

Rules and Regulations

Federal Register

Vol. 51, No. 163

Friday, August 22, 1986

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 277]

Food Stamp Program: Treatment of Certain Educational Grants and Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program Regulations pertaining to the treatment of educational assistance or student earnings when determining the income eligibility and benefit levels for students. This action implements several student provisions of the Food Security Act of 1985, enacted December 23, 1985, which continue longstanding Departmental regulatory policy with regard to the treatment of various types of educational assistance as income. Another student provision of the Food Security Act included in this action is a statutory mandate to provide an income exclusion for origination fees and insurance premiums placed on educational loans. This action also clarifies current policy relative to granting an exemption for persons physically or mentally unfit for employment from provisions which restrict Program participation by students and from provisions which require certain individuals to register for and seek employment as a condition of continued eligibility. In addition, this action contains technical amendments to correct a provision which appeared in a final rule issued on May 21, 1986, entitled *Food Stamp Program: the Food Security Act of 1985; Nondiscretionary Provisions; Final Rule and Correction* and to correct a typographical error

which appeared in an interim rule issued on August 5, 1986, entitled *Food Stamp Program: Categorical Eligibility for Certain Public Assistance and Supplemental Security Income Recipients*.

EFFECTIVE DATE: This action is effective August 22, 1986.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification.

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than \$100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Robert E. Leard, 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. State welfare agencies are affected to the extent that they must implement the provisions described in this action.

Potentially eligible and currently participating households are affected to the extent that such households contain students. Some currently ineligible student households will become eligible and many others could receive increased benefits.

Public Participation and Justification for Less Than a Thirty-Day Effective Date

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b) (A) and (B). Generally see, *Alcaraz v. Block*, 746 F. 2d 593 (9th Cir., 1984); *Sepulveda v. Block*, 782 F. 2d 363 (2nd Cir., 1986). It is in the public interest to effectuate all these statutory educational assistance provisions at the beginning of the next school term when the potential for student households applying for the Program is at its greatest. In accordance with Pub. L. 99-198, this action: 1) Prohibits an income exclusion for Federal educational assistance beyond that used for tuition and mandatory school fees; 2) allows an income exclusion for non-Federal educational assistance beyond that used for tuition and mandatory school fees, to the extent earmarked for educational expenses and not provided for normal living expenses; 3) expands current policy to provide an income exclusion for educational assistance used for tuition and mandatory school fees at institutions of post secondary education; 4) excludes origination fees and insurance premiums charged on student loans from consideration as income; and 5) prohibits an income exclusion for certain third party vendor payments. Under these statutory provisions some currently ineligible student households will become eligible and others may receive higher benefit levels. These provisions, effective before the fast approaching school year, restate, define or apply the statute or restate current regulatory policy within the statutory framework. While Pub. L. 99-198 provides until April 1, 1987 to implement these provisions, the Department believes that implementation of these statutory provisions before the school year is in the public interest.

Lastly, this final action includes technical amendments which clarify current policy relative to granting an exemption for persons physically or mentally unfit for employment from provisions which restrict student

participation in the Program and from provisions which require certain individuals to register for and seek employment as a condition of continued eligibility.

For these reasons, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comment is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective less than 30 days from date of publication.

Paperwork Reduction Act

This action does not contain any reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Background

Educational Grants Used at Post-Secondary Institutions—§ 273.9(c)

Under current regulations at 7 CFR 273.9(c)(3), educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent they are used for tuition and mandatory school fees at institutions of higher education or schools at any level for the mentally or physically handicapped and excluded from consideration as income for Food Stamp Program purposes. Current regulations at 7 CFR 271.2 define institution of higher education as "any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post high school level."

Section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)(3)), as amended by section 1509(a)(2)(A) of the Food Security Act of 1985 (Pub. L. 99-198), enacted December 23, 1985, expands current policy at 7 CFR 273.9(c)(3) to include educational assistance used for tuition and mandatory school fees at institutions of post-secondary education. Legislative history accompanying Pub. L. 99-198 explains Congressional intent to expand current policy to include students enrolled in "vocational schools and junior and community colleges" which do not require a high school diploma for enrollment but which offer educational programs which have a "direct impact on the employability and economic self-sufficiency of the participants." Granting an exclusion for such students "constitutes sound

approach toward reducing future dependency." (H.R. Rep. 99-271, 99th Cong., 1st Session, p. 143.)

Thus, this final action implements the statutory change by eliminating the previous high school diploma or equivalency certificate test as the only criteria for obtaining an income exclusion under 7 CFR 273.9(c)(3). This action allows students without a diploma or equivalency certificate which are determined eligible for the Program under 7 CFR 273.5 and enroll in post secondary educational programs to obtain an income exclusion for tuition and mandatory school fees. Students who are eligible for, or could have been eligible for, an income exclusion under the previous high school diploma test are not affected by this action.

Accordingly, this action amends 7 CFR 273.9(c)(3) to replace the reference to "institution of higher education" with a reference to "institution of post secondary education" and to clarify that such institutions are those which admit students beyond the age of compulsory school attendance in the State as well as those which require students to have a high school diploma or equivalent certificate. The provision further provides that the institution must be legally authorized or recognized by the State to provide education beyond secondary education or provide a training program to prepare students for gainful employment. This regulation is designed to interpret and define the statutory phrase "institution of post secondary education" so that the provision implements Congressional goals and is applied only to post secondary schools in a consistent manner nationwide.

Mandatory School Fees

As stated earlier, current regulations at 7 CFR 273.9(c)(3) provide that educational assistance used for mandatory school fees shall not be considered when determining household eligibility and benefit levels. Mandatory school fees are those charged uniformly by the school to all students or those charged to all students within a certain curriculum by the institution providing the course of study. For example, all students enrolled in a chemistry course may be required by the institution to purchase protective gloves from the institution offering the course, or may be required by the institution to pay a fee for the use of certain equipment. However, transportation, routine supplies (such as pens, pencils, paper, etc.) and textbook expenses are not uniformly charged to all students by the school and, therefore, are not excludable as mandatory school fees.

The recent Senate Report (S. Rept. No. 99-145, 99th Cong., 1st Session) and House Conference Report (H. Conf. Rept. No. 99-447, 99th Cong., 1st Session) regarding the Food Security Act of 1985 expressed concern that some students may be required by the school to furnish their own special equipment or materials above and beyond books and routine supplies but not receive an exclusion for those expenses. While Pub. L. 99-198 does not provide a specific statutory provision to address this issue, the Senate and Conference Reports provide Congressional intent that the regulatory definition of mandatory school fees be broadened to recognize that certain supplies are required of all students even though a separate fee is not imposed for these supplies.

The Department shares this concern. However, the Department is concerned that an expanded definition of mandatory school fees strike a reasonable balance between the benefit a client could potentially receive and the administrative complexities that could be incurred by State agencies and clients alike for implementing and verifying expenses incurred for required special equipment or supplies. Therefore, the Department intends to carefully examine the administrative implications of expanding the definition within the confines of Congressional intent. The Department will address this issue in the near future through notice of proposed rulemaking and public comment procedures.

Educational Grants as Vendor Payments—§ 273.9(c)(1)(iv)

Some students receive income assistance for items other than tuition and mandatory fees in such a manner that the students have construed the assistance to be a vendor payment and excluded from income under the general rules for exclusion of vendor payments at 7 CFR 273.9(b). Department policy is that the assistance should be considered income based on the provision at 7 CFR 273.9(c)(1)(iii) which does not allow an income exclusion for a vendor payment made from funds legally obligated or otherwise payable to the household. Section 5(k)(3) of the Food Stamp Act, as added by section 1509(b) of Pub. L. 99-198, reinforces Department policy by providing that educational assistance which is provided to a third party on behalf of the household for living expenses shall be treated as money payable directly to the household and not excluded from income as a vendor payment. The intent of Congress is to handle expenses for items other than tuition and mandatory school fees in the

same manner for all students whether or not they receive educational assistance directly or through a third party. (Senate Report 99-145, September 30, 1985, pg. 235.) Accordingly, the Department proposes to amend 7 CFR 273.9(c)(1) to include this specific statutory provision.

Reimbursements/Allowances for Educational Expenses—§ 273.9(c)(5)

Regulations prior to this final action, provided that grants or scholarships to students for education expenses other than tuition and mandatory school fees, such as books or travel may be excluded from consideration as income if they are specifically earmarked by the grantor agency as provided for education expenses rather than normal living expenses. In litigation filed against the Department regarding the reimbursement income exclusion policy, student food stamp recipients have alleged: 1) That the "Statement of Educational Purpose" (for example see 34 CFR 676.16(h)(1) and 34 CFR 690.79) which each student must sign to be eligible for Federal aid *specifically earmarked* the grants; 2) that "student budgets" prepared by colleges and used to calculate the *amount* of the grant *specifically earmarked* how the grants were to be spent, or; 3) that "award letters" which some colleges send to students announcing the grants *earmarked* those grants. However, under Department of Education (ED) regulations colleges do not and cannot *specifically earmark* portions of Pell Grants or Supplemental Educational Opportunity Grant (SEOG) assistance received by students for "education expenses" rather than for "living expenses" (7 CFR 273.9(c)(5)(iv)). Thus, no portions of Pell or SEOG assistance are excludable under 7 CFR 273.9(c)(5) nor has such assistance ever been properly excludable as a reimbursement for Food Stamp Program purposes. Pell and SEOG award checks, as well as Guaranteed Student Loan (GSL; 34 CFR 675) and National Direct Student Loans proceeds (NDSL; 34 CFR 674), may be used by students as they determine appropriate to meet the vast range of expenses associated with attending college. The "student budgets" prepared by colleges and used to calculate the amount of the grants, the "Statement of Educational Purpose", and the "award letters" sent by some colleges to announce the awards, do not limit or otherwise restrict, define, identify or earmark how portions of the grant must or should be spent by particular students. The Department's longstanding position based on ED regulations has been upheld in Federal courts that have decided these issues.

See *Shaffer v. Block*, 705 F.2d 805 (6th Cir. 1983); *Burkett v. Block*, 764 F.2d 1203 (6th Cir., 1985); *Reichley v. Block*, Civ. 84-M-2039 (D. Colo., July 12, 1985); *Malone v. Block*, Civ. 83-34-D-2 (S.D. Iowa, 1985); and *Alvarez v. Block*, 82 Civ. 4998 (SD, NY, May 6, 1986). Also see *Knebel v. Hein*, 429 U.S. 288 (1977).

Section 5(d) of the Food Stamp Act, as amended by section 1509(a)(3) of Pub. L. 99-198, eliminates any possibility of continued litigation regarding the issue of whether Federal educational assistance spent on other than tuition and mandatory school fees is excludable. The statute provides that no portion of any Federal educational grant, scholarship, fellowship, veterans' educational benefit, educational loan on which payment is deferred, and the like which provides income assistance beyond that used for tuition and mandatory school fees shall be excluded as a reimbursement.

Section 5(d) of the Food Stamp Act, as amended by section 1509 of Pub. L. 99-198, also reinforces the educational reimbursement policy as it relates to non-Federal educational assistance. The statute provides that no portion of any non-Federal grant, scholarship, fellowship, veterans' educational benefit, educational loan on which payment is deferred, and the like provided for living expenses shall be considered as a reimbursement.

Many non-Federal institutions also provide assistance to students to cover multiple expenses including living expenses. Again, the provider (grantor agency) does not necessarily restrict the student on how to use the grant. In other words, the student may choose to use the entire grant for living expenses connected with attending college or for other expenses such as books or transportation or some combination of educational living expenses and other expenses. Legislative history clarifies Congress' intent that the longstanding Departmental position be continued—that the portion of the non-Federal assistance available for living expenses is not excludable under this provision. Current regulations at 7 CFR 273.9(c)(5) governing the treatment of reimbursements generally describe living expenses as "normal living expenses such as rent or mortgage, personal clothing or food eaten at home." Senator Helms, Chairman, Senate Committee on Agriculture, Nutrition and Forestry, discussed this point. See 131 Cong. Rec. 17886, daily ed., Dec. 18, 1985. His unopposed comments on this matter, in part, are:

The bill also specifically addresses how State, local, or private educational benefits

are counted as income. However, since almost all of such educational aid provides students with funds which may be used for living expenses connected with attending college, as the student determines appropriate, such educational aid even where spent on necessary books or supplies would not be excludable as a reimbursement from income. Where the student receives a fund of money to be used for all future educational expenses—including living expenses such as food or rent—each dollar is "provided for living expenses," although it may be used for necessary books, and is not excludable as a reimbursement. This same principle has been properly applied by the courts to Federal educational assistance. . . . Neither the computational budgets used by colleges to compute the amounts of aid, nor the award letters colleges issue to announce the awards, preclude students from using general grants or scholarship which they receive for living expenses connected with attending college.

Accordingly, this final action amends 7 CFR 273.9(c)(5) to provide that Federal educational assistance provided for other than tuition and mandatory school fees is not excludable as a reimbursement and that non-Federal educational assistance provided for other than tuition and mandatory school fees are excludable as a reimbursement but only if the grantor agency specifically earmarks such assistance as provided for education expenses rather than living expenses.

The types of educational assistance referenced under the new provision are educational grants, scholarships, fellowships, veterans' educational benefits and the like. Pub. L. 98-198 also included a reference to educational loans on which payment is deferred with regard to this reimbursement provision. Current regulations at 7 CFR 273.9(c)(4) governing the exclusion of loans, makes reference to the fact that deferred payment loans are not excludable income. Therefore, the Department has decided to address the issue of deferred payment educational loans at 7 CFR 273.9(c)(4) in a manner parallel to the reimbursement educational provisions at § 273.9(c)(5) of this final action. Accordingly, this final action amends 7 CFR 273.9(c)(4) to provide that Federal deferred payment loans which provide income assistance beyond that used for tuition and mandatory school fees are not excludable from income. The provision also further provides that non-Federal deferred payment loans which provide income assistance beyond that used for tuition and mandatory school fees are excludable if the lender specifically earmarks portions of the loan as provided for education expenses rather than living expenses. This treatment parallels the longstanding treatment

accorded grants and scholarships by this Department.

Other Concerns—§ 273.5

Current regulations at 7 CFR 273.5 provide that any person who is between the ages of 18 and 60, physically or mentally fit for employment, and enrolled at least half-time in an institution of higher education are ineligible to participate in the Program. Additional regulatory text within this provision makes reference to the fact that persons physically or mentally disabled are not subject to this provision. Using the term "disabled" in this additional text could potentially be misinterpreted by caseworkers to refer to the definition of a "disabled member" at section 3(r) of the Food Stamp Act and at 7 CFR 271.2 of the regulations. Generally, that definition mandates that an individual must be eligible for, or in receipt of, certain temporary or permanent disability benefits to be considered disabled. Section 6(e) of the Act does not reference persons physically or mentally "disabled" with regard to the student provisions; it refers to persons not physically or mentally "fit". In order to avoid potential confusion or misinterpretation of the student provisions, this final action amends 7 CFR 273.5(a) to reference the term "unfit" throughout the provision rather than "disabled" as does the statute and to clarify that if a student claims that he/she is "unfit" for employment, acceptable verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

A concurring amendment is also being made by this final action to the work registration provision at 7 CFR 273.7(b)(1)(ii) to reference to term "unfitness" rather than "disability." The provision at 7 CFR 273.7(b)(1)(ii) provides that persons physically or mentally "unfit" for employment are exempt from the requirement to seek work. As with the student provision, additional regulatory text within this provision makes reference to the term "disability." Again, section 6(e) of the Act does not reference persons with a physical or mental "disability" with regard to work registration requirements; it refers to persons not physically or mentally "fit." Therefore, it is necessary to also amend this provision to be more consistent with the statute and avoid potential misinterpretation by caseworkers.

Implementation—§ 272.1(g)

State agencies shall implement the provisions of this rule on August 22, 1986. If, for any reason, a State agency fails to implement these provisions on that date, affected households, shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

Rescission of Proposed Provision

On November 19, 1982, the Department published a proposed rulemaking at 47 FR 52185 which contained a provision relative to the treatment of Federal educational assistance as an income exclusion. The Food Security Act of 1985 renders the proposed provision moot. Therefore, the amendment to add a new sentence to the end of 7 CFR 273.9(c)(5)(iv) as published at 47 FR 52189, November 19, 1982 is hereby rescinded.

List of Subjects

7 CFR Part 272

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

7 CFR 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

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

1. The authority citation for Parts 272 and 273 continue to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011-2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(79) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. * * *

(79) Amendment No. 277. State agencies shall implement the provisions of Amendment No. 277 on August 22, 1986. If, for any reason, a State agency fails to implement the provisions, affected households shall be entitled to restored benefits but not prior to August 22, 1986.

* * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.5, paragraph (a) is amended by replacing the word "disabled" appearing in the second sentence with the word "unfit" and by adding two new sentences to the end of paragraph (a) to read as follows:

§ 273.5 Students.

(a) Applicability. * * * If mental or physical unfitness is claimed and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

§ 273.7 [Amended]

4. In § 273.7, the second sentence of paragraph (b)(1)(ii) is amended by replacing the phrase "If a mental or physical disability is claimed and the disability" with the phrase "If mental or physical unfitness is claimed and the unfitness".

5. In § 273.9:

- a new paragraph (c)(1)(iv) is added.
- the first sentence of paragraph (c)(3) is amended by replacing the words "higher education" with the words "post-secondary education".
- three new sentences are added after the first sentence in paragraph (c)(3).
- two new sentences are added to the end of paragraph (c)(4).
- paragraphs (c)(5)(i) through (c)(5)(v) are redesignated as paragraphs (c)(5)(i)(A) through (c)(5)(i)(E), respectively.

f. newly redesignated paragraph (c)(5)(i)(D) is amended by replacing the first word in the paragraph "Reimbursements" with the words "Non-Federal reimbursements".

g. the last sentence of the introductory text of paragraph (c)(5) is designated as paragraph (c)(5)(i).

- h. a new paragraph (c)(5)(ii) is added.
- i. the second sentence of the introductory text of paragraph (c)(5) is designated as paragraph (c)(5)(ii)(A) and new paragraphs (c)(5)(ii)(B) and (c)(5)(ii)(C) are added.

The additions read as follows:

§ 273.9 Income and deductions.

(c) Income exclusions. * * *

- (1) * * *
- (iv) Educational loans on which payment is deferred, grants,

scholarships, fellowships, veterans' educational benefits, and the like that are provided to a third party on behalf of the household for living expenses such as rent or mortgage, personal clothing or food eaten at home shall be treated as money payable directly to the household and not excluded as a vendor payment.

(3) * * * For the purpose of this provision, institution of post secondary education means any public or private educational institution which normally requires: a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment. Origination fees and insurance premiums on student loans are excludable charges. Only the amount of the loan after these charges have been excluded is to be considered income. * * *

(4) * * * Federal deferred payment educational loans, such as, but not limited to National Direct Student Loans or Guaranteed Student Loans, to the extent that they provide income assistance beyond that used for tuition and mandatory school fees set forth in paragraph (c)(3) of this section are not excludable under this provision. Portions of non-Federal (State, local or private) deferred payment educational loans are excludable under this provision only to the extent that the lender specifically earmarks portions or all of such loan as provided for education expenses, such as travel or books, but not for living expenses, such as rent or mortgage, personal clothing or food eaten at home.

(5) * * *
(ii) The following shall not be considered a reimbursement excludable under this provision:

(B) No portion of any Federal educational grant, scholarship, fellowship, veterans' educational benefit and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees as set forth in paragraph (c)(3) of this section shall be considered excludable under this provision. Therefore, none of the expenses of college, such as expenses for books, travel, supplies, board, rent, transportation or equipment, paid for with Pell Grant or Supplemental

Educational Opportunity Grant (SEOG) assistance are excludable under this provision.

(C) No portion of any non-Federal (State, local or private) educational grant, scholarship, fellowship, veterans' educational benefit, and the like that is provided for living expenses shall be considered excludable under this provision. Thus, to be excludable such assistance must be specifically earmarked by the grantor for education expenses, such as travel or books, but not for living expenses, such food rent or clothing.

Corrections

In FR Doc. 86-11256, appearing at page 18744, as Part III, in the issue of Wednesday, May 21, 1986, make the following correction:

§ 273.2 [Corrected]

On page 18750, in the second column, amendatory statement number 5.d. under § 273.2, is corrected to read: Paragraph (f)(1)(viii)(A)(2) is amended by replacing the phrase, "paragraph (3)" with the phrase, "paragraph (6)" and by adding the phrase "or nonservice-connected" after the word "service-connected".

A conforming amendment to add the phrase "or nonservice-connected" was unintentionally overlooked when the May 21, 1986 regulations were developed. The phrase is directly related to the reference change from paragraph (3) to paragraph (6) and is hereby incorporated to conform paragraph (f)(1)(viii)(A)(2) to Department intent.

In FR Doc. 86-17535, appearing at page 28196, as Part III, in the issue of Tuesday, August 5, 1986, make the following correction:

§ 273.2 [Corrected]

On page 28201, in the second column, under paragraph (1)(iv) of § 273.2, the phrase "reduced, suspended, or when the grant is received." (appearing in the fourth sentence of the amendment) is corrected to read "reduced, suspended, or terminated when the grant is received."

The word "terminated" was inadvertently omitted when the August 5, 1986 regulations were developed and is hereby incorporated to conform all of paragraph (1)(iv) to Department intent.

Dated: August 19, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86-19011 Filed 8-21-86; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-326]

Golden Nematode; Regulated Areas

AGENCY: Animal Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Golden Nematode quarantine and regulations by deleting Yates County in New York from the list of suppressive regulated areas. This action is necessary as an emergency measure in order to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Effective date of this interim rule August 22, 1986. Written comments concerning this interim rule must be received on or before October 21, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Group, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-326. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (*Heterodera rostochiensis*), is a plant pest which is highly destructive to potatoes and other solanaceous plants. It is undoubtedly the most serious pest threatening the American potato industry. Potatoes cannot be grown economically on land containing large numbers of the nematode.

The golden nematode has been determined to occur in the United States only in parts of New York. The Golden Nematode quarantine and regulations (referred to below as the regulations; 7 CFR 301.85 through 301.85-10) quarantine the State of New York because of the golden nematode, and