

Food and Nutrition Service, USDA

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(c) Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(d) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FNSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(e) FNS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic or physical needs.

(f) Schools shall make substitutions in foods listed in this section for students who are considered handicapped under 7 CFR part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement shall, in the case of a handicapped student, be signed by a physician or, in the case of a nonhandicapped student, by a recognized medical authority.

(g) The inability of a school to obtain a supply of milk on a continuing basis to meet the breakfast requirements in paragraphs (a) and (b) of this section shall not bar it from participation in the Program. In such cases the State agency, or FNSRO were applicable, may approve the service of breakfasts without milk: *Provided, however*, That an equivalent amount of canned, whole dry, or nonfat dry milk is used in the preparation of the components of the breakfast patterns listed in paragraphs (a)(1) and (b)(3) of this section.

(h) For the period ending September 30, 1977, the Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, shall establish a breakfast pattern or patterns which are consonant with local food consumption patterns and which, given

available food supplies and food service equipment and facilities, provide optimum nutrition consistent with sound dietary habits for participating children, for use in the Trust Territory in lieu of the breakfast patterns listed in paragraphs (a) and (b) of this section. The requirements for such patterns shall be attached to and made a part of the written agreement required under § 220.3 of this part.

(44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended by Amdt. 26, 41 FR 52057, Nov. 26, 1976; 47 FR 746, Jan. 7, 1982; 53 FR 25308, July 6, 1988, 53 FR 48632; Amdt. 56, 54 FR 2990, Jan. 23, 1989; Amdt. 57, 54 FR 13047, Mar. 30, 1989, 54 FR 13605, Apr. 4, 1989. Redesignated at 60 FR 31217, June 13, 1995; amended at 60 FR 31222, June 13, 1995; 62 FR 10191, Mar. 6, 1997; 64 FR 61775, Nov. 15, 1999]

§ 220.9 Reimbursement payments.

(a) State agencies, or FNSRO's where applicable, shall make reimbursement payments to schools only in connection with breakfasts meeting the requirements of § 220.8 or § 220.8a, whichever is applicable, and reported in accordance with § 220.11(b) of this part. School Food Authorities shall plan for and prepare breakfasts on the basis of participation trends, with the objective of providing one breakfast per child per day. Production and participation records shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of breakfasts needed and to reduce the resultant waste, any excess breakfasts that are prepared may be served to eligible children and may be claimed for reimbursement unless the State agency, or FNSRO where applicable, determines that the School Food Authority has failed to plan and prepare breakfasts with the objective of providing one breakfast per child per day. In no event shall the School Food Authority claim reimbursement for free and reduced price breakfasts in excess of the number of children approved for free and reduced price meals.

(b) The rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment

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factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the School Breakfast Program shall be prescribed annually by the Secretary in the FEDERAL REGISTER.

(c) The total reimbursement for breakfasts served to eligible children in, (1) schools not in severe need, and (2) severe need schools in State's with State Breakfast mandates as provided for in §220.9(e)(3) (i) and (ii) in any School Food Authority during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively, by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) For any school year, severe need reimbursement payments to any School Food Authority except as provided for in paragraph (c) of this section shall be the lesser of: (1) The cost of providing free and reduced price breakfast to eligible children in schools determined to be in severe need, less the reduced price payments received by such schools; or (2) the number of free and the number of reduced price breakfasts, respectively, that are served to eligible children in schools determined to be in severe need, multiplied by the applicable severe need reimbursement rates for such breakfasts.

(e) *Severe need schools.* The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on the following eligibility criteria: (1) The reimbursement rate per meal established by the Secretary is insufficient to cover the costs of the school's breakfast program; (2) the school is participating in or desiring to initiate a breakfast program; and (3) 40 percent or more of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. In addition, schools which are required by State law to serve breakfasts and which fail to satisfy the required 40 percent eligibility criteria are eligible

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for severe need reimbursement rates only for the following limited time periods:

(i) In States where the State legislature meets annually, the schools may receive severe need reimbursement rates until July 1, 1983; and (ii) in States where the State legislature meets biennially, the schools may receive severe need reimbursement rates until July 1, 1984. State agencies shall maintain on file, and have available for review and audits, their eligibility criteria for determining the severe need of schools and the source of the data to be used in making individual determinations. The State agency, or FNSRO where applicable, shall be responsible for establishing systems for determining breakfast costs where such costs are necessary to the determination of whether or not a school is in severe need.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1776; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1753, 1759(a), 1758, 1773; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); 44 U.S.C. 3506))

[Amdt. 25, 41 FR 34760, Aug. 17, 1976, as amended by Amdt. 29, 44 FR 48159, Aug. 17, 1979; Amdt. No. 38, 46 FR 50928, Oct. 16, 1981; 46 FR 51368, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982; 47 FR 31375, July 20, 1982; 48 FR 40196, 40197, Sept. 6, 1983; 60 FR 31222, June 13, 1995]

§ 220.10 Effective date for reimbursement.

Reimbursement payments under the School Breakfast Program may be made only to School Food Authorities operating under an agreement with the State Agency or the Department, and may be made only after execution of the agreement. Such payments may include reimbursement in connection with breakfasts served in accordance with provisions of the program in the calendar month preceding the calendar month in which the agreement is executed.

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972]

§ 220.11 Reimbursement procedures.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement.