

SOLANO

Survey Area

California:
Solano

Area of Application. Survey area plus:

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BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 210, 220 and 226**

[RIN 0584-AB81]

National School Lunch Program, School Breakfast Program and Child and Adult Care Food Program: Amendments to the Infant Meal Pattern**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Interim rule with request for comments.

SUMMARY: This rule amends the regulations for the National School Lunch Program, School Breakfast Program and Child and Adult Care Food Program to eliminate the option of serving whole cow's milk as part of reimbursable meals for infants under one year of age. Instead, schools and institutions are required to serve either breast milk or iron-fortified formula with all reimbursable meals served to those infants. This rule responds to scientific data demonstrating that infants who consume cow's milk during their first year receive an inappropriate level of nutrients and experience more nutrition-related health problems than children who are fed breast milk or iron-fortified formula. This rule also amends the definition of "infant formula" currently in the Child and Adult Care Food Program regulations to conform to the definition of "infant formula" for the National School Lunch and School Breakfast Programs, because the latter definition more accurately describes the role of formula in infants' diet. This rule further makes technical amendments to the regulations and charts outlining the Infant Meal Patterns to clarify the role of breast milk in these programs. Finally, this regulation authorizes reimbursement for meals containing only breast milk. These amendments support America's breastfeeding promotion campaign and the Healthy People 2000 goal of increasing the

incidence and duration of breastfeeding to at least 75 percent in the early postpartum period and 50 percent at 5 to 6 months and beyond, by increasing the incentive for day care providers to encourage breast feeding and will result in children receiving improved nutrition benefits during their first year of life.

DATES: This rule is effective December 15, 1999. To be assured of consideration, comments must be postmarked on or before May 15, 2000.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or via the Internet at CNDProposal@FNS.USDA.GOV. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie at the above address or by telephone at (703) 305-2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and was reviewed by the Office of Management and Budget.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, this interim rule is not

subject to the requirements of sections 202 and 205 of the UMRA. However, a Regulatory Cost/Benefit Assessment is provided in the Appendix to this preamble.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities because the number of infants who would be affected constitutes a tiny portion of the total participation in these programs. The principal effect of this rule will be to enhance the nutritional benefit of meals served to infants under these programs.

Executive Order 12372

The National School Lunch Program, School Breakfast Program and Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553 and 10.558 respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published in 48 FR 29114, June 24, 1983).

Paperwork Reduction Act

This rule contains no new information collection requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the reporting and recordkeeping requirements included in this rule have been previously approved by the Office of Management and Budget under clearances 0584-0006, 0584-0012 and 0584-0055.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

In the National School Lunch Program and School Breakfast Program, the

administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of Food and Nutrition Service findings as a result of an administrative review must follow agency hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions under 7 CFR 235.11(b) must follow the administrative review process as established pursuant to 7 CFR 235.11(f).

In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) Institutions must follow administrative appeal procedures as established pursuant to 7 CFR 226.6(k); and (2) State agency or institution appeals of procurement matters must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR 3015.

Public Participation

In accordance with the requirements of 5 U.S.C. 553, the Under Secretary for Food, Nutrition and Consumer Services has determined that good cause exists for not requiring notice and comment before making this rule effective. Scientific evidence has demonstrated that infants should not be served whole cow's milk before their first birthday, because it does not provide the appropriate level of nutrients needed by very young children and can be detrimental to their health and development. Because of the importance of maintaining high standards of nutrition in the school meal programs and the Child and Adult Care Food Program, prior notice and comment would be contrary to the public interest. As specified above, the Department will consider comments submitted in response to this rulemaking and will address those comments in future rulemakings.

Background

Sections 9(a)(1)(A) and 17(g)(1)(A) of the National School Lunch Act (42 U.S.C. 1758 and 1766) and Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773) require meals claimed for reimbursement under the National School Lunch Program (NSLP), the Child and Adult Care Food Program (CACFP) and the School Breakfast Program (SBP) to meet nutrition requirements established by the Secretary of Agriculture. Additionally,

Section 9(a)(2)(A) of the National School Lunch Act requires that lunches served under the NSLP offer fluid milk as a component.

These statutory mandates have been implemented by 7 CFR 210.10 and 210.10a for the NSLP, 7 CFR 220.8 and 220.8a for the SBP and 7 CFR 226.20 for the CACFP, all of which include specific meal component and quantity requirements for children under one year of age. The principal component for meals served to these children is either breast milk provided by the infant's mother (which could include breast milk produced by a wet nurse) or iron-fortified infant formula. In addition, while the Department recommends that either breast milk or iron-fortified formula be served for the entire first year of the child's life, schools and institutions currently have the option of serving whole cow's milk to children beginning at eight months of age as long as the infants consume at least one-third of their calories from a balanced mixture of cereal, fruits, vegetables and other foods to ensure that the child receives adequate levels of iron and vitamin C.

The Department originally authorized serving whole cow's milk to older infants because of a 1983 policy statement by the American Academy of Pediatrics which indicated that, at that time, there was no convincing evidence from studies demonstrating that cow's milk is harmful for children older than six months provided they consume adequate supplementary foods. Subsequent studies have shown, however, that consumption of whole cow's milk can be detrimental to the health of infants between six months and one year of age as well as younger infants.

Most seriously, consumption of whole cow's milk can lead to iron deficiency. High levels of calcium and phosphorus and the low level of vitamin C in whole cow's milk may inhibit an infant's ability to absorb iron from other foods, including iron-fortified infant cereals. Moreover, whole cow's milk has been shown to cause microscopic bleeding and nutritionally significant blood loss from an infant's gastrointestinal tract during the second six months of life, thereby promoting the development of iron deficiency anemia. Studies suggest that iron deficiency in infancy and early childhood may lead to long-term changes in behavior that may not be reversed later even by taking iron supplements which correct the iron deficiency anemia. In contrast to these disadvantages associated with whole cow's milk during the first year of life, infants who are fed breast milk or iron-

fortified formula for the entire first year of life generally maintain normal iron status.

In addition to inadequate iron intake, infants who are fed whole cow's milk receive low levels of linolenic acid (an essential fatty acid) and vitamin E. On the other hand, they receive excessive levels of sodium, potassium, chloride and protein, which can place stress on an infant's kidneys and could be dangerous for infants suffering from medical conditions associated with dehydration (e.g., diarrhea, vomiting and fever). When whole cow's milk is fed to infants, their nutrient intakes are not optimal, and their nutritional status may be altered, with the most dramatic effect on iron status.

Based on these more recent findings, the American Academy of Pediatrics issued a policy statement in 1992 which concluded that whole cow's milk should not be fed to infants at all during the first year of life. In response to this statement, the Department is amending 7 CFR 210.10(m), 210.10(n), 210.10a(h), 210.10a(j), 220.8(i), 220.8a(b) and 226.20(b) to eliminate cow's milk as an option for meals served to infants under one year of age and to require, instead, that all reimbursable infant meals include either breast milk or iron-fortified formula.

Reimbursement for Breast Milk Meals

This interim rule also amends the Infant Meal Pattern regulations to emphasize the desirability of feeding breast milk to all infants under one year of age and to encourage breast milk feeding by authorizing reimbursement for meals containing only breast milk. Because of the substantial nutritional benefits of breast milk, the regulations for the NSLP, SBP and CACFP permit breast milk or iron-fortified formula for all infant meals served under these programs (7 CFR 210.10(m)(2), 210.10a(h), 220.8(i), 220.8a(b) and 226.20(b), respectively). Under the current regulations, however, when breast milk is the only component in an infant's meal, that meal may not be claimed for reimbursement under the school meal programs or the CACFP. This provision reflects the overall requirement that meals are not eligible for reimbursement when all items are provided by the child's family and, as a result, the provider has incurred no expense in obtaining the food.

However, the Department is concerned that this restriction on reimbursement does not reflect the Department's deep commitment to encouraging consumption of breast milk by infants. "Healthy People 2000, National Health Promotion and Disease

Prevention Objectives" issued by the U.S. Department of Health and Human Services in goal 2.11 on nutrition and goal 14.9 on maternal and infant health recommend that America should increase the incidence and duration of breastfeeding to at least 75 percent in the early postpartum period and 50 percent at 5 to 6 months and beyond. Also, the Food and Nutrition Service strategic plan includes breast feeding promotion as part of Objectives 3.2 and 3.3; and Goal 3.2.1 of the Food and Nutrition Service Annual Performance Plan provides specific annual targets for increasing breastfeeding in support of America's overall objectives.

In other programs, notably the Special Supplemental Nutrition Program for Women, Infants and Children, the Department has been actively promoting breastfeeding, and restricting its use under the NSLP, SBP and CACFP creates an inconsistency that tends to undermine this position. Therefore, the Department is amending the program regulations to permit reimbursement for meals served to infants younger than 8 months that contain only breast milk and no other items. The Department emphasizes that this provision applies *only* to meals in which breast milk is the only required item and is being adopted in recognition of the special contribution breast milk makes to the health, well-being and development of the child. This provision does not apply to those situations in which infant formula is the only required item and is provided by the parent. Moreover, meals served to infants 8 months of age and older, which require at least one item in addition to breast milk, continue to be ineligible for reimbursement unless the provider also furnishes at least one item.

Minimum Quantity of Breast Milk

The current Program regulations require providers to serve minimum portions of meal components, including breast milk, in order for the meal to be reimbursed. The Department is aware, however, that some infants consume, on average, less than the minimum serving of breast milk established for their age group. Consequently, if the full portion of breast milk is offered to an infant who does not consume that much, some of the breast milk may be wasted. Since breast milk is provided in very limited quantities, the Department is anxious to conserve as much as possible of this resource. Therefore, in this interim rule, the Department is permitting providers to serve less than the minimum regulatory serving of breast milk to infants who regularly do not consume that amount of breast milk. However, if the full portion is not initially offered,

the provider must offer additional breast milk if the infant is still hungry.

The Department emphasizes that this provision is being adopted solely in recognition of the reduced needs of some infants and the desire to avoid wasting already limited quantities of breast milk. Therefore, under no circumstances could providers offer less than the stipulated minimum serving of infant formula or other components of the meal pattern.

Technical Clarifications Regarding Service of Breast Milk

The Department is also incorporating a number of technical amendments to clarify certain issues with regard to breast milk. First, while the regulations for the NSLP, SBP and CACFP permit breast milk to be substituted for iron-fortified formula (7 CFR 210.10(m)(2), 210.10a(h), 220.8(i), 220.8a(b) and 226.20(b), respectively), there is no specific mention of breast milk in the regulatory text that outlines the infant meal patterns for these programs. Therefore, to ensure that there is no confusion on this point, the Department is amending the appropriate regulatory texts outlining the infant meal patterns to include breast milk as a specific option along with iron-fortified formula.

Moreover, this rule adds footnotes to the chart in 7 CFR 226.20(b)(4) to clarify that breast milk may be substituted for infant formula for all meals served to infants and that providers may serve less than the minimum portion of breast milk to infants. This rule also adds identical charts to 7 CFR 210.10(m), 210.10a(h), 220.8(i) and 220.8a(b).

Definition of Infant Formula

The Department is also taking this opportunity to make a technical amendment to the CACFP regulations to conform the definition of "infant formula" in that program to the definition in the regulations for the NSLP and SBP. Currently, infant formula is described in 7 CFR 226.2 as being "intended for dietary use as a sole source of food. * * *" The regulations for the NSLP and SBP, however, define infant formula as "intended for dietary use solely as a food * * *"

The language in the CACFP's definition has been interpreted by some to mean that infant formula is the only allowed food source. The definition in the school program regulations avoids this confusion by specifying that infant formula is to be used only as a source of food for infants and not as the only source. In the interests of clarification, therefore, this rule proposes to amend the CACFP regulations to conform the definition of "infant formula" in that

program to the definition in the NSLP and SBP regulations. The Department emphasizes that this is not a substantive change to the meal requirements for the CACFP but is a technical amendment to clarify what has always been the intent of the regulation.

Care and Handling of Breast Milk

Finally, as consumption of breast milk becomes increasingly prevalent in the NSLP, SBP and CACFP, meal providers must take care to ensure that breast milk is stored and handled properly to prevent possible tainting or spread of disease. In particular, all breast milk given to the provider should have a label stating the child's name, and providers must make sure that each child receives only the breast milk supplied by its mother. State agencies should include breast milk handling techniques as part of their training and technical assistance activities, and school food authorities and child care sponsors should take steps to make all meal providers aware of the importance of this issue.

List of Subjects

7 CFR Part 210

Commodity School Program, Food assistance programs, Grants programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly 7 CFR Parts 210, 220 and 226 are amended, as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10:

a. Paragraph (l)(1) is amended by revising the fifth sentence.

b. Paragraph (m)(1)(i) is amended by removing the words "formula or milk"

and adding in their place the words "breast milk or iron-fortified infant formula".

c. Paragraph (m)(2) is amended by removing the ninth and tenth sentences, revising the eleventh sentence, and adding two new sentences immediately following the eleventh sentence.

d. Paragraphs (m)(2)(i) and (m)(2)(ii)(A) are amended by adding the words "breast milk or" between the words "of" and "iron-fortified infant formula" each time they appear.

e. Paragraph (m)(2)(iii)(A) is revised.

f. A new table "Lunch Pattern for Infants" is added after paragraph (m)(2)(iii)(C).

g. Paragraphs (n)(3)(i), (n)(3)(ii) and (n)(3)(iii) are amended by adding the words "breast milk or iron-fortified" between the words "of" and "infant formula". Paragraph (n)(3)(iii) is further

amended by removing the words "or whole fluid milk".

h. Paragraph (n)(3)(iv) is redesignated as paragraph (n)(4), and is further amended by removing the word "paragraph" and adding in its place the words "paragraphs (n)(2) and".

i. The table "Supplements for Infants" appearing after the Meal Supplement Chart for Children in newly redesignated paragraph (n)(4) is revised.

The revisions and additions specified above read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

* * * * *

(l) * * *

(1) * * * All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for

infants under 1 year of age, the milk shall be breast milk or iron-fortified infant formula. * * *

* * * * *

(m) * * *

(2) * * * Either breast milk or iron-fortified infant formula shall be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered. In these situations, additional breast milk must be offered if the infant is still hungry. * * *

* * * * *

(iii) * * *

(A) 6 to 8 fluid ounces of breast milk or iron-fortified infant formula;

* * * * *

(C) * * *

LUNCH PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Lunch	4-6 fl.oz. breast milk ^{2,3} or formula ¹	4-8 fl.oz. breast milk ^{2,3} or formula ¹ 0-3 Tbsp. Infant cereal ^{1,4} ; 0-3 Tbsp. Fruit and/or vegetable ⁴	6-8 fl.oz. breast milk ^{2,3} or formula ¹ ; and 2-4 Tbsp. Infant cereal ¹ ; and/or 1-4 Tbsp. meat, fish, poultry, egg yolk, cooked dry beans, or peas; or 1/2-2 oz. cheese; or 1-4 Tbsp. cottage cheese, cheese food, or cheese spread; and 1-4 Tbsp. fruit and/or vegetable.

¹ Infant formula and dry infant cereal shall be iron-fortified.

² It is recommended that breast milk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

⁴ A serving of this component shall be optional.

(n) * * *

(4) * * *

SUPPLEMENTS FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Supplement (snack)	4-6 fl. oz. breast milk ^{2,3} or formula ¹	4-6 fl. oz. breast milk ^{2,3} or formula ¹	2-4 fl. oz breast milk ^{2,3} , formula ¹ , or fruit juice ⁴ ; 0-1/2 bread ⁵ or 0-2 crackers ⁵ .

¹ Infant formula shall be iron-fortified.

² It is recommended that breast milk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.

⁴ Fruit juice shall be full-strength.

⁵ Bread and bread alternates shall be made from whole-grain or enriched meal or flour. A serving of this component shall be optional.

* * * * *

3. In § 210.10a:

a. Paragraph (a)(1) is amended by removing the words "formula or milk" and adding in their place the words "breast milk or iron-fortified infant formula".

b. Paragraph (d)(1) is amended by revising the third sentence.

c. The introductory text in paragraph (h) is amended by removing the ninth

and tenth sentences, revising the eleventh sentence, and adding two new sentences immediately following the eleventh sentence.

d. Paragraphs (h)(1), (h)(2)(i) and (h)(3)(i) are amended by adding the words "breast milk or" between the words "of" and "iron-fortified infant formula". Paragraph (h)(3)(i) is further amended by removing the words "or 6 to 8 fluid ounces of whole milk".

e. A new table "Lunch Pattern for Infants" is added after paragraph (h)(3)(iii).

f. Paragraphs (j)(3)(i), (j)(3)(ii) and (j)(3)(iii) are amended by adding the words "breast milk or iron-fortified" between the words "of" and "infant formula". Paragraph (j)(3)(iii) is further amended by removing the words "or whole fluid milk".

g. The undesignated text after paragraph (j)(3)(iii) is designated as paragraph (j)(4), and is further amended by removing the word "paragraph" and adding in its place the words "paragraphs (j)(2) and".

h. The table "Supplements for Infants" appearing after the Meal Supplement Chart for Children in newly designated paragraph (j)(4) is revised.

The revisions and additions specified above read as follow:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(d) * * *

(1) * * * All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for infants under 1 year of age, the milk shall be breast milk or iron-fortified infant formula. * * *

* * * * *

(h) * * * Either breast milk or iron-fortified infant formula shall be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered. In these situations, additional breast milk must be offered if the infant is still hungry. * * *

* * * * *

(3) * * *

LUNCH PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Lunch	4-6 fl. oz. formula ¹ or breast milk ^{2,3}	4-8 fl. oz. formula ¹ or breast milk ^{2,3} ; 0-3 Tbsp. Infant cereal ^{1,4} ; 0-3 Tbsp. Fruit and/or vegetable ⁴	6-8 fl. oz. formula ¹ or breast milk ^{2,3} ; and 2-4 Tbsp. infant cereal ¹ ; and/or 1-4 Tbsp. meat, fish, poultry, egg yolk, cooked dry beans, or peas; or 1/2-2 oz. cheese; or 1-4 Tbsp. cottage cheese, cheese food, or cheese spread; and 1-4 Tbsp. fruit and/or vegetable.

¹ Infant formula and dry infant cereal shall be iron-fortified.

² It is recommended that breast milk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

⁴ A serving of this component shall be optional.

* * * * *

(j) * * *

(4) * * *

SUPPLEMENTS FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Supplement (snack)	4-6 fl.oz. formula ¹ or breast milk ^{2,3}	4-6 fl. oz. formula ¹ or breast milk ^{2,3}	2-4 fl. oz. formula ¹ , breast milk ^{2,3} , or fruit juice ⁴ ; 0-1/2 bread ⁵ or 0-2 crackers. ⁵

¹ Infant formula shall be iron-fortified.

² It is recommended that breast milk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

⁴ Fruit juice shall be full-strength.

⁵ Bread and bread alternates shall be made from whole-grain or enriched meal or flour. A serving of this component shall be optional.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2:

a. Paragraph (k) is amended by removing the words "formula or milk" and adding in their place the words "breast milk or iron-fortified infant formula".

b. Paragraph (n) is amended by revising the first sentence to read as follows.

§ 220.2 Definitions.

* * * * *

(n) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age), milk means breast milk or iron-fortified infant formula. * * *

* * * * *

3. In § 220.8:

a. The introductory text in paragraph (i) is amended by removing the ninth and tenth sentences, revising the eleventh sentence, and adding two new sentences immediately following the eleventh sentence.

b. Paragraphs (i)(1), (i)(2) and (i)(3) are amended by adding the words "breast milk or" between the words "of" and

"iron-fortified infant formula". Paragraph (i)(3) is further amended by removing the words "or 6 to 8 fluid ounces of whole milk".

c. A new table "Breakfast Pattern for Infants" is added after paragraph (i)(3).

The revision and additions specified above read as follow:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

* * * * *

(i) * * * Either breast milk or iron-fortified infant formula shall be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered. In these situations,

additional breast milk must be offered if the infant is still hungry. * * *
* * * * *

BREAKFAST PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4-6 fl.oz. formula ¹ or breast milk ^{2,3}	4-8 fl. oz. formula ¹ or breast milk ^{2,3} ; 0-3 Tbsp. Infant cereal ^{1,4}	6-8 fl. oz. formula ¹ or breast milk ^{2,3} ; and 2-4 Tbsp. infant cereal ¹ ; and 1-4 Tbsp. fruit and/or vegetable.

¹ Infant formula and dry infant cereal shall be iron-fortified.
² It is recommended that breast milk be served in place of formula from birth through 11 months.
³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
⁴ A serving of this component shall be optional.

* * * * *
 4. In § 220.8a:
 a. The introductory text in paragraph (b) is amended by removing the ninth and tenth sentences, revising the eleventh sentence, and adding two new sentences immediately following the eleventh sentence.
 b. Paragraphs (b)(1), (b)(2) and (b)(3) are amended by adding the words "breast milk or" between the words "of" and "iron-fortified infant formula".

Paragraph (b)(3) is further amended by removing the words "or 6 to 8 fluid ounces of whole milk".
 c. A new table "Breakfast Pattern for Infants" is added after paragraph (b)(3).
 The additions specified above read as follow:

§ 220.8a Breakfast components and quantities for the meal pattern.

* * * * *

(b) * * * Either breast milk or iron-fortified infant formula shall be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered. In these situations, additional breast milk must be offered if the infant is still hungry. * * *

* * * * *

(3) * * *

BREAKFAST PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4-6 fl.oz. formula ¹ or breast milk ^{2,3}	4-8 fl. oz. formula ¹ or breast milk ^{2,3} ; .. 0-3 Tbsp. Infant cereal ^{1,4}	6-8 fl. oz. formula ¹ or breast milk ^{2,3} ; and 2-4 Tbsp. Infant cereal ¹ ; and 1-4 Tbsp. Fruit and/or vegetable.

¹ Infant formula and dry infant cereal shall be iron-fortified.
² It is recommended that breast milk be served in place of formula from birth through 11 months.
³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
⁴ A serving of this component shall be optional.

* * * * *
PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.2:

a. The definition of *Infant cereal* is amended by removing the words "formula or milk" and adding in their place the words "breast milk or iron-fortified infant formula".

b. The definition of *Infant formula* is revised.

c. The definition of *Milk* is amended by revising the first sentence.

The revisions specified above read as follow:

§ 226.2 Definitions

* * * * *

Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

* * * * *

Milk means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk, except that, in the meal pattern for infants (0 to 1 year of age), milk means breast milk or iron-fortified infant formula. * * *

* * * * *

3. In § 226.20:

a. The introductory text in paragraph (b) is amended by removing the ninth and tenth sentences, revising the eleventh sentence, and adding two new sentences immediately following the eleventh sentence.

b. Paragraphs (b)(1), (b)(2), (b)(3)(i) and (b)(3)(ii) are amended by adding the words "of" and "iron-fortified infant formula" each time they appear. Paragraphs (b)(3)(i) and (b)(3)(ii) are further amended by removing the words "or 6 to 8 fluid ounces whole milk" each time they appear.

c. Paragraph (b)(3)(iii) is amended by removing the words "whole milk" and adding the words "breast milk" in their place.

d. The "Child Care Infant Meal Pattern" table in paragraph (b)(4) is revised.

The revisions and addition specified above read as follow:

§ 226.20 Requirements for meals.

(b) * * * Either breast milk or iron-fortified infant formula shall be served for the entire first year. For some

breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered. In these situations,

additional breast milk must be offered if the infant is still hungry.* * *
(4) * * *

CHILD CARE INFANT MEAL PATTERN

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4-6 fl. oz. formula ¹ or breast milk ^{2,3} ...	4-8 fl. oz. formula ¹ or breast milk ^{2,3} ; .. 0-3 Tbsp. Infant cereal ^{1,4}	6-8 fl. oz. formula ¹ or breast milk ^{2,3} ; .. and 2-4 Tbsp. Infant cereal ^{1,4} ; and 1-4 Tbsp. Fruit and/or vegetable
Lunch or supper	4-6 fl. oz. formula ¹ or breast milk ^{2,3} ..	4-8 fl. oz. formula ¹ or breast milk ^{2,3} ; 0-3 Tbsp. Infant cereal ^{1,4} ; 0-3 Tbsp. Fruit and/or vegetable ⁴	6-8 fl. oz. formula ¹ or breast milk ^{2,3} ; .. and 2-4 Tbsp. Infant cereal ¹ ; and/or 1-4 Tbsp. Meat, fish, poultry, egg yolk, cooked dry beans, or peas; or 1/2-2 oz. Cheese; or 1-4 Tbsp. Cottage cheese, cheese food, or cheese spread; and 1-4 Tbsp. Fruit and/or vegetable
Supplement (snack)	4-6 fl. oz. formula ¹ or breast milk ^{2,3} ...	4-6 fl. oz. formula ¹ or breast milk ^{2,3} ...	2-4 fl. oz. formula ¹ , breast milk ^{2,3} , or fruit juice ⁵ ; 0-1/2 bread ^{4,6} or 0-2 crackers ^{4,6}

¹ Infant formula and dry infant cereal shall be iron-fortified.

² It is recommended that breast milk be served in place of formula from birth through 11 months.

³ For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

⁴ A serving of this component shall be optional.

⁵ Fruit juice shall be full-strength.

⁶ Bread and bread alternates shall be made from whole-grain or enriched meal or flour.

* * * * *
Dated: October 29, 1999.

Shirley R. Watkins,
Under Secretary for Food, Nutrition and Consumer Services.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

[Docket No. DA-00-01]

Milk in the New England and Other Marketing Areas; Exemption of Handlers Operating Plants in Clark County, Nevada, From Order Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of statutory amendment.

SUMMARY: This document informs interested parties of an amendment to the Agricultural Marketing Agreement Act of 1937 (AMAA). A provision of the Agriculture Appropriations Bill, which

was signed into law on October 22, 1999, amended the AMAA to exempt any handler operating a plant in Clark County, Nevada, from the pricing provisions of any Federal milk marketing order. The exemption is effective October 1, 1999.

EFFECTIVE DATE: October 1, 1999.
FOR FURTHER INFORMATION CONTACT: John F. Borovies, Chief, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7183, e-mail address john.borovies@usda.gov.

SUPPLEMENTARY INFORMATION: This document informs interested parties of an amendment to the AMAA which exempts any handler operating a plant in Clark County, Nevada, from the pricing provisions of any Federal milk marketing order. The effect of this amendment is to remove any handler operating a plant in Clark County, Nevada, from the Federal milk marketing order framework. The amendment appears in the Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (P.L. 106-78), (i.e., Agriculture Appropriations Bill). In passing this amendment, the congressional intent was that "the price of milk paid by a handler at a plant operating in Clark County, Nevada, shall

not be subject to the Agricultural Marketing Agreement Act of 1937."

Beginning October 1, 1999, in addition to being exempted from complying with the pricing provisions of any federal milk marketing order, any handler operating a plant in Clark County, Nevada, will not be subject to other order provisions such as pooling, reporting, and assessments. This is because the major objective of every Federal milk marketing order is the pricing of milk in order to achieve orderly marketing. Once the enforcement of minimum pricing is no longer applicable, other order provisions, such as pooling, classification, and reporting, which are used to determine who should be regulated and the degree to which such persons should be regulated would serve no useful purpose.

Accordingly, this action is effective October 1, 1999, as indicated by the law.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

The authority citation for 7 CFR Parts 1001 through 1139 continues to read as follows: