This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

## Nutrition Program for the Elderly; Adjusted Level of Assistance From October 1, 1993 to September 30, 1994 and Initial Level of Assistance From October 1, 1994 to September 30, 1995

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

# ACTION: Notice.

SUMMARY: This notice announces both the final level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1994 and the initial level of per-meal assistance for Fiscal Year 1995. The Fiscal Year 1994 initial level of assistance of \$.6146 is adjusted to \$.6057 for all eligible meals served during the fiscal year in accordance with section 311(c)(2)(A) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992 and preempted by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act of 1993. Rates are subject to change because NPE receives a finite amount of annual appropriations, but meal service is a variable which cannot be accurately projected. Therefore, if meal service exceeds Department projections, the rate must be adjusted accordingly. The Fiscal Year 1995 initial level of assistance is set at \$.60 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992

**EFFECTIVE DATE:** Fiscal Year 1994 Adjusted Level of Assistance: October 1, 1993. Fiscal Year 1995 Initial Level of Assistance: October 1, 1994.

# FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program

Administration Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: Executive Order 12866

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

#### **Executive Order 12372**

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is 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 notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984.)

## **Paperwork Reduction Act**

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

# Legislative Background

Section 310 of Pub. L. 102-375, the Older Americans Act Amendments of 1992, amended section 311(a)(4) of the Older Americans Act of 1965, 42 U.S.C. 3030a(a)(4), to require the Secretary of Agriculture to maintain an annually programmed level of assistance equal to the greater of: (1) The current appropriation divided by the number of meals served in the preceding fiscal year; or (2) 61 cents per meal adjusted annually beginning with Fiscal Year 1993 to reflect changes in the Consumer Price Index. Section 311(c)(2) of the Act (42 U.S.C. 3030a(c)(2)) was amended to provide that the final reimbursement claims must be adjusted so as to utilize the entire program appropriation for the fiscal year for per-meal support.

Notwithstanding the initial rates established by the Older Americans Act, the Department is required to comply with the spending clause of the U.S. Constitution and 31 U.S.C. 1341(a)(1)(A) (known as the Antideficiency Act), which prohibit the obligation or expenditure of funds in excess of the available appropriation. Thus the Department is required to establish (and if necessary, adjust) rates in such a manner as to not exceed the program appropriation.

# Fiscal Year 1994 Adjusted Level of Assistance

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act of 1993 (Pub. L. 103–111), which appropriated NPE funding for Fiscal Year 1994, imposed different NPE rate management requirements for Fiscal Year 1994. Title IV, Domestic Food Programs, of the Act provides that "\* \* a maximum rate of reimbursement to States will be established by the Secretary, subject to reduction if obligations would exceed the amount of available funds, with any unobligated funds to remain available for obligation in the fiscal year beginning October 1, 1994.

Based on its projection of the number of meals to be claimed during the fiscal year, and in light of constitutional and statutory prohibitions on obligating or spending funds in excess of the available appropriation, the Department announced an initial per-meal reimbursement rate of \$.6146, the highest rate which it believed could be sustained throughout the fiscal year. This initial level of per-meal assistance was announced in the January 3, 1994 **Federal Register** (57 FR 59).

The Department's meal service projection for Fiscal Year 1994 assumed a .45 percent meal service increase over virtually complete Fiscal Year 1993 meal counts. This growth factor represented one-half of the highest rate of growth (.9 percent) the program had experienced in any one of the four previous fiscal years. However, meal service, which is the basis for rate setting, cannot always be accurately projected because it follows no discernible pattern from year to year. In some recent years, for example, meal service declined when the per-meal support level remained unchanged or increased.

Data for the first three quarters of Fiscal Year 1994 revealed that the program had experienced a .31 percent meal service increase over the number of meals served in the first three quarters in Fiscal Year 1993, well within the Department's projected .45 percent increase for the year. However, the program experienced an almost

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