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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206-A159

Pay Under Other Systems

AGENCY: Office of Personnel Management

ACTION: Technical amendment.

SUMMARY: This document contains a technical amendment to the final regulations that were originally published in the **Federal Register** on Friday, January 2, 1987 (52 FR 1). This technical amendment implements statutory changes in the total amount of performance awards that may be granted to career members of the Senior Executive Service in a fiscal year. These changes were enacted by Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, October 21, 1998.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606-1610, FAX (202) 606-0557, or email to seshelp@opm.gov.

SUPPLEMENTARY INFORMATION: Public Law 105-277, enacted on October 21, 1998, amends 5 U.S.C. 5384(b)(3) to increase the total amount of SES performance awards that may be paid during a fiscal year. The public law changed the award pool configurations to 10 percent (formerly 3 percent) of aggregate career SES basic pay, or 20 percent (formerly 15 percent) of the average annual rates of career SES basic pay. The new award pool provisions could be used for SES performance awards paid any time after enactment of the public law.

In accordance with 5 U.S.C. 553, I find that, as these amendments are mandated by statute, notice and public procedure thereon are impracticable,

unnecessary, and contrary to the public interest.

Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

2. Amend § 534.403 by revising paragraph (b) to read as follows:

§ 534.403 Performance awards.

* * * * *

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Ten percent of the aggregate career SES basic pay for the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Twenty percent of the average annual rates of basic pay for career SES appointees of the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

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[FR Doc. 99-33583 Filed 12-28-99; 8:45 am]

BILLING CODE 6325-01-U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584-AC06

Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule contains changes to the Summer Food Service Program as a result of a provision in the Healthy Meals for Healthy Americans Act of 1994 which allows Program meal service to be provided during periods of unanticipated school closures such as teacher strikes. Additionally, this rule makes discretionary changes to simplify sponsor and site applications and State agency monitoring requirements. Except for the State agency monitoring requirements, which were changed substantially, the final rule makes only minor modifications to the provisions of the proposed rule. These changes are intended to reduce unnecessary and duplicative administrative burdens for Summer Food Service Program sponsors and State agencies.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein (Summer Food Service Program) at the following address: Policy and Program Development Branch, Child Nutrition Division, Room 1006, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302-1500, or by telephone at: (703) 305-2620.

SUPPLEMENTARY INFORMATION:

Background

The Summer Food Service Program (SFSP) provides free meals to children at approved feeding sites in areas with significant concentrations of low-income children during school vacations. SFSP meals are intended to take the place of the meals that children normally receive through the National School Lunch and Breakfast Programs during the school year.

Generally, Program benefits are limited to times when school is not in

session during the months of May through September. Section 13(c)(1) of the National School Lunch Act (NSLA) (42 U.S.C. 1761(c)(1)) provides an exception to these timeframes for areas that operate on a year-round, or continuous school calendar basis. In these areas, Program benefits may be provided at any time of the year that children are on school vacation. An additional exception was authorized by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), which permits the SFSP to operate in areas with unanticipated school closures during October through April.

On October 13, 1998, we published a proposed rule for the SFSP in the *Federal Register* (63 FR 54617). The rule proposed changes to the Program in the following three areas:

- Unanticipated school closures. The proposed rule set forth criteria for participation of sponsors and sites in the SFSP during periods of unanticipated (*i.e.*, emergency) school closures during the months of October through April, and included language from Pub. L. 103-448 on the types of situations that qualify;

- Paperwork reduction. The proposed rule removed unnecessary and duplicative sponsor and site application requirements for experienced sponsors and sites; and,

- Targeted State agency monitoring. The proposed rule revised State agency monitoring requirements to better target efforts to new and large sponsors, and those sponsors who have operational deficiencies or experience significant staff turnover from one year to the next.

The proposed rule had a sixty day public comment period which ended on December 14, 1998. During this time, we received a total of 17 comments. Of these, 13 were from State agencies, 2 were from SFSP sponsors (both of which were local school districts), and 2 were from community organizations. In general, commenters were supportive of the proposed rule. Every commenter addressed the area of "paperwork reduction" in some capacity, and primarily viewed the changes as positive with only minor modifications needed. The final rule is being published based on these comments.

A. Unanticipated School Closures

General Discussion

Since the beginning of the SFSP, there have been times when a single school or an entire school system did not open as scheduled at the end of the summer (*e.g.*, in the case of a teacher strike). Prior to 1994, the NSLA prohibited the SFSP to operate during the months of

October through April unless the school was in session on a year-round or continuous school calendar basis. Since the National School Lunch and Breakfast Programs may only operate when school is in session, many children were denied a nutritious meal when the schools were closed in these emergency situations.

In response to these circumstances, the President signed into law the Healthy Meals for Healthy Americans Act of 1994. Section 114(c) of this law amended section 13(c)(1) of the NSLA to allow SFSP meals to be served at "non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order or similar cause".

Proposed Rule Provisions

In addition to setting forth the circumstances warranting implementation, the October 13, 1998, proposed rule detailed how existing requirements for SFSP participation would be applied when the Program operates during unanticipated school closures. Specifically, the proposed rule:

- Listed circumstances under which SFSP sponsors and sites are eligible to participate in the Program during unanticipated school closures. These circumstances included natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, and similar causes as approved by the State agency;

- In accordance with the explicit language of the law, permitted only *non-school sites* to be eligible feeding sites in these situations, although school food authorities would be eligible as *sponsors*;

- Waived eligibility documentation for sites that had previously participated in the SFSP in the current year or prior two calendar years; documentation of site eligibility was still required for all other sites;

- Streamlined the application process for sponsors which had successfully participated in the Program in the current year or either of the two prior calendar years;

- Required that all sponsors participating during unanticipated school closures enter into agreements with the State agency to operate the Program; and

- Provided State agencies discretion in conducting pre-approval visits of sponsors operating the Program during unanticipated school closures, but maintained the requirement that *sponsors* visit all of their feeding sites prior to Program operations.

Comments Received and Final Rule Provisions

Non-School Sites

Six commenters expressed concern that the proposed rule did not allow school sites to participate in the SFSP during unanticipated school closures. In general, respondents believe that schools are accessible to the community at large and, a uniform prohibition on using those sites as feeding sites during all emergency situations might deny eligible children SFSP meals when they most need them.

Although we agree that school buildings are sometimes the most capable and logical feeding sites (*e.g.*, during a natural disaster), Pub. L. 103-448 explicitly excludes school sites from participating in these situations. Therefore, this final rule retains the provision as set forth in the proposed rule. We recommend that local areas that encounter unanticipated school closures in which a school feeding site is the only viable option, should contact their State agency to find acceptable alternatives, or to explore the possibility of requesting a waiver of this provision from the Department under section 12(l) of the NSLA (42 U.S.C. 1760(l)). We will consider these requests on a case-by-case basis. We do not anticipate granting waivers in situations of unanticipated school closures involving labor-management disputes at school sites unless the safety of the children being fed at the site can be insured. Under this rule, school food authorities that meet the sponsor eligibility requirements may serve as sponsors during unanticipated school closures.

Sponsor Applications

We received one comment expressing concern about allowing experienced sponsors to participate in the Program without a current year application. The commenter indicated that sponsor information can change significantly from year to year, and recommended that we retain the application requirements found in the current regulations. State agencies that have concerns about the accuracy of the information they already have on file can choose to require that sponsors complete a new application in these circumstances. However, we believe the need to begin program operations quickly in these situations usually outweighs the need for collecting new application information from sponsors who have participated in the Program within the last three years. Accordingly, this final rule retains the streamlined application provision for experienced sponsors seeking to operate the Program

during unanticipated school closures. This provision is set forth in § 225.6(c)(1) and 225.14(a) of this final rule.

Year-Round Sites

One commenter expressed concern that the provisions for unanticipated school closures do not include year-round, or continuous school calendar, SFSP sponsors. The commenter was concerned that the type of unanticipated school closures discussed in Pub. L. 103-448 and the proposed rule could occur at any time of the year, not just during October through April. We agree with the commenter, and do not believe the law intended to exclude sponsors in year-round school communities from being able to provide SFSP meal service during unanticipated school closures.

Accordingly, this final rule adds language clarifying that the unanticipated school closure provisions of the regulations apply to areas operating under a continuous school calendar system. In these areas, this authority is not restricted to closures that occur during the months of October through April, but rather is available at any time of the year. These revisions appear in this final rule in §§ 225.6(b)(1); 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); 225.7(a); 225.7(d)(1)(i); 225.14(a); and 225.15(d)(1).

Other Provisions/Clarifying Language

We received a few comments pertaining to the meaning of "current year or prior two calendar years" in describing those sponsors who are exempt from application and other requirements during unanticipated school closures. One commenter suggested an editorial change to be more specific with our intent of prior participation in the Program at any time within three years. Therefore, we are amending the language of the final rule to read "current year or in either of the prior two calendar years." These changes are contained in §§ 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); and 225.14(a) of this final rule.

We received no comments on the remaining provisions of the proposed rule on operation of the SFSP during unanticipated school closures. Accordingly, this final rule retains these provisions as set forth in the proposed rule. These provisions are contained in this final rule at §§ 225.6(c)(2)(i)(G) and 225.6(c)(3)(i)(B) (documentation of site eligibility); § 225.7(d)(1)(i) (pre-approval visits by State agencies); and §§ 225.7(a) and 225.15(d) (training by State agencies and sponsors).

B. Paperwork Reduction

Proposed Rule Provisions

The proposed rule took the minimum application requirements for SFSP sponsors and sites found in current § 225.6(c)(2) and reorganized and substantially revised them. The proposed rule established separate minimum requirements for: (1) New sponsors and sites, and those with significant operational problems in the prior year; and (2) experienced sponsors and sites. In the proposed rule, paragraph (c)(2) contained the requirements for new sponsors/sites and sponsors/sites with significant operational problems, and paragraph (c)(3) contained the requirements for experienced sponsors/sites. The application requirements were grouped and discussed in the preamble to the proposed rule as general requirements that apply to all types of sponsors and sites and requirements that are specific to certain types of sites, such as open sites, enrolled sites, migrant sites, and homeless sites.

In light of this new structure, and to help clarify application requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, new definitions were included in the proposed rule in § 225.2 for "new sponsor," "new site," "experienced sponsor," and "experienced site." The proposed rule eliminated duplicative and unnecessary requirements for experienced sponsors, with the intent of reducing the paperwork associated with the application process for these sponsors.

The proposed rule also contained new definitions of "open site," "closed enrolled site," and "open enrolled site." These definitions were used in setting forth the application requirements, and included in the rule to clarify how each type of Program site demonstrates eligibility.

Comments Received and Final Rule Provisions

We received a total of 17 comments in the area of Paperwork Reduction. In general, commenters were supportive of the changes to the Program outlined in the proposed rule with only minor modifications needed. The concerns of commenters and a discussion of these concerns are provided below.

General Comments

A few commenters expressed concern that paperwork is not reduced under the proposed rule, but rather increased as State agencies will need to keep separate records for experienced and new sponsors. In addition, several

commenters expressed concern that the integrity of SFSP may be compromised if we do not require all information currently required of SFSP sponsors on an annual basis, as information can change significantly from year to year for experienced sponsors.

In response to these comments, we do not anticipate an increase in administrative burden once the changes are implemented. As with any new system, it may take additional time to create a system that appropriately determines and tracks new sponsors, sponsors with significant operational problems, and experienced sponsors. However, there is flexibility in how a State agency implements these provisions. As we indicated in the preamble to the proposed rule, the requirements set forth in the regulations are *minimum* requirements. State agencies may include other provisions in their applications as long as they do not establish additional requirements for SFSP participation.

State Agency Classification of Sponsors

We also received several comments in the area of State agency classification of sponsors. Commenters suggested that we provide State agencies with guidelines for categorizing sponsors as having significant staff turnover or significant operational problems. We do not believe it is necessary nor prudent to include specific guidelines for making sponsor classifications in the final rule. We prefer to leave this discretion to State agencies to make assessments on a case-by-case basis. In making these classifications, State agencies should consider the deficiencies, if any, noted in monitoring visits, reports that have been received about the sponsor or any of its sites, and whether staff in key positions have changed.

Commenters also indicated that sponsors who experience significant operational problems should be required to attend more training or should be monitored more frequently by the State agency, not merely be required to submit more paperwork or information to the State agency. We believe providing additional training and monitoring for sponsors with operational problems is important, and encourage State agencies to do so. However, we also believe there is value in having these sponsors fully document their plans for administering the Program through the application process. This documentation helps ensure that they have a thorough understanding of Program requirements and responsibilities.

Definitions

One commenter recommended including in the definition of experienced sponsor, a requirement that the sponsor had to have successfully completed an application to participate in the Program in the prior year. We do not believe this change is necessary. We believe the fact that a sponsor is experienced clearly implies that the organization must have successfully completed an application. Therefore, we are not including the commenter's recommendation in the final rule.

Another commenter proposed eliminating the word "successful" from "successful participation" as a criterion to be classified as an experienced sponsor. We agree that the term "successful" is a subjective term. However, we believe it conveys the appropriate meaning. Therefore, we are retaining it in the definition of experienced sponsor in § 225.2 of the final rule.

We received one comment requesting that the reference to using data "from other appropriate sources" found in paragraph (a)(3) of the definition of "areas in which poor economic conditions exist" in § 225.2 needs to be better defined. As mentioned in the proposed rule, to determine if a site is located in a low-income area, State agencies should first consult school data to determine if the site meets the criteria that 50 percent or more of children are eligible for free or reduced-price meals. Census data may be used to determine site eligibility in certain circumstances where it is more representative of an area's socioeconomic status than school data. If neither school nor census data indicates that a site is area eligible but "other" data sources do, State agencies must consult with FNS to assess the appropriateness of that data as an indicator of an area's socioeconomic status. Though it is used rarely, for these unique situations, we believe it is important to retain the language "from other appropriate sources" in the final rule as it provides some flexibility in determining if a source provides substantial evidence of being a low-income area.

We received several comments on the proposed rule's definitions of "open site," "closed enrolled site," and "open enrolled site." Commenters were concerned that the terminology would lead to confusion regarding the required documentation of eligibility for the different types of sites, especially in the case of the term "open enrolled site."

The proposed rule defined an "open site" as "a site at which meals are made available to all children in the area and

which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist." Open sites document their eligibility on the basis of area data showing that at least 50 percent of the children from the area are from households with incomes at or below 185 percent of poverty.

An "open enrolled site" was defined as "an enrolled site which is initially open to broad community participation, but at which the sponsor limits attendance for reasons of security, safety, or control. Site eligibility for an open enrolled site shall be documented in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist." For an open enrolled site, site eligibility is documented using area eligibility information, the same way that eligibility is documented for an open site.

The proposed rule defined a closed enrolled site as "a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f) of this part." Thus, in contrast to open and open enrolled sites, a closed enrolled site documents its eligibility on the basis of applications from individual children that are enrolled at the site.

We agree with commenters that the term "open enrolled site" could lead a reader to believe that the site's eligibility is linked to the income eligibility of individual children rather than the overall socioeconomic status of the area. Based on comments, we are changing the term "open enrolled site" in this final rule to "restricted open site." (The wording of the definition remains the same.) We believe "restricted open site" more accurately conveys the way that these sites must document eligibility. The definitions of "open site," "closed enrolled site," and "restricted open site" are in § 225.2 of this final rule.

Site Eligibility Documentation

One commenter recommended allowing eligibility documentation for open and open enrolled (now "restricted open") sites to be collected

every five years, instead of the three years set forth in the proposed rule, because a site's economic status does not change significantly in a five year time period. We agree that, in most cases, an area's overall economic status does not change rapidly. However, we are retaining the three year cycle for determining a site as area eligible when school data is used in § 225.6(c)(3)(i)(B), as we believe this timeframe provides the appropriate balance between paperwork reduction and Program accountability.

Homeless Feeding Sites

The requirements for new sponsors and sponsors with significant operational problems applying to participate in the Program at homeless feeding sites were contained in § 225.6(c)(2)(i)(L) of the proposed rule. We did not receive any comments on the provisions relating to homeless feeding sites. However, minor changes have been made to the requirements for homeless feeding sites, since these sites are no longer eligible to participate in SFSP solely on the basis of being homeless sites. Section 107(j)(2)(A) of the Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336) amended Section 13(a)(3)(C) of the NSLA (42 U.S.C. 1761 (a)(3)(C)) to remove the special eligibility provisions for homeless feeding sites in SFSP, and authorized their participation in the Child and Adult Care Food Program, effective July 1, 1999. To continue to participate in SFSP, homeless sites must qualify as open or enrolled sites. Therefore, this final rule removes the requirement in proposed § 225.6(c)(2)(i)(L) that site information sheets for homeless sites contain certification that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families, since this information is no longer necessary in determining a homeless site's eligibility to participate in SFSP.

Budgets

One commenter stated that experienced sponsors should not be required to continue to submit administrative budgets to the State agency, as these budgets are not an accurate indicator of what a sponsor needs to financially administer the Program because sponsors tend to add and drop sites during the course of the year. The commenter also stated that experienced sponsors usually have a good understanding of the "lesser of cost versus rate" concept and can effectively use this to project their finances for the Program. According to

the April 14, 1994, FNS instruction, 796-4, Revision 4, the "lesser of cost versus rate" concept means payments made to SFSP sponsors for their operating costs should equal the lesser of: (1) the actual operating costs incurred by the sponsor, or (2) the sum of the amounts derived by multiplying the number of meals, by type, that are served to participating children at the current reimbursement rates. This concept is also outlined in § 225.9(d)(6)(i) and (ii) of the SFSP regulations.

As mentioned in the proposed rule, updating and submitting administrative and operating budgets to the State

agency is an important process as it ensures that Federal funds are properly spent. Additionally, this process helps sponsors determine whether their planned expenditures will be adequately funded under the SFSP's "lesser of costs versus rates" funding formula. We continue to believe this is important information to be submitted on an annual basis to the State agency. Therefore, we are retaining the requirement for experienced sponsors in § 225.6(c)(3)(ii)(B). (The requirement is found in § 225.6(c)(2)(ii)(B) of this final rule for new sponsors and sponsors with significant operational problems.)

Other Comments/Summary of Provisions

We did not receive any comments on the remaining provisions of the proposed rule on sponsor and site application requirements. The following chart outlines the sponsor and site application requirements for new sponsors/sponsors with significant operational problems, and for experienced sponsors. Changes based on public comments received, as discussed above, have been incorporated in the final rule.

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Site Information Sheet:		
Organized and supervised system for serving meals to children.	§ 225.6(c)(2)(i)(A)	N/A.
Estimated number and types of meals to be served and times of service.	§ 225.6(c)(2)(i)(B)	§ 225.6(c)(3)(i)(A).
Arrangements for delivery and holding of meals and storing leftovers for next day meal service.	§ 225.6(c)(2)(i)(C)	N/A.
Arrangements for food service during periods of inclement weather.	§ 225.6(c)(2)(i)(D)	N/A.
Access to means of communication for making necessary adjustments for number of meals to be served at each site.	§ 225.6(c)(2)(i)(E)	N/A.
Whether the site is rural or non-rural and whether the site's food service will be self-prepared or vended.	§ 225.6(c)(2)(i)(F)	N/A.
Open sites and restricted open sites: documentation supporting area eligibility determination.	§ 225.6(c)(2)(i)(G)	§ 225.6(c)(3)(i)(B). Documentation must be submitted every three years if school data is used, or earlier if requested by the State agency. If census data is used, documentation must be submitted when new census data becomes available.
Closed enrolled sites: the projected number of children enrolled and projected number of children eligible for f/rp meals for each site.	§ 225.6(c)(2)(i)(H)	§ 225.6(c)(3)(i)(C).
NYSP sites: certification from sponsor that all children who will receive SFSP meals are enrolled participants in NYSP.	§ 225.6(c)(2)(i)(I)	N/A.
Camps: number of children enrolled in each session who meet Program income standards.	§ 225.6(c)(2)(i)(J)	§ 225.6(c)(3)(i)(D).
Migrant sites: certification from migrant organization that site serves children of migrant worker families. If site also serves non-migrant children, sponsor must certify that the site primarily serves migrant children.	§ 225.6(c)(2)(i)(K)	N/A.
Homeless feeding sites: information that demonstrates that site is not a residential child care institution; description of method used to ensure that no cash payments or other in-kind services are used for meal service; certification that site only claims meals served to children.	§ 225.6(c)(2)(i)(L)	N/A.
Other Application Requirements:		
Information that demonstrates that applicant meets requirements in § 225.14; extent of Program payments needed including advance and start-up payments (if applicable); staffing and monitoring plan.	§ 225.6(c)(2)(ii)(A)	§ 225.6(c)(3)(ii)(A).
Complete administrative and operating budget which includes projected administrative expenses and information of how sponsor will operate the Program within estimated reimbursement.	§ 225.6(c)(2)(ii)(B)	§ 225.6(c)(3)(ii)(B).

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Summary of how meals will be obtained; if invitation for bid is required, sponsors must submit a schedule for bid dates and a copy of their IFB.	§ 225.6(c)(2)(ii)(C)	§ 225.6(c)(3)(ii)(C). If IFB is required, sponsors must submit schedule for bid dates and copy of IFB if a change has occurred from previous year. If method for procuring meals has changed from previous year, sponsors must submit a summary of how meals will be obtained.
For sponsors seeking approval as unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(3).	§ 225.6(c)(2)(ii)(D)	N/A.

C. Targeted State Monitoring

General Discussion

State agency monitoring of SFSP sponsors and sites is critically important as it serves as a tool for effective Program management and ensures that quality meals are being served to eligible children. However, we believe that the current State agency monitoring requirements do not always allow State agencies enough flexibility to determine where to focus their monitoring resources. Provisions in the proposed rule allowed State agencies to target their review efforts to new sponsors and those sponsors determined by the State agency to need follow-up monitoring. In response to public comments, this final rule revises some of the monitoring requirements contained in the proposed rule to allow State agencies to more effectively focus their monitoring efforts on those sponsors/sites which are new, operationally deficient, or demonstrate the greatest potential to be deficient in their operations.

Proposed Rule Provisions

Pre-approval Visits

The proposed rule retained the current provisions, found in § 225.7(d)(1)(i) and (ii), for State agencies to conduct pre-approval visits of *sponsors*. These provisions require State agencies to:

- Conduct pre-approval visits for all applicant sponsors which did not participate in the Program in the prior year;
- Conduct optional pre-approval visits for new applicant school food authority sponsors which have been reviewed by the State agency under the NSLP during the preceding 12 months and had no significant deficiencies; and
- Conduct pre-approval visits for sponsors identified by the State agency as needing pre-operational visits as a result of operational problems in the prior year.

The proposed rule removed the specific requirements for State agencies

to conduct pre-approval visits for certain large sites and sites operated by private nonprofit sponsors, and made all State agency pre-approval visits to *sites* discretionary. This provision was contained in § 225.7(d)(1)(iii) of the proposed rule.

Sponsor and Site Reviews

The proposed rule required that, at any time during the Program year, State agencies were required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number was greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- Every sponsor with 20 or more sites.

Under the proposed rule, all sponsors were to be reviewed at least once every 3 years. In addition, sponsors with large sites, larger numbers of sites, or significant operational problems in the prior year were required to be reviewed earlier. The recommendation was also made that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increased substantially, from one year to the next.

Finally, the proposed rule eliminated the special requirements for State agency review of private nonprofit organizations found in § 225.7(d)(2)(i)(A), and removed the review requirement for academic-year NYSP sites, since the NSLA no longer authorizes these sites to participate in SFSP.

As indicated in the preamble of the proposed rule, the proposed changes were not intended to result in a reduction in a State agency's monitoring efforts. Rather, it was intended that the State agency's monitoring resources would become more targeted to reviews of new sponsors and sponsors of over 20

sites, and other sponsors that the State agency identifies, and that a correspondingly greater amount of State agency time and effort could be spent in conducting such reviews. We expected each State's level of resources devoted to SFSP monitoring to remain the same.

Comments Received and Final Rule Provisions

We received 3 comments pertaining to sponsor and site reviews. One commenter suggested removing the reference to having State agencies target sponsors that have increased their sites by 5 or more, indicating that recommendations such as this are better placed in guidance material. Two commenters expressed concern that the net result of the proposed monitoring requirements could result in significant reductions in the monitoring efforts put forth by State agencies.

As a result of these comments, we are revising the State agency monitoring requirements in this final rule. We are removing the proposed requirements that the State agency annually review every sponsor with 20 or more sites, and that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increases substantially, from one year to the next.

Instead, State agencies will be required to annually review a number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year. We believe that the three-year review cycle, coupled with the elimination of the current detailed and prescriptive review requirements, will provide State agencies the flexibility they need to properly oversee Program operations. The requirement to annually review sponsors with claims totaling one-half of Program reimbursements in the prior year ensure that State agencies focus on the largest sponsors. To improve Program management, we are

considering similar changes in the State agency monitoring requirements for the Child and Adult Care Food Program.

Accordingly, under this final rule, State agencies are required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number is greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- A number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year.

In addition, State agencies must review every sponsor at least once every 3 years. Sponsors with large numbers of sites, or a site(s) with a large number of children attending, should be reviewed earlier. These provisions are contained in § 225.7(d)(2) of this final rule.

D. Procedural Matters

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires 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 must prepare 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 rule contains no Federal mandates (under the 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 rule is

not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Simplifying and streamlining the administration of the SFSP is the intended effect of this rule when implemented.

Executive Order 12988

This final 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 "Dates" section of the preamble of the rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and sponsors.

Paperwork Reduction Act

This final rule seeks to reduce the reporting and recordkeeping requirements for State agencies administering the SFSP. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the reporting requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for 7 CFR

Part 225 under OMB number 0584-0280.

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 225 is amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.2:
- a. New definitions of *Closed enrolled site*, *Experienced site*, *Experienced sponsor*, *New site*, *New sponsor*, *Open site*, and *Restricted open site* are added in alphabetical order; and
 - b. The definition of *Areas in which poor economic conditions exist* is revised. The additions and revision read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

(a) The local areas from which an open site and restricted open site draw their attendance in which at least 50 percent of the children are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined:

- (1) By information provided from departments of welfare and education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations;
- (2) By the number of free and reduced-price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites; or
- (3) From other appropriate sources; or
- (b) A closed enrolled site.

* * * * *

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

* * * * *

Experienced site means a site which, as determined by the State agency, has successfully participated in the Program in the prior year.

Experienced sponsor means a sponsor which, as determined by the State agency, has successfully participated in the Program in the prior year.

* * * * *

New site means a site which did not participate in the Program in the prior year, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

New sponsor means a sponsor which did not participate in the Program in the prior year, or, as determined by the State agency, a sponsor which has experienced significant staff turnover from the prior year.

* * * * *

Open site means a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist*.

* * * * *

Restricted open site means a site which is initially open to broad community participation, but at which the sponsor restricts or limits attendance for reasons of security, safety or control. Site eligibility for a restricted open site shall be documented in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist*.

* * * * *

3. In § 225.6:

a. Paragraph (b)(1) is amended by adding a new sentence at the end;

b. Paragraph (b)(4) is revised;

c. Paragraph (c)(1) is revised;

d. Paragraph (c)(2) is revised;

e. Paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(4) and (c)(5), respectively, and a new paragraph (c)(3) is added;

f. Newly redesignated paragraph (c)(4) is amended by adding a heading and by removing paragraph (c)(4) introductory text and adding it as the first sentence in newly redesignated paragraph (c)(4)(i); the paragraph is further amended by removing the reference to "(c)(4)" in paragraph (c)(4)(ii)(D) and adding in its place a reference to "(c)(5)".

g. Newly redesignated paragraph (c)(5) is amended by adding a heading;

h. Paragraph (d)(1)(ii) is amended by removing the word "and" at the end of the paragraph;

i. Paragraph (d)(1)(iii) is amended by removing the period at the end of the paragraph and adding in its place the word "; and";

j. A new paragraph (d)(1)(iv) is added; and

k. Paragraph (e)(1) is revised.

The additions and revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(1) * * * Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) shall be exempt from the application submission deadline.

* * * * *

(4) The State agency shall determine the eligibility of sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.14. However, State agencies may approve the application of an otherwise eligible applicant sponsor which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: It is a residential camp; it proposes to provide a food service for the children of migrant workers; a failure to do so would deny the Program to an area in which poor economic conditions exist; a significant number of needy children will not otherwise have reasonable access to the Program; or it proposes to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar). In addition, the State agency may approve a sponsor for participation during an unanticipated school closure without a prior application if the sponsor participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

(c) * * *

(1) *Application forms.* The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. Sponsors proposing to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be

exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years. The State agency may use the application form developed by FNS, or it may develop an application form, for use in the Program.

Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) *Requirements for new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems in the prior year.*—(i) *Site information sheets.* At a

minimum, the application submitted by new sponsors and by sponsors which, in the determination of the State agency, have experienced significant operational problems in the prior year shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for new sponsors and new sites, and for sponsors and sites which, in the determination of the State agency, have experienced significant operational problems in the current year must demonstrate or describe the following:

(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for food service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended;

(G) For open sites and restricted open sites, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. However, for sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program

at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation;

(H) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price meals for each of these sites;

(I) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP;

(J) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session;

(K) For those sites at which applicants will serve children of migrant workers, certification from a migrant organization which attests that the site serves children of migrant worker families. If the site also serves non-migrant children, the sponsor shall certify that the site predominantly serves migrant children; and

(L) For a site that serves homeless children, information sufficient to demonstrate that the site is not a residential child care institution, as defined in paragraph (c) of the definition of *school* in § 210.2 of this chapter. If cash payments, food stamps, or any in-kind service are required of any meal recipient at these sites, sponsors must describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children. In addition, sponsors must certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to children.

(ii) *Other application requirements.* New sponsors and sponsors which in the determination of the State agency have experienced significant operational problems in the prior year shall also include in their applications:

(A) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the

operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs;

(C) A summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.). If an invitation for bid is required under § 225.15(g), sponsors shall also submit a schedule for bid dates, and a copy of their invitation for bid; and

(D) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, or under § 225.14(b)(5) as a private nonprofit organization, certification that it will directly operate the Program in accordance with § 225.14(d)(3).

(3) *Requirements for experienced sponsors and experienced sites.*—(i) *Site information sheets.* At a minimum, the application submitted by experienced sponsors shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for experienced sponsors and experienced sites must demonstrate or describe the information below. The State agency also may require experienced sponsors and experienced sites to provide any of the information required in paragraph (c)(2) of this section.

(A) The estimated number and types of meals to be served and the times of service;

(B) For open sites and restricted open sites, new documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist shall be submitted. Such documentation shall be submitted every three years when school data are used.

When census data are used, such documentation shall be submitted when new census data are available, or earlier if the State agency believes that an area's socioeconomic status has changed significantly since the last census. For sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two

calendar years shall be considered eligible without new documentation of serving an area in which poor economic conditions exist;

(C) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; and

(D) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(ii) *Other application requirements.* Experienced sponsors shall also include on their applications:

(A) The extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs; and

(C) If an invitation for bid is required under § 225.15(g), a schedule for bid dates. Sponsors shall also submit a copy of the invitation for bid if it is changed from the previous year. If the method of procuring meals is changed, sponsors shall submit a summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.).

(4) *Free meal policy statement.* * * *

(5) *Hearing procedures statement.* * * *

* * * * *

(d) * * *

(1) * * *

(iv) If it is a site proposed to operate during an unanticipated school closure, it is a non-school site.

* * * * *

(e) * * *

(1) Operate a nonprofit food service during the period specified, as follows:

(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) During the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.

* * * * *

4. In § 225.7:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1)(i) is amended by removing the semicolon at the end of the paragraph, by adding a period in its place, and by adding a new sentence at the end of the paragraph;

c. Paragraph (d)(1)(iii) is revised;

d. Paragraph (d)(1)(iv) is removed; and

e. Paragraph (d)(2) is revised.

The additions and revisions read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * * * *

(d) * * *

(1) * * *

(i) * * * In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be conducted at the discretion of the State agency;

* * * * *

(iii) All sites which the State agency has determined need a pre-approval visit.

(2) *Sponsor and site reviews*—(i) *General.* The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program

performance, and the results of previous reviews of the sponsor and sites. When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. Reviews shall be conducted as follows:

(ii) *Frequency and number of required reviews.* State agencies shall:

(A) Conduct a review of every new sponsor at least once during the first year of operation;

(B) Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

(C) Annually review every sponsor which experienced significant operational problems in the prior year;

(D) Review each sponsor at least once every three years; and

(E) As part of each sponsor review, conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater.

* * * * *

5. In § 225.14:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1) is removed; and

c. Paragraphs (d)(2) through (d)(6) are redesignated as paragraphs (d)(1) through (d)(5), respectively.

The addition reads as follows:

§ 225.14 Requirements for sponsor participation.

(a) * * * Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April

(or at any time of the year in an area with a continuous school calendar).

* * *

* * * * *

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99-33504 Filed 12-28-99; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584-AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the provisions contained in this rule address various changes required by the repeal of section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions also provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also changes the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule broadens the allowable uses of TEFAP administrative funds at the State and local levels, and provides greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort