but only in the form of totals (combined Federal and State funds) for each category. Similarly, only a total *estimated* amount is required for each activity as defined by the State agency. Finally, only a total *estimated* amount is required for each of three program areas (School Nutrition Programs, Child Care Food Program and Food Distribution Program). Only one figure showing the amount of State funds separately is required, i.e., the amount of total budgeted funds that are State funds. In keeping with commenter concerns, the rule also states that FNS guidance for preparing the plan shall provide flexibility in reporting with a minimal amount of reporting burden. However, in response to specific administrative deficiencies identified by FNS, the requirements in the guidance may be supplemented for individual

State agencies in order to obtain such additional information as may be necessary to address the deficiencies. Finally, this rule has been revised to remove the obsolete reference to "... system level supervisory and operating personnel, and school level personnel ..." which was contained in the provision describing the required State staffing plan, and to add to the plan the total estimated amount of Child Care Food Program two percent audit funds to be used.

### 3. Availability of SAE Funds

Under the proposed rule, the amount of SAE funds that would be made available for payment to a State agency would be determined by FNS upon approval of the State agency's plan and would be limited to the amount justified in the plan or the State agency's SAE funds allocation plus carryover, whichever was less. Fifteen commenters expressed a variety of concerns over this provision and its effect on the carryover of SAE funds by State agencies. Some felt that the provision was contrary to the intent of section 7(e) of the CNA which authorized carryover and/or were concerned that the provision would limit State agency flexibility in the use of carryover funds. They pointed out the specific benefits of carryover in long-range planning, hiring, handling unforeseen expenditures, and in alleviating Federal funding uncertainties at the beginning of the fiscal year. Others felt that problems associated with excess carryover were not addressed by the proposal. Several commenters felt that it was not appropriate for FNS to judge program needs within each State in approving plans and wondered if FNS would restrict access to SAE funds if it did not approve of certain activities or if it would recover any funds that were not budgeted and approved at the beginning of the year.

The proposed rule was not intended to affect materially a State agency's right to carry over and use SAE funds. What was intended, however, was to establish better accountability for such funds through the plan process. Under the proposed rule, Federal control over carryover funds, as well as all other SAE funds, would be maintained until the funds were needed for obligation and expenditure by State agencies as evidenced in their approved plans. In effect, the funds would be held in reserve until needed. Funds not included in approved plans would not be recovered by FNS unless they were first released by State agencies. Under these conditions, State agencies would, with effective planning and budgeting,

continue to realize the benefits of carryover funds. In view of the broad legislative provision which authorizes carryover, FNS continues to believe that the above described proposal to improve the accountability and control of SAE funds is an appropriate part of its SAE Management System. This final rule essentially reflects the proposed provisions.

FNS acknowledges that State agencies have primary responsibility under their Federal-State agreements to determine program needs within their jurisdictions and, using available resources, to administer the programs in accordance with applicable legislation and regulations, instructions and procedures set forth by FNS. However, as the Federal agency legally responsible for overall program administration, it is appropriate that FNS monitor all aspects of program administration by State agencies and work to improve such administration where necessary. This would be true whether or not SAE funds were being provided to State agencies. However, the provision of SAE funds further underscores the Federal concern with and commitment to effective and efficient State agency program administration. This final rule makes the SAE plan a critical component of FNS' oversight effort in this area. Approval of plans must be consistent with that effort. Therefore, under this rule FNS approval of plans or amendments shall be on the basis of consistency with program administrative needs and SAE requirements.

### 4. Plan Amendments, Reallocation and Transfer of SAE Funds

The proposed rule contained provisions that would enable State agencies to amend their plans at any time during the year in order to gain access to additional SAE funds within their grants. Other changes in funding or funding needs would also require plan amendments. Amendments, like the plan itself, would be subject to FNS review and approval. It was also proposed that the authorized number of required SAE Funds Reallocation Reports (FNS-525) be decreased from two to one and that requests for reallocated funds be treated as plan amendments. The rule also proposed that the reallocation reports be submitted between March 1 and May 1, the specific date to be set by FNS. Twelve State agencies commented on these provisions. Four commenters supported the concept of one reallocation with one of these also supporting the plan amendment provisions. Several commenters noted problems with timing for both reallocations and plan amendments.

Some felt that if a reallocation occurred after May 1, it would be too late for prior year (carryover) and/or current year funds. One commenter felt that such a reallocation would occur too early. With respect to plan amendments, several commenters cited lengthy State clearance procedures or overlapping Federal and State fiscal years as impediments to the submission of timely plan amendments. One commenter suggested that amendments be required to be structured so as to be consistent with the plan. Several commenters questioned the need for FNS approval of plan amendments not involving increased SAE funding. Finally, some commenters suggested that State concerns be obtained and considered by FNS when establishing reallocation guidelines and priorities.

FNS acknowledges that no one reallocation time would be entirely satisfactory for all State agencies. However, since a reallocation based on input from all State agencies is a complex and time-consuming operation, FNS believes that the number of such comprehensive reallocations should be limited to one in order to relieve administrative burdens and should be based on information received prior to the third quarter of the fiscal year in order to address both prior and current year funds. To meet any special needs that may occur at other times during the year, this final rule has been reworded to allow FNS to reallocate SAE funds at other times based on information other than the annual reallocation reports submitted by State agencies. Although FNS reserves the right to establish reallocation guidelines and priorities, it will seek and consider State agency input on this subject. In response to comments on the submission and approval of plan amendments, FNS has revised the final rule to require that amendments be in a format consistent with that of the plan and that only amendments justifying additional SAE funds or resulting in significant reductions in planned funding levels or levels of planned activity require FNS approval. This latter change should not only expedite the amendment process in many cases but will appropriately narrow FNS' scope of interest to matters that may adversely affect program administrative needs.

Finally, three clarification changes have been made in the final rule. First, the rule now requires that reallocated funds be covered by a plan amendment before they can be made available for payment through the Letter of Credit. Second, the rule allows State agencies to release SAE funds to FNS for

reallocation at any time during the year and not just when the annual reallocation report is submitted. Third, § 235.6(a) was revised to clarify the conditions under which a State agency may transfer SAE funds to another State agency (such as a distributing agency) within the State.

#### 5. Plan Implementation and Monitoring

Under the proposed rule, State agencies would be required to implement their approved plans to the extent practicable; FNS would monitor implementation of plans through management evaluations, State agency reports or other available means; and State agencies would be subject to the sanction provisions of § 235.11(b) if they failed to substantially implement their approved plans. Twelve commenters responded to these provisions. One commenter supported the concept of monitoring the management of SAE funds through management evaluations while the others expressed concern over or opposition to these provisions. Commenters felt that FNS should monitor compliance with program regulatory requirements rather than the implementation of plans and were concerned that FNS would use the plan to direct and control State agency operations. They also felt that the proposed monitoring of plans would duplicate what is currently being done in management evaluations and through internal State review procedures. Some had specific concerns about how the monitoring would be done and cited reductions in FNS staff and resources, lack of guidelines on what constitutes acceptable plan implementation, and proposed additional reporting burdens as potential problems. With respect to sanctions, commenters felt that the failure to implement plans was not sufficient reason to invoke the SAE sanction provisions since such a failure would not necessarily indicate noncompliance with program regulatory requirements and might be beyond the control of the State agency.

FNS would like to point out that monitoring of plan implementation would not be done in lieu of program compliance monitoring but, rather, in conjunction with it and as part of the overall management evaluation process. In this regard, FNS has a responsibility to monitor State agency management of SAE funds. Since planning is an integral part of effective management, FNS believes that it should monitor and assess plan implementation. Such activity should not be viewed by State agencies as an attempt to direct and/or control State agency operations. In support of this and as previously

discussed in this preamble, changes have been made in this final rule to promote State agency flexibility in plan preparation and to limit FNS approval of amendments. Furthermore, State agencies may submit amendments to their plans at any time and FNS guidance on this subject will allow a degree of latitude in plan implementation without submission of amendments. With respect to specific commenter concerns on monitoring, FNS will place priority emphasis on implementing and maintaining the SAE Management System. Additional State agency reporting burden has been limited to the additional plan requirements, plan amendments as necessary, and the annual reporting of State funds usage.

FNS agrees with commenters that State agency failure to implement a plan cannot necessarily be equated to noncompliance with program regulatory requirements. However, such failure could indicate deficiencies in the management of SAE funds and, depending upon the degree of failure, may well affect the State agency's ability to meet program administrative needs and comply with regulatory requirements. FNS also agrees with commenters that, by itself, failure to implement a plan is not sufficient reason to subject a State agency to the SAE sanction provisions and has removed the proposed language in question. Readers should note, however, that this final rule still requires State agencies to implement their approved plans (as amended), to the extent practicable. Since this is a regulatory requirement, failure to comply may subject a State agency to SAE sanction under § 235.11(b). However, FNS believes that the language "to the extent practicable" provides an appropriate perspective from which to view and assess plan implementation.

#### 6. State Funding Requirements

The proposed rule would incorporate the cost sharing and matching requirements of OMB Circular A-102 and USDA regulations (7 CFR Part 3015) into the SAE regulations, specify that in-kind contributions could not be counted toward the SAE State funding requirement, and require State agencies to report State funds usage on the Financial Status Report (SF-269) in accordance with guidance provided by FNS.

Ten State agency commenters addressed these provisions. Two supported the reporting of State funds usage, one agreed that in-kind contributions should be excluded from State funding requirements, and the

remainder expressed opposition or concern over one or more of the provisions or were unclear as to how the in-kind contribution or reporting provisions would be applied.

Two of these felt that in-kind contributions should not be excluded without specific legislative authority and two felt that information on State funds usage should be collected during management evaluations.

Section 7(h) of the Child Nutrition Act requires States ". . . to maintain a level of funding out of State revenues, for administrative costs . . . not less than the amount expended or obligated in Fiscal Year 1977." This language clearly excludes in-kind contributions and funds from sources other than State revenues from being considered in meeting the State funding requirement. The Department acknowledges that in excluding only in-kind contributions from being considered, the proposal presented an incomplete picture and made it unclear as to what actually could be counted toward meeting this requirement. Therefore, the following changes are reflected in this final rule to make the State funding provisions consistent with legislation and to more clearly describe the applicability of OMB and USDA requirements. The reference to "Expenditures of funds from State sources . . ." in the provision setting forth the State funding requirement has been changed to "Expenditures of funds from State revenues . . ." and the language incorporating the OMB and USDA provisions has been changed to make it clear that not all of these provisions apply to the State funding requirement. With respect to reporting, the Department disagrees with commenters who suggest that management evaluations can be used to provide adequate information on State funds usage to FNS. Management evaluations of State agencies are conducted at various times throughout the year. Current year information collected during a management evaluation would likely be incomplete, and information collected for the prior year could be up to a year old depending upon when the management evaluation was conducted. Such a collection method would be inadequate for monitoring the State funding requirement or for year-end assessment of State plan implementation under the SAE Management System. Therefore, the requirement for reporting State funds usage on the Financial Status Report (SF-269) has been retained. Under the proposed rule, this information would have been reported at the end of each

fiscal year. However, the SF-269 is a quarterly report that is designed to provide information on a cumulative basis. The annual reporting of State funds usage would be inconsistent with other information being reported on this form and could prove to be confusing for both State agencies in providing the information and FNS when using it. Furthermore, due to overlapping State and Federal fiscal years, many State agencies would have to maintain this information on a quarterly basis in order to obtain an appropriate four quarter annual total. In view of this, FNS believes that quarterly reporting would result in minimal additional recordkeeping and reporting burdens nationally. Therefore, in order to integrate the reporting of State funds usage into the existing reporting system, this final rule provides for the quarterly reporting of such funds. FNS will provide guidance to State agencies on how this shall be accomplished.

#### 7. Effective Date

In developing the SAE Management System, FNS has maintained its intention to fully implement the system in Fiscal Year 1987. Several commenters expressed concern about being able to comply with the submission date for a revised annual plan for Fiscal Year 1987 due to insufficient lead time for internal State clearance. In response to these commenters and to allow a 30-day period between rule publication and effective date, the final rule changes the due date for the Fiscal Year 1987 plans to September 2, 1986. The rule also allows FNS to grant individual extensions beyond plan due dates, if necessary. FNS will make every effort to expedite plan review and approval in order that Fiscal Year 1987 SAE funds can be made available for payment to State agencies through their Letters of Credit by October 1, 1986.

#### List of Subjects in 7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements administrative practice and procedure.

Accordingly, Part 235, is amended as follows:

#### PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779), unless otherwise noted.

2. In Part 235, all references to "SPD" are changed to read "CND".

3. In § 235.2, paragraph (p-1) is removed, paragraph (b) is revised and paragraph (n), previously reserved, is added as follows:

#### § 235.2 Definitions.

(b) "CND" means the Child Nutrition Division of the Food and Service of the U.S. Department of Agriculture.

(n) "SAE" means federally provided State administrative expense funds for State agencies under this part.

#### § 235.4 [Amended]

4. In § 235.4, paragraphs (c), (d), and (e) are removed, and paragraphs (f), (g), and (h) are redesignated (c), (d), and (e) respectively.

5. Section 235.5 is revised to read as follows:

#### § 235.5 Payment to States.

(a) *Method of payment.* FNS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under § 235.4 plus or minus any adjustments resulting from the reallocation provisions under paragraph (d) of this section plus any transfers under § 235.6(a) and/or § 235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FNS upon approval of the State agency's administrative plan for the fiscal year under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FNS. However, if the plan has not been approved by October 1 of the fiscal year, FNS may advance SAE funds to the State agency, in amounts determined appropriate by FNS, pending approval of the plan.

(b) *Administrative plan.* (1) Based on guidance provided by FNS, each State agency shall submit to FNS, by August 15 of each year, a plan for meeting its administrative responsibilities under the National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program, and

Food Distribution Program in schools and child care institutions as applicable, for the upcoming fiscal year; except that, for the fiscal year beginning October 1, 1986, such plan shall be due by September 2, 1986. If FNS determines that a State agency is unable to comply with a due date under this subparagraph, it may grant an extension to the State agency.

(2) The State agency's plan shall include its staffing pattern for State level personnel; a budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category; the total amount of budgeted funds to be provided from State sources; the total amount of budgeted funds to be provided under this part; the State agency's estimate of the total SAE carryover from the current fiscal year; the State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child Care Food Program, and/or Food Distribution Program in schools and child care institutions and to each of the major activity areas of the State agency; and the State agency's estimate of the total Child Care Food Program two percent audit funds to be used for the forthcoming fiscal year. These activity areas shall be defined and described by the State agency in accordance with guidance issued by FNS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies

(3) The basic guidance issued by FNS for preparation of the plan shall provide flexibility in reporting with a minimal amount of reporting burden for State agencies. Such guidance, however, may be expanded for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FNS through management evaluations, audits or other means. Except in specific instances where determined necessary by FNS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A-87, Attachment B to establish cost categories. In accordance with Office of Management and Budget Circular A-102, Attachment F, State agency plans for the forthcoming fiscal year shall include not only the projected expenditures of State

funds by the State agency (as required above), but also all projected expenditures of State funds by other divisions of the State that will be applied to the State funding requirement under § 235.11(a) of this part.

(4) FNS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part. In approving a State agency's administrative plan or amendment thereto, FNS shall determine the amount of SAE funds to be made available for payment to the State agency. For any fiscal year, this amount shall be based on the amount of SAE funds justified in the administrative plan as amended, but shall not exceed the total of the following: SAE funds allocated to the State agency under § 235.4 of this part for the fiscal year, any SAE funds carried over from the prior fiscal year grant, any SAE funds transferred to the State agency by another State agency within the State under § 235.6(a) and/or § 235.6(c) of this part and any SAE funds reallocated to the State agency under paragraph (d) of this section.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FNS shall monitor State agency implementation of the plans through management evaluations, State agency reports submitted under this part, and through other available means.

(c) *Amendments to the administrative plan.* A State agency may amend its administrative plan at any time during the fiscal year to justify the need for additional SAE funds up to the limit specified in paragraph (b) of this section. Any such amendment shall provide information in a format consistent with that provided in the State agency's plan under paragraph (b) of this section and must be approved by FNS before additional SAE funds are made available for payment to the State agency. In accordance with guidance provided by FNS, a State agency shall also amend its administrative plan to reflect other changes in funding or funding needs. An amendment of this type shall also provide information in a format consistent with that provided in the State agency's plan, but shall only require FNS approval if it results in a significant reduction in funding level or level of planned activity.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FNS, of each year, each State agency shall submit to FNS a State Administrative Expense Funds

Reallocation Report (FNS-525) on the use of SAE funds. At such time, a State agency may release to FNS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's plan under this section and an amendment to such plan which covers the reallocated funds. Notwithstanding any other provision of this part, a State agency may, at any time, release to FNS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* Each State agency shall return to FNS any funds made available through its Letter of Credit under this part which are unexpended at the end of the fiscal year following the year for which such funds were originally allocated. Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FNS.

#### § 235.6 [Amended]

6. In § 235.6:

A. Paragraphs (a) and (a-1) are redesignated as (a-1) and (a-2) respectively, and a new paragraph (a) is added to read as follows:

b. The words "Federal Management Circular 74-4 (32 CFR Part 255)" in paragraph (b) are changed to read "Office of Management and Budget Circular A-87".

c. The last sentence of paragraph (c) is removed.

The addition specified above reads as follows:

#### § 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR Part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR Parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR Part 225 shall be used for the program(s) for which allocated, except that the State

agency may transfer up to ten percent of the funds allocated for any such program(s) to other such program(s). Subject to the provisions of this paragraph, a State agency may also transfer SAE funds that are not needed to implement its approved plan § 235.5(b) to another State agency within the State that is eligible to receive SAE funds under this part. Funds for any fiscal year which are allocated, reallocated or transferred to a State agency under this part shall, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

\* \* \* \* \*

7. In § 235.7, paragraph (b) is amended by adding a sentence between the fifth and sixth sentences to read as follows:

#### § 235.7 Reports and reports.

\* \* \* \* \*

(b) \* \* \* Based on guidance provided by FNS, each State agency shall also use the quarterly SF-269 to report on the use of State funds provided during the fiscal year. \* \* \*

\* \* \* \* \*

8. In § 235.11, paragraph (a) is amended by adding a sentence to the end of the paragraph to read as follows:

#### § 235.11 Other provisions.

(a) \* \* \* State agencies shall follow, as applicable, the provisions of Office of Management and Budget Circular A-102, Attachments F and G and 7 CFR Part 3015, Subparts G and H in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

\* \* \* \* \*

Dated: July 25, 1986.

Robert E. Leard,  
Administrator.

[FR Doc. 86-17197 Filed 7-29-86; 8:45 am]

BILLING CODE 3410-30-M

#### Agricultural Marketing Service

7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

[Docket Nos. AO-351-A24, et al.]

#### Milk in the Chicago Regional and Certain Other Marketing Areas; Interim Amendment of Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This action modifies on an interim basis the plant location adjustments to prices under the

Southern Illinois, Ohio Valley, Indiana, and Central Illinois milk orders based on industry proposals considered at a public hearing held March 12-14, 1986. The location adjustment provisions of the four orders are amended in order to conform with the higher Class I differentials mandated by the Food Security Act of 1985. In several orders, changes are also needed to assure the proper intra-market alignment of prices. More than two-thirds of the producers in each of the four markets have approved the interim amendments to the order for their market.

The hearing in this proceeding reopened an earlier proceeding on proposed amendments to change the location adjustment provisions of the Eastern Ohio-Western Pennsylvania order. A separate document will deal with the Eastern Ohio-Western Pennsylvania order and the issues related thereto.

This action does not adopt any change for the Chicago Regional milk order in that all relevant proposals were withdrawn at the hearing.

**EFFECTIVE DATE:** August 1, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding: Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6241).

Interim Final Decision: Issued June 26, 1986; published July 8, 1986 (51 FR 24677).

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative

marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended on an interim basis regulate the handling of milk in the same manner as marketing agreements upon which a hearing has been held. The said orders as hereby amended on an interim basis are applicable only to persons in the respective classes of industrial or commercial activity specified in the same marketing agreements

(b) *Additional findings.* It is necessary in the public interest to make these interim amendments to each of the aforesaid orders effective August 1, 1986. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The interim amendments to these orders are known to handlers. The interim final decision of the Deputy Assistant Secretary containing all interim amendments to these orders was issued June 26, 1986 (51 FR 24677). The changes effected by these interim amendments will not require extensive preparation; nor will there be substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim amendments to each of the aforesaid orders effective August 1, 1986, and that it would be contrary to the public interest to delay the effective date of these amendments for 30 days after publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which

is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these interim amendments to each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of these interim amendments to each of the specified orders is approved by more than the necessary two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

**List of Subjects in 7 CFR Parts 1032, 1033, 1049, and 1050**

Milk marketing order, Milk, Dairy products.

**Order Relative to Handling**

*It is therefore ordered,* That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

The authority citation for 7 CFR Parts 1032, 1033, 1049, and 1050 continues to read as follows:

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

**PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA**

Note.—No amendatory action taken.

**PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA**

1. Section 1032.52 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (b) and adding (a)(2)(iii) to read as follows:

**§ 1032.52 Plant location adjustments for handlers.**

(a) \* \* \*

(1) For a plant located within one of the zones designated in § 1032.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Base Zone.....	No adjustment.
Northern Zone.....	Minus 17 cents.
Southern Zone.....	Plus 9 cents.

(2) \* \* \*

(i) Plus 9 cents. St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites

Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St. Louis in the State of Missouri.

(ii) Minus 17 cents. In the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(iii) No location adjustment shall apply at a plant located in the State of Missouri south and east of Interstate Highway 44 that was not in an area described in paragraph (a)(2)(i) of this section.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 20 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(4) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

**PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA**

1. Section 1033.6 is amended by revising paragraphs (a), (b), (c), and adding (d) and (e) to read as follows:

**§ 1033.6 Ohio Valley marketing area.**

(a) "Zone 1" shall include the following territory:

**Ohio Counties**

Fulton, Hancock, Henry, Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

**Michigan Counties**

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).  
Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) "Zone 2" shall include the following territory:

**Ohio Counties**

Allen Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only), Wyandot.

(c) "Zone 3" shall include the following territory:

**Ohio Counties**

Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonderry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) "Zone 4" shall include the following territory:

**Ohio Counties**

Adams, Athens, Brown, Clermont, Gallia, Hamilton, Highland, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, Vinton, Washington.

**Kentucky Counties**

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

**Indiana Counties**

Dearborn, Ohio.

**West Virginia Counties**

Calhoun, Gilmer, Pleasants, Ritchie, Wirt, Wood.

(e) "Zone 5" shall include the following territory:

**Kentucky Counties**

Floyd, Johnson, Laurence, Magoffin, Martin, Pike.

**West Virginia Counties**

Boone, Cabell, Fayette, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wyoming.

2. Section 1033.53 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), redesignating (a)(4) as (a)(5), and adding (a)(4) to read as follows:

**§ 1033.53 Plant location adjustments for handlers.**

(a) \* \* \*

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
1.....	Minus 24 cents.
2.....	Minus 14 cents.
3.....	No adjustment.
4.....	Plus 7 cents.
5.....	Plus 15 cents.

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, at any such plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia, the adjustment shall be the adjustment applicable at Zone 4;

(4) At a plant located outside the marketing area in the Ohio counties of Defiance, Paulding, Van Wert, (except the city of Delphos), or Williams, the adjustment shall be minus 24 cents; and

(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

**PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA**

Note.—A separate document will be issued regarding the issues related thereto.

**PART 1049—MILK IN THE INDIANA MARKETING AREA**

1. In § 1049.52, paragraphs (a)(1) and (a)(2) are revised to read as follows:

**§ 1049.52 Plant location adjustments for handlers.**

(a) \* \* \*

(1) At any plant located within:

	Rate of adjustment per hundredweight (cents)
(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section or at any location south of the marketing area as specified in § 1049.2.....	0
(ii) Any of the Indiana counties of: Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.....	20
(iii) Any of the Indiana counties of: DeKalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and Whitley and any of the Michigan counties of Berrien, Branch, Cass, and St. Joseph.....	30
(iv) Any of the Indiana counties of: Lake and Porter.....	40

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be 2.0 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to paragraph (a)(1) of this section applicable at the respective point.

\* \* \* \* \*

**PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA**

1. In § 1050.52, paragraphs (a) and (b) are revised to read as follows:

**§ 1050.52 Plant location adjustments for handlers.**

(a) The Class I price for producer milk at a plant located outside the State of Illinois or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee shall be reduced 10 cents if such plant is 50 miles or more from the City Hall in Peoria, Illinois, plus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only

to the extent that 105 percent of Class I disposition at the transferor-plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants; such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

Effective date: August 1, 1986.

Signed at Washington, DC, on: July 24, 1986.

**Karen K. Darling,**

*Deputy Assistant Secretary, Marketing & Inspection Services.*

[FR Doc. 86-17050 Filed 7-29-86; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1076****Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends for the months of August 1986 through February 1987 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** August 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 18, 1986; published June 24, 1986 (51 FR 22944).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends

to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on June 24, 1986 (51 FR 22944) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1986 through February 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3)

**Statement of Consideration**

This action removes for the months of August 1986 through February 1987 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that supplies most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers historically associated with the Eastern South Dakota market. Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 36 to 46 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded,