

(e) The school food authority must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

5. In § 245.6a,

a. Amend the seventh sentence of paragraph (a) by removing the words "of food stamp households that provided food stamp case numbers" and add the words "of food stamp, FDPIR or TANF households that provided a food stamp or TANF case number or FDPIR case number or other identifier" in their place;

b. Revise paragraph (a)(2)(i);

c. Revise the second sentence of paragraph (a)(2)(iv);

d. Revise the fourth sentence of paragraph (a)(2)(v);

e. Revise the heading and first three sentences of paragraph (a)(3);

f. Add a sentence at the end of paragraph (a)(5); and

g. Revise the second sentence of paragraph (b)(3).

The revisions and addition read as follows:

#### **§ 245.6a Verification requirements.**

(a) \* \* \*

(2) *Notification of selection.* \* \* \*

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, households selected for verification must provide the social security number of each adult household member;

\* \* \* \* \*

(iv) \* \* \* These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting a food stamp, FDPIR or TANF office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking documentation produced by household members to prove the amount of income received. \* \* \*

(v) \* \* \* Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. \* \* \*

(3) *Food stamp, FDPIR or TANF recipients.* On applications where

households have furnished food stamp or TANF case numbers or FDPIR case numbers or other identifiers, verification shall be accomplished either by confirming with the local food stamp, FDPIR, or TANF office that each child, for whom application was made and a case number or other identifier was provided, is a member of a currently certified food stamp, FDPIR or TANF household; or by obtaining from the household a copy of a current "Notice of Eligibility" for the Food Stamp Program, FDPIR or TANF Program or equivalent official documentation issued by the food stamp, FDPIR or TANF office which confirms that the child is a member of a currently certified food stamp, FDPIR or TANF household. An identification card for either program is not acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp, TANF or FDPIR household, the procedures for adverse action specified in paragraph (e) of this section must be followed. \* \* \*

\* \* \* \* \*

(5) \* \* \* Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

(b) *Sources of information.* \* \* \*

(3) *Agency records.* \* \* \* Information concerning income, household size, or food stamp, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, school food authority or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. \* \* \*

\* \* \* \* \*

6. In § 245.10, revise paragraph (a)(3) to read as follows:

#### **§ 245.10 Action by School Food Authorities.**

(a) \* \* \*

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally,

school food authorities that have implemented direct certification and that must provide households a notice of eligibility, as specified in § 245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

\* \* \* \* \*

6. In § 245.11, add a new paragraph (g) to read as follows:

#### **§ 245.11 Action by State agencies and FNSROs.**

\* \* \* \* \*

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

Dated: December 16, 1999.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 99-33179 Filed 12-27-99; 8:45 am]

**BILLING CODE 3410-30-U**

## **DEPARTMENT OF AGRICULTURE**

### **Food and Nutrition Service**

#### **7 CFR Part 225**

**RIN 0584-AC23**

#### **Summer Food Service Program;**

#### **Implementation of Legislative Reforms**

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** This interim rule amends Summer Food Service Program (SFSP) regulations to incorporate nondiscretionary changes made by the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Program changes include easing restrictions of participation by private nonprofit

organizations and food service management companies, streamlining rules for schools to encourage Program sponsorship, reducing paperwork burdens for State agencies, and other provisions to improve Program operations. As required by law, these changes were implemented by the dates mandated by the statutes. This rule updates the SFSP regulations. In addition, this rule makes minor technical changes to the meal pattern requirements to conform the standards to those used in the National School Lunch Program and the School Breakfast Program.

**DATES:** This rule becomes effective January 27, 2000. We will consider comments that are submitted by the public. To be assured of consideration, comments must be postmarked on or before June 25, 2000.

**ADDRESSES:** Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302-1594. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.-5 p.m. Comments will also be

accepted via electronic mail submission at the following Internet address: CND Proposals@FNS.USDA.GOV. Since comments are being accepted on several rules at the same time, please refer to the title of this rule in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rothstein or Linda Jupin at the above address or by telephone at (703) 305-2620.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Summer Food Service Program (SFSP) is authorized under section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761). Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

In 1994, 1996, and 1998, substantive changes to the SFSP were made with the enactment of three public laws. These laws are briefly discussed below.

- The Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448) was signed on November 2, 1994. This law reauthorized the SFSP through Fiscal Year 1998 and amended a number of provisions in section 13 of the NSLA. These provisions were implemented by the Department via

guidance issued to State agencies on December 8, 1994.

- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) was signed on August 22, 1996. This statute, which made landmark changes to the Federal public assistance program known as the Aid to Families with Dependent Children (AFDC), also amended the NSLA and the Child Nutrition Act of 1966 (CNA). The Department informed State agencies of impending changes on August 13, 1996 and implemented the provisions relating to the SFSP on January 27, 1997, in the form of guidance provided to State agencies.

- The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336) was signed on October 31, 1998. One provision affecting the SFSP amended the CNA and the remaining provisions amended the NSLA. The Department implemented the provisions affecting the SFSP on December 3, 1998 in the form of guidance provided to State agencies.

The following chart summarizes the statutory provisions of Pub. L. 103-448, Pub. L. 104-193, and Pub. L. 105-336 that are addressed in this interim rule:

Statute	Provision	Regulatory section affected
Pub. L. 103-448:		
Section 114(a) ...	Revised sponsor priority system .....	§ 225.6(b)(5).
Section 114(b) ...	Eliminated one-year waiting period for private nonprofit organizations (PNOs) ..	§§ 225.2 definition of PNOs, and 225.6(a)(3)(iv)(B), 225.14(d)(7)(iv).
Section 114(f) ....	Eliminated warning from PNO applications .....	§ 225.6(a)(5).
Section 114(e) ...	Reduced requirements States must include in their Management and Administration Plans (MAPs).	§ 225.4(d).
Section 114(d) ...	Reduced report of food management service companies (FSMC) to just the seriously deficient.	§ 225.8(d).
Pub. L. 104-193:		
Section 703 .....	Reduced frequency of submission of Free & Reduced Price Policy Statement ..	§ 225.6(c)(3).
Section 706(c)(1)	Reduced the number of meals that can be served each day at camps and migrant sites from 4 meals to 3 meals or 2 meals and 1 snack.	§ 225.16(b)(1)(i) and (b)(5).
Section 706(d) ...	Eliminated academic-year National Youth Sports Program (NYSP); allows NYSP site eligibility based on residence in "area where poor economic conditions exist".	§ 225.2 (definition of NYSP feeding site); and § 225.6(c)(2)(v).
Section 706(e) ...	Removed requirement that school food authorities conduct training before receiving the second month's advance program payment.	§ 225.9(c)(1)(i).
Section 706(f) ....	Provided new language on inspections for bacteria levels in meals .....	§ 225.6(h)(2)(v).
Section 706(g) ...	Allowed school sponsors to use offer versus serve option in school site locations.	§ 225.16(g).
Sections 706(j) ..	Removed requirements in MAPs .....	§ 225.4(d).
Section 706(k) ...	Removed specific training for PNOs .....	§ 225.7(a).
Section 109(g) ...	Permitted categorical eligibility for participants in State-funded programs that replace AFDC (i.e., TANF).	§§ 225.2 (definitions of "documentation" and "TANF"), 225.6(c)(3), 225.15(e), and 225.15(f).
Pub. L. 105-336:		
Section 104(b) ...	Increased the maximum fine for program abuse from \$10,000 to \$25,000 .....	§ 225.6(a)(5)(i)(A)-(C).
Section 105(a) ...	Increased the number of sites and total number of children that PNOs may serve.	§§ 225.2 (definition of PNO), 225.6(b)(6)(ii), and 225.14(d)(7)(ii).
Section 105(b) ...	Allowed PNOs to use commercial food vendors .....	§§ 225.2 (definition of PNO), 225.6(a)(3)(iii), 225.14(d)(7)(iii), and 225.15(g)(3).
Section 105(b) ...	Eliminated indication of sponsor interest requirement .....	§ 225.14(d)(7)(iv).
Section 105(c) ...	Expanded offer versus serve to all school sponsor sites .....	§ 225.16(g).

Statute	Provision	Regulatory section affected
Section 102(d) ...	Required single agreement and common claim form requirements for schools that operate multiple child nutrition programs, including the SFSP.	§§ 225.6(e) and 225.9(d).
Section 105(b) ...	Removed Federal requirement for FSMC registration and report of seriously deficient FSMCs.	§§ 225.6(g), 225.8(d), and 225.13(a).
Section 107(j) ....	Transferred authority of emergency shelters (homeless) from SFSP to CACFP	§§ 225.2, 225.6(c)(2)(ii), 225.6(d), 225.8(e), 225.14(d)(5), and 225.16.(b)(2).
Section 104(a) ...	Allowed higher SFSP reimbursement rates in Alaska and Hawaii .....	§ 225.9(d)(8).

The rest of this preamble discusses the specific statutory changes and the corresponding revisions to the SFSP regulations. The statutory changes are discussed under the program areas affected.

### **I. Private Nonprofit Organizations (PNOs)**

Significant changes were made in the SFSP statutory framework governing PNO sponsorship and participation with the enactment of Pub. L. 103-448, Pub. L. 104-193, and Pub. L. 105-336. These revisions represent an acknowledgment that PNO sponsors, with adequate training and monitoring, can successfully operate the SFSP. The 1994 amendments (Pub. L. 103-448) sought to facilitate participation in SFSP by PNOs and to acknowledge their efforts to operate quality programs. These amendments to the NSLA revised the sponsor eligibility priority list, eliminated the one-year waiting period for PNO participation in certain areas, and ended the practice of including a criminal penalty warning statement on PNO application materials. With respect to PNO sponsors, the 1996 amendments (Pub. L. 104-193) lifted the mandate that State agencies must conduct training specifically for PNO sponsors participating in SFSP. The provisions in the 1998 amendments to the NSLA (Pub. L. 105-336) eliminated a number of restrictions that had been placed on PNO sponsors. By easing restrictions on PNOs to sponsor the Program, it was hoped that more low-income children would have access to nutritious meals during the summer months.

Following is a discussion of each statutory change made to PNO participation in the Program. Corresponding changes made to regulatory language are noted.

#### **1. Sponsor Selection—Priority System**

Section 114(a) of Pub. L. 103-448 amended section 13(a)(4) of the NSLA to revise the sponsor eligibility priority system. Previously, when more than one SFSP sponsor or potential sponsor proposed to provide meal service at the same site or in the same area, the regulations required that State agencies

consider PNOs last behind other eligible applicants. This lack of priority given PNOs reflected the view that PNOs tended to be the most problematic of potential SFSP sponsors. The results of monitoring PNOs revealed that experienced PNO sponsors are as able in their administration of the SFSP as are other sponsors. In view of this information, Congress adopted a new priority system. With this revision, State agencies must consider eligible SFSP sponsor applicants in the following order: (1) Local school food authorities; (2) all other government sponsors and PNOs that have demonstrated successful program performance in a prior year; (3) new government sponsors; and (4) new PNOs. If a government agency and a PNO apply to serve the same area, we believe that State agencies should have the flexibility to make the approval determination.

Accordingly, this rule conforms the SFSP regulations at § 225.6(b)(5) to mirror the new order of priority established in the law that State agencies must use in approving applicants seeking to serve the same area or the same group of enrolled children. We also clarify in this section that State agencies must approve or deny applications on a case-by-case basis, when experienced government and PNO sponsors both apply to serve the same area.

#### **2. Eliminating the One-Year Waiting Period**

Section 114(b) of Pub. L. 103-448 struck the provision in section 13(a)(7)(C) of the NSLA requiring a one-year waiting period with respect to the participation of PNOs in certain areas. Previously, PNOs were under a prohibition from serving a site or an area during the 12 months after that area had been served by a school food authority or a government sponsor. Under the regulations, a waiver was allowed provided the State agency had determined that an experienced sponsor was discontinuing meal service to an area, regardless of the availability of a PNO to serve that area. Opponents of the waiting period maintained that a geographical area in critical need of

SFSP meal service could remain unserved for 12 months with its imposition.

Accordingly, this rule conforms the regulations to the statutory elimination of a waiting period before a PNO may apply to operate SFSP sites previously operated by schools or government sponsors. In doing so, we have removed references to the one-year waiting period in the definition of a PNO at § 225.2, and in §§ 225.6(a)(3)(iv)(B) and 225.14(d)(7)(iv).

#### **3. Eliminating Warnings on PNO Application Materials**

In earlier years of Program operation, large PNO sponsors, particularly those contracting with commercial food service companies and serving sizable numbers of children at many sites, were found to have committed Program fraud. Concern about fraudulent PNO sponsors prompted Congress to mandate that a warning of the criminal provisions, penalties, and termination procedures for Program violations must be printed in bold lettering on applications provided to PNOs. More recent monitoring showed that PNO sponsors administer SFSP with similar levels of error as other types of sponsors with comparable experience. In view of this updated information, section 114(f) of Pub. L. 103-448 deleted the requirement in section 13(q)(2) of the NSLA for the warning statement on applications provided to PNOs. State agencies may include warning statements on application materials, as long as the warning appears on all sponsor applications. However, State agencies may not single out PNO sponsors to receive warnings about Program misconduct and the consequences on application materials. It should be noted, however, that the required certification statements specified at § 225.6(a)(4) and the procedures for program termination of any site or sponsor determined to be seriously deficient in its administration of the SFSP continue to apply.

Accordingly, to conform with the revision in the statute, we have deleted specific references to PNOs at § 225.6(a)(5) of the SFSP regulations. We

have made two other changes to § 225.6(a)(5):

- To indicate a State agency's option to include criminal provisions, penalties, and termination procedures in application and preapplication materials; and,
- To quote the most current statutory language containing maximum fines that may be levied against violators.

Fines for having been criminally convicted of fraud, embezzlement or similar improprieties in connection with Program activities have been revised upward from \$10,000 to \$25,000 in accordance with section 104(b) of Pub. L. 105-336, which amended section 12(g) of the NSLA. We note with interest that Congress did not amend section 13(o) of the NSLA, which provides language for criminal fines and penalties in connection with submitting false information on applications and other program-related reports. The maximum fine at section 13(o) of the NSLA for these crimes remains at \$10,000. However, section 12(g) of the NSLA specifically includes all programs covered under the NSLA and the CNA. In the absence of any reference to this apparent conflict in any conference or committee reports, we have decided to include the language from section 12(g) rather than section 13(o) of the NSLA. The statutory language at section 12(g) of the NSLA contains the most recent Congressional statement with regard to criminal fines and penalties that may be levied against program violators. In addition, it is preferable, in our view, to maintain consistency across all Child Nutrition Programs in this matter.

#### 4. Monitoring and Training

Prior to the 1994 amendments to the NSLA, State agencies were required to establish and implement an ongoing training and technical assistance program specifically for PNOs. The training focused on program requirements, procedures, and accountability for PNO sponsors. Section 706(k) of Pub. L. 104-193 struck the requirement in section 13(q) of the NSLA for special PNO sponsor training.

Accordingly, this rule removes the special training requirements outlined in § 225.7(a) of the SFSP regulations for PNO sponsors. However, State agencies remain responsible for providing training and technical assistance to all SFSP sponsors, including PNOs, as described in this paragraph of the Program regulations.

#### 5. Numbers of Sites and Children Served

A priority of the 1998 reauthorization statute was to increase SFSP participation and aid eligible sponsors

in reaching more needy children. Thus, section 105(a) of Pub. L. 105-336 amended section 13(a)(7)(B)(i) of the NSLA to modify the limit on the number of sites a PNO may operate as well as the number of children a site may serve. With this modification, a PNO may be approved by a State agency to operate up to 25 SFSP sites, in any combination of urban or rural sites. Also, the previous 2,500 limit on the total daily attendance for all PNO sponsor sites was lifted. However, Congress kept both the statutory limit of 300 children that PNOs may serve at any one site, and the provision allowing State agencies to waive that limit and allow up to 500 children to be served by PNOs at any one site.

Accordingly, this rule conforms the SFSP regulations at §§ 225.2 (the definition of a PNO), 225.6(b)(6)(ii), and 225.14(d)(7) to the statutory revisions concerning the number of sites and number of children that PNOs may serve with State agency approval.

#### 6. Authority to Obtain Meals From Commercial Vendors

Section 105(b) of Pub. L. 105-336 removed section 13(a)(7)(B)(ii) and amended section 13(l)(1) of the NSLA. The effect of these changes is to end prohibition on PNO sponsors from contracting with food service management companies for the furnishing of meals. Ending the prohibition on commercial contracting should improve program access. In particular, rural areas should benefit from increased access to commercial vendors, since non-commercial vendors are more limited in those localities. With this action, PNO sponsors have the options of preparing meals themselves, or purchasing unitized meals from schools, public facilities, or commercial vendors.

Accordingly, to conform to this revision in the NSLA, we have revised the following sections in the SFSP regulations: §§ 225.2 (the definition of a PNO), 225.6(a)(3), 225.14(d)(7), and 225.15(g)(3).

#### 7. Indication of Interest Requirement

Section 105(b) of Pub. L. 105-336 also struck the requirement in section 13(a)(7)(B)(iii) of the NSLA that limited PNO sponsors to SFSP participation only in areas where a school food authority or a government sponsor had not indicated an interest in operating the Program by March 1 of each year. As with the previous two amendments, improving access to nutritious meals for poor children was the goal of eliminating this qualifying condition for PNO sponsors.

Accordingly, we have eliminated reference to the March 1 indication of interest requirement in §§ 225.2 (the definition of a PNO) and 225.14(d)(7)(iv).

## II. Paperwork Reduction

### 1. Management and Administration Plans

In an ongoing effort to simplify the administration of the SFSP and reduce paperwork burdens, Pub. L. 103-448 and Pub. L. 104-193 amended section 13(n) of the NSLA to decrease the number of areas that State agencies must address in their management and administration plans. The laws eliminated the following eight criteria from the management and administrative plan:

- The State's schedule for application by sponsors;
- The actions to be taken to maximize the use of meals prepared by sponsors and the use of school food service facilities;
- The State's plan and schedule for registering food service management companies;
- The State's plan for determining the amounts of program payments to sponsors and for disbursing such payments;
- The State procedure for granting a hearing and prompt determination to any sponsor wishing to appeal a State's ruling denying the sponsor's application for program participation or for program reimbursement;
- The State's needs assessment plan;
- The best estimate of the number of sponsors and children expected to participate; and
- The *schedule* for providing technical assistance and training to eligible sponsors.

With this action, paperwork was reduced without compromising the operational and financial management of the Program.

Accordingly, this rule makes conforming revisions to § 225.4(d) of the SFSP regulations. This rule also makes a technical change to this paragraph of the regulations due to the expiration of an outreach requirement made by Pub. L. 101-147. That law deleted the requirement that each State agency include a description of its plans to inform private nonprofit organizations of their potential eligibility to participate in SFSP. Finally, outdated references to implementation of procurement monitoring requirements, health inspections, and meal quality tests are also deleted from this section. With these revisions, eight criteria remain for inclusion in management and administration plans. They are:

- The State's administrative budget for the fiscal year;
- The State's plans to use Program funds and any additional State funds to reach needy children;
- The State's plans for providing technical assistance and training eligible sponsors;
- The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies;
- The State's plan for action against Program violators;
- The State's plan for ensuring fiscal integrity of sponsors not subject to auditing requirements.;
- The State's plan for ensuring compliance with the food service management company procurement monitoring requirements; and
- An estimate of the State's need, if any, for funds to pay for health inspections and meal quality tests.

## **2. Free and Reduced Price Policy Statement**

In a statutory change applicable only to school food authority SFSP sponsors, Section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to eliminate the requirement for annual submission of a free and reduced price policy statement to the State agency by a school food authority. After the initial submission, the school food authority need not submit a policy statement in subsequent years unless there is a substantive change in the free and reduced price policy of the school food authority.

As specified in the amendment, a routine policy change, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, would not necessitate the submission of a policy statement by the school food authority. However, a State agency may determine which changes are significant enough to justify a policy statement revision. Circumstances that might trigger a resubmission include when a sponsor designates new approval or hearing officials, when application collection procedures change, or when significant revisions are made in the media release, the notice to households, or the income eligibility statements.

Accordingly, this rule revises § 225.6(c)(3) of the SFSP regulations to reflect the change in the free and reduced price policy statement submission requirement. The revised regulations state that each new applicant sponsor must submit a statement of its policy for serving free meals at all sites under its jurisdiction. After the initial submission, a school

food authority sponsor applying to continue program participation need revise its statement only when one or more substantive changes have been made in its nondiscrimination policies.

## **III. Food Service Management Companies**

### **1. Registration Requirement**

Section 105(b)(2)(A)(i)(II) of Pub. L. 105–336 removed the Federal requirement for registering food service management companies and the specific standards for the registration in section 13(l)(2) of the NSLA. However, Congress allowed States the discretion to require registration and to implement their own registration procedures. Section 105(b)(2)(C) of Pub. L. 105–336 also removed the requirement formerly in section 13(l)(3) of the NSLA that the Secretary maintain a list of food service management companies that have been seriously deficient while participating in the SFSP.

Accordingly, this rule revises § 225.6(g) to make the registration of food service management companies optional rather than mandatory. Also, the State agency reporting requirement concerning food service management companies at § 225.8(d) is removed. To conform the appeal procedure requirements to the optional nature of registration, we have revised paragraph (a) of § 225.13.

### **2. Food Service Management Company Contract Requirements**

Section 706(f) of Pub. L. 104–193 amended section 13(f)(5) of the NSLA by making a technical change to existing language on requirements for inspections of bacteria levels in SFSP meals. The new, more general language requires that contracts between SFSP sponsors and food service management companies include mandatory periodic inspections of meals in order to determine bacteria levels present in meals and conformance with standards set by independent agencies or the local health department for the locality in which the meals are served.

Accordingly, this rule revises § 225.6(h)(2)(v) to reflect this technical change in the inspections and certifications included in contracts between SFSP sponsors and food service management companies.

## **IV. School Food Authorities**

### **1. Advance Program Payments**

Section 706(e)(2) of Pub. L. 104–193 amended section 13(e)(1) of the NSLA to alter the policy governing advance reimbursement payments for SFSP school sponsors. The amendment to the

NSLA exempts school food authorities from the requirement that sponsors and sites conduct training before receiving an advance of program payments for their second month of operation.

Before this amendment, a State agency was required to certify that all sponsors had conducted training for SFSP personnel on program requirements before releasing the second month's advance operating costs' payment. Providing the payments helps sponsors to meet program expenses, as they occur, and aids them in maintaining a positive cash flow.

This provision in Pub. L. 104–193 has simplified reporting for school food authorities and State agencies. However, the training requirements that school food authorities must fulfill were not affected. In addition, this exemption does not apply to requests for advances on administrative costs. To qualify for a second advance payment for administrative costs, all sponsors, including schools, must continue to certify that their programs operate in accordance with their approved administrative budget.

Accordingly, this rule revises SFSP regulations at § 225.9(c)(1)(i) to exclude school food authorities from the requirement that sponsors must have conducted training for all sponsor and site personnel to be eligible for their second advance operating payments.

### **2. Offer Versus Serve**

The 1996 and 1998 statutes extended the "offer versus serve" provision to school food authorities that are operating SFSP sites. The offer versus serve option has long been a fixture in the National School Lunch Program (42 U.S.C. 1758(a)(3)). Section 706(g) of Pub. L. 104–193 amended section 13(f)(7) of the NSLA to permit school SFSP sponsors to use the offer versus serve option only at school sites, on the same basis as the option is used during the school year under the NSLP. Later, section 105(c) of Pub. L. 105–336 amended the same section of the NSLA to expand the offer versus serve option further by allowing its use at any site operated by a school food authority.

This meal planning option provides children the opportunity to refuse either one or two food items they do not intend to consume. Its use has aided schools in reducing plate waste and food costs in the school meals programs. The option can also promote choice and menu variety as well as enhance food service productivity. Schools with adequate cafeteria facilities and proper supervision are especially able to increase their productivity under offer versus serve.

In implementing the offer versus serve option in SFSP, lunches and suppers served in schools must meet the appropriate meal service requirements and nutrition standards of their NSLP, and breakfasts must conform with SBP meal service requirements. The option is not permitted for snacks. In addition, schools must have utilized the option during the school year when serving school meals in order to use it under SFSP. Each child must be offered a complete meal and the serving size of each item must equal the minimum quantities specified in NSLP and SBP regulations. SFSP participants may refuse one or more items of a meal, but they may not be encouraged to decline offered items.

With respect to reimbursement, SFSP meals served under the offer versus serve option are eligible for the same reimbursement as other SFSP meals. This option does not alter the requirement that school sites with accredited summer school programs should participate in the NSLP and in that event are not eligible to operate SFSP. A SFSP site operated in a school must open its food service to all children residing in the area served by the site.

Accordingly, we have added a new paragraph to § 225.16(g) that permits a school food authority to use the "offer versus serve" option at the SFSP sites it operates. This means that a child may refuse one or more items of a meal that he/she does not intend to consume. A school food authority must apply this option under its school meal program rules. The regulatory language also clarifies that the amount of payments made to a school for a meal will not be affected by the refusal of an offered item.

### *3. Single Permanent Agreement/ Common Claims Form*

Section 102(d) of Pub. L. 105-336 added section 9(i) to the NSLA to establish two requirements with respect to school food authorities which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the State agency must use a single State/local agreement for all programs operated by the school food authority under that State agency. This also means that multiple programs operated under an alternate State agency must be combined into a single agreement. While these agreements are permanent, they may be amended as necessary. Second, a State agency must use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and

common claim forms were permitted at State agency option for school food authorities administering multiple Child Nutrition Programs under a single State agency.

Congress intended these provisions to provide both State agencies and school districts with additional administrative flexibility. In the Conference Report for Pub. L. 105-336, the Conference Committee stated that when the same school food service personnel administer the SFSP as well as the school meal programs, the State agency need not conduct a review of the summer program in the same year in which the school food service operations have been reviewed and determined to be satisfactory. The Conference Committee expected this flexibility to result in savings at the State level, but noted that States may conduct additional reviews when they deem it appropriate.

Implementing this provision, we notified State agencies in December 1998 of a general waiver for two years for this provision as it pertains to claims, because many State agencies have insufficient computer resources to make the necessary changes due to the potential difficulties rising from the preparations for the year 2000. We also provided a waiver of the requirement for single agreements until the school year 1999-2000, since agreements for the 1998-1999 school year had already been signed prior to the passage of Pub. L. 105-336.

This rule revises § 225.6(e) to require the use of single permanent agreements for SFSP school sponsors that report to a single State administering agency. We have also revised § 225.9(d) to require the use of a single claim form for requesting reimbursement for meals or snacks served under multiple child nutrition programs. In addition, we have revised § 225.7(d)(2) to include the provision for State agency review of SFSP sites that are operated by school food authorities also operating NSLP.

### **V. Temporary Assistance for Needy Families (TANF)**

Section 109(g) of Pub. L. 104-193 struck all references in the NSLA to the former Aid to Families with Dependent Children (AFDC) program, and inserted the term "State program-funded". This new terminology referred to the block grant program, TANF, that replaced AFDC. The summary effect of this provision is that children who had been categorically eligible for free SFSP meals under AFDC, continue that same eligibility if they are now receiving State-funded (TANF) benefits. The stipulation is that the State-funded

program has to have the same or more restrictive eligibility rules than the AFDC program had in effect on June 1, 1995.

Establishing categorical eligibility for TANF households requires the completion of an abbreviated income eligibility statement. Sponsors are allowed to determine free meal eligibility using information obtained from the TANF agency. The movement to a block grant assistance program does not modify existing SFSP eligibility procedures for households receiving benefits under the State-funded program. However, as stated earlier, the State-funded program eligibility rules must be comparable or more restrictive than the AFDC rules that were in effect on June 1, 1995.

In addition to the name change from AFDC to TANF, we are amending the list of program benefits that trigger automatic eligibility to receive free meals in the SFSP to include the Food Distribution Program on Indian Reservations (FDPIR). The FDPIR has the same income standards as the Food Stamp Program; the primary difference between the two programs is that FDPIR participants receive USDA commodities instead of food stamps. Procedurally, FDPIR households apply for SFSP benefits by providing their FDPIR identification numbers on the free and reduced price application forms, in lieu of family and income information.

Accordingly, this interim rule makes the following revisions: The definition of "AFDC assistance unit" is removed at § 225.2 and all references to AFDC are removed in this part; new definitions of "documentation", "FDPIR household", and "TANF" are added at § 225.2; §§ 225.6(c)(3), 225.15(e), and 225.15(f) are amended to indicate that children of families receiving food stamp, FDPIR, or TANF benefits are automatically eligible for free meals in SFSP. Finally, we have revised § 225.15(f) by simplifying the language where possible and reorganizing the information to improve the readability of information that must be printed on the application for Program benefits or must be given in written materials to applicant households. A conforming change is made to the definition of "current income" in § 225.2.

### **VI. National Youth Sports Program (NYSP)**

Section 706(d) of Pub. L. 104-193 struck the provision in section 13(c) of the NSLA allowing SFSP participation by NYSP participants during the academic year. The NSLA was further amended to specify that NYSP children are eligible for free meals on showing

residence in areas in which poor economic conditions exist or by showing income eligibility statements enrolling them in the NYSP.

The NYSP is a program of supervised sports training for low-income youths, administered by the National Collegiate Athletic Association through grant awards by the U.S. Department of Health and Human Services. In 1988, Congress extended SFSP sponsor eligibility to public and private nonprofit colleges and universities that participate in NYSP. The following year, Congress allowed year-round SFSP participation by college and university sponsors that had implemented drug awareness and counseling projects as part of NYSP. These sponsors could receive SFSP reimbursement for as many as two meals per day on no more than thirty days between October 1 and April 30.

With the enactment of section 706(d) of Pub. L. 104–193, effective August 22, 1996, authority expired for academic-year participation in SFSP by NYSP sponsors. Thus, NYSP sponsors may participate in the SFSP only during the months of May through September and are subject to the same rules governing other sponsors.

This rule removes the definition in § 225.2 of “Academic-Year NYSP” and all references to “academic year” or “NYSP sponsors participating during the months of October through April” from this part.

With regard to the issue of NYSP site eligibility, section 706(d) of Pub. L. 104–193 amended the NSLA to specify that all participants at a NYSP site may receive reimbursable SFSP meals, if at least 50 percent reside in areas where poor economic conditions exist, or if at least 50 percent are individually determined to meet income eligibility guidelines. With this modification in the eligibility criteria, NYSP sponsors may qualify a potential site for program participation using either school data or census data. Such data would reveal that at least 50 percent of the children in the local area from which the site would draw its attendance are eligible for free and reduced price meals. NYSP sponsors may also collect free and reduced price program applications to document the site’s eligibility.

Accordingly, this rule revises the definition of “NYSP feeding site” at § 225.2 and the application requirements at § 225.6(c)(2)(v) to specify that sites may be qualified for program participation by means of enrollment or area conditions.

## **VII. Consolidated Benefits for Homeless Children**

Section 107(j)(2)(A) of Pub. L. 105–336 amended sections 13(a)(3)(C) and 17 of the NSLA by transferring authority over SFSP homeless sites to the Child and Adult Care Food Program (CACFP). Section 107(j)(2)(C)(i) of Pub. L. 105–336 also abolished the Homeless Children Nutrition Program under section 17B of the NSLA. Section 107(g) and added a new paragraph (q), “Participation by emergency shelters”, to section 17 of the NSLA to consolidate the administration and delivery of benefits to homeless children under a single program. Moving homeless sites from SFSP into CACFP has provided an opportunity to expand the delivery of important nutrition benefits to children through the age of 12 because CACFP benefits are provided year-round. It allows sponsors to serve each eligible child up to three meals or two meals and one snack, each day.

This change was effective July 1, 1999. We issued guidance to State agencies on March 30, 1999, on the implementation of provisions concerning homeless children in CACFP and the transition of program authority from the SFSP to CACFP. We urged State agencies to encourage sponsors of homeless sites participating in the SFSP to apply to participate in CACFP in order to continue receiving meal benefits for children after June 30, 1999. It should be clarified, however, that a homeless shelter may still operate the SFSP, but it must meet other criteria as an open or enrolled SFSP site, as described in § 225.6(c) of the regulations. There no longer exists a special category of homeless SFSP sites.

This rule implements the transfer of homeless provisions from the SFSP to the CACFP by deleting references to homeless emergency shelters found at §§ 225.2, 225.6(c)(2), 225.6(d), 225.8(e), 225.14(c)(3), 225.14(d)(5), 225.15(a)(2), and 225.16(b)(2).

## **VIII. Program Payments**

### **1. Per-Meal Reimbursements**

Section 706(b) of Pub. L. 104–193 amended section 13(b) of the NSLA to set the reimbursement rates for each breakfast, lunch, snack, and supper served in the SFSP. It also required an adjustment in the rates on January 1, 1997, and each January 1 thereafter to the nearest lower cent increment, based on the changes in the Consumer Price Index for all Urban Consumers for the previous 12-month period (ending November 30). The stipulation of the law that reimbursement rates be adjusted to the nearest lower cent

represents a change from the previous requirement of rounding down to the nearest quarter cent.

The per-meal payment changes made by Pub. L. 104–193 do not require a corresponding amendment of the SFSP regulations. The adjustment of the reimbursement rates was reflected in the SFSP Rates Notice that was published in the **Federal Register** on January 9, 1997 (63 FR 71616).

### **2. Adjustments to Program Reimbursement Rates for Alaska and Hawaii**

Section 104(a)(1) of Pub. L. 105–336 amended section 12(f) of the NSLA to allow adjustments to SFSP rates for sponsors in Alaska and Hawaii. The Department has long had the statutory authority to make these adjustments in the other child nutrition programs. The State agencies in Alaska and Hawaii have already demonstrated the higher cost of providing meals in those areas in the context of the other Child Nutrition Programs, and the Department has adjusted rates for those States.

Through the 1998 reauthorization statute, this authority was extended to SFSP. Beginning January 1, 1999, SFSP operating and administrative rates were adjusted upward to reflect the higher cost of providing meals in Alaska and Hawaii. The adjustments were announced in the annual SFSP Rate Notice that was published in the **Federal Register** on December 29, 1998 (63 FR 71616).

Accordingly, this rule revises § 225.9(d)(8) to reference the higher reimbursement rates that are provided to Alaska and Hawaii.

## **IX. Number of Meals and Meal Pattern Requirements**

### **1. Number of Meals for Camps and Migrant Sites**

Section 706(c)(1) of Pub. L. 104–193 amended section 13(b)(2) of the NSLA to reduce the number of meals per day that camps and migrant feeding sites may claim for reimbursement. Congress stipulated that these sites may only be reimbursed for up to three meals or two meals and one snack per day. Previously, these sites were eligible for up to four meals per child per day. This reduction more closely aligns reimbursable meals for sponsors of camps and migrant sites with the reimbursements that sponsors of other SFSP sites may claim on a daily basis. We notified State agencies of this change on August 13, 1996 by a guidance memorandum.

Accordingly, we have revised paragraphs (b)(1)(i) and (b)(5) in



§ 225.16 to conform to this statutory change.

## 2. Conforming Changes in Nomenclature and Meal Pattern Requirements

Finally, we are making two revisions in this rule to update the language in this part to conform to changes in other Child Nutrition Programs.

First, we have changed the use of the word "supplement" or "supplements" to "snack" or "snacks", which are the preferred terms to use in reference to the light meal that is served between lunch and supper in the SFSP. While the NSLA uses the term supplement, we believe most people are more familiar with the term snack. This change is made wherever these terms appear throughout this part. This language conforms to the new Child Nutrition Program that was authorized by sections 107(h) and 108(a)(1) and (2) of Pub. L. 105-336 and that is referred to the "Afterschool Snack Program" within the NSLP, section 17A(a) of the NSLA (42 U.S.C. 1766a(a)), and the "At-Risk Afterschool Care Program" within the CACFP, section 17(r) of the NSLA (42 U.S.C. 1766(r)).

The second change we have made in this rule is to conform the egg to meat or meat alternative equivalencies in the SFSP meal patterns for breakfast, lunch, snack, and supper to those equivalencies used in the NSLP at § 210.10(k)(2) or the School Breakfast Program (SBP) at § 220.8(g)(iii)(B)(a). A similar revision is being made to these equivalencies in the CACFP in another rulemaking. These minor revisions to the meal pattern requirements have been made in § 225.16 of the SFSP Regulations.

Currently, the egg to meat/meat alternate equivalencies at § 225.16(d) of the SFSP regulations, allow one large egg to equal either one ounce or two ounces of meat/meat alternates, depending on the meal being served. However, the regulations for the NSLP and the SBP include the following standard egg to meat/meat alternate equivalencies: one large egg to two ounces of meat/meat alternate and one-half large egg to one ounce of meat/meat alternate. Accordingly, we have revised § 225.16(d) to reflect these equivalencies. We believe that this change, though minor in scope, increases consistency in the standards across child nutrition programs. It should also eliminate any confusion that variable equivalencies among the child nutrition programs may have caused.

## X. Procedural Matters

### Executive Order 12866

This interim 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 interim 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 interim 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 interim rule seeks to reduce the reporting requirements for State agencies and service institutions administering the SFSP. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections associated with the implementation of the interim rule, Summer Food Service Program: Implementation of Legislative Reforms.

Written comments on this notice must be received by February 28, 2000, to be assured of consideration.

Comments concerning the information collection aspects of this interim rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Lori Schack, Desk Officer for FNS. A Copy of these comments may also be sent to Mr. Eadie at the address listed in the ADDRESSES section of this preamble. Commentors are asked to separate their comments on the information collection requirements from their comments on the remainder of this interim rule.

OMB is required to make a decision concerning the collection of information contained in this interim rule between 30 and 60 days after the publication of this document in the **Federal Register**.



Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection

techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

*Title:* Summer Food Service Program.

*OMB Number:* 0584-0280.

*Expiration Date:* 12/31/99.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The interim rule, Summer Food Service Program: Implementation of Legislative Reforms, amends the regulations for the Summer Food Service Program (SFSP) to incorporate changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Reconciliation Act of 1996

(Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336). Section 114(e) of Public Law 103-448 significantly decreased the number of requirements to be included in each State's management and administration plan. Section 703 of Public Law 104-193 prohibits requiring the annual submission of a free and reduced price policy statement after the initial submission, unless there is a substantive change. Section 102(d) of Public Law 105-336 amended section 9 of the National School Lunch Act to require State agencies to use a single State/local agreement for all programs operated by the same school food authority under the administration of the State agency. The Section also requires State agencies to use a common reimbursement form to claim meals served under the programs. The affected SFSP requirements and their applicable burden changes are listed in the table below:

#### ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agencies (SAs), by Feb 15 of each year, submit to FNSRO a program Management and Administration Plan for that fiscal year:					
Total Existing .....	7 CFR 225.4 (a) .....	50 SAs .....	1	80	4,000
Total Proposed .....	7 CFR 225.4 (a) .....	50 SAs .....	1	40	2,000
Sponsor must submit a statement of its policy for serving free meals:					
Total Existing .....	7 CFR 225.6(c)(3) .....	3,616 sponsors .....	1	1	3,616
Total Proposed .....	7 CFR 225.6(c)(3) .....	0 .....	0	0	0
Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements (FNS-80):					
Total Existing .....	7 CFR 225.6 (e) .....	3,616 sponsors .....	1	.123	445
Total Proposed .....	7 CFR 225.6 (e) .....	3,000 sponsors .....	1	.123	369
SAs forward the final claim form for reimbursement:					
Total Existing .....	7 CFR 225.9(b) (5) ....	50 SAs .....	3	1	150
Total Proposed .....	7 CFR 225.9(b) (5) ....	40 SAs .....	3	1	120
Total Existing Burden for 7 CFR Part 225.	.....	.....	.....	.....	301,404
Total Proposed Burden for 7 CFR Part 225.	.....	.....	.....	.....	295,682
Difference .....	.....	.....	.....	.....	-5,722

#### Good Cause Determination

This interim rule is being issued without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(a) and (b). On December 8, 1994, and September 26, 1995, guidance memoranda were issued to State agencies on implementing SFSP provisions of the Healthy Meals for Healthy Americans Act of 1994, Pub. L. 103-448. To aid the State agencies in

implementing the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, guidance memoranda were issued on August 13, 1996, January 27, 1997, and May 19, 1997. Finally, on December 3, 1998, a guidance memorandum was issued for use by State agencies in implementing SFSP provisions of the William F. Goodling Child Nutrition Reauthorization Act of

1998, Pub. L. 105-336. In each instance, the guidance memoranda were implementing statutory provisions that made nondiscretionary changes to the SFSP. Based upon this determination, the Administrator of FNS finds good cause to adopt this rule on an interim basis without prior public comment because such comment is unnecessary. In developing final rulemaking, however, the Administrator believes a

solicitation of public comment would be beneficial given that States and local entities have acquired substantial operational experience to date. As stated earlier in this preamble, comments received within 180 days of publication will be considered.

#### 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. Remove the definitions of *Academic-Year NYSP*, *AFDC assistance unit*, and *Homeless feeding site*;

b. Revise the definitions of *Current income*, *Documentation*, *NYSP feeding site*, *Private nonprofit organization*, and *Sponsor*; and

c. Add in alphabetical order the new definitions of *FDPIR household* and *TANF*.

The additions and revisions read as follows:

##### § 225.2 Definitions.

*Current income* means income, as defined in § 225.15(f)(4)(vi), received during the month prior to application for free meals. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

*Documentation* means:

(a) The completion of the following information on a free meal application:

- (1) Names of all household members;
- (2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she

does not possess a social security number; or

(b) For a child who is a member of a household receiving food stamp, FDPIR, or TANF benefits, "documentation" means completion of only the following information on a free meal application:

(1) The name(s) and appropriate food stamp, FDPIR, or TANF case number(s) for the child(ren); and

(2) the signature of an adult member of the household.

\* \* \* \* \*

*FDPIR household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

\* \* \* \* \*

*NYSP feeding site* means a site at which all of the children receiving Program meals are enrolled in the NYSP and which qualifies for Program participation on the basis of documentation that the site meets the definition of "areas in which poor economic conditions exist" as provided in this section.

\* \* \* \* \*

*Private nonprofit organization* means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of "private nonprofit" in this section and which:

(a) Administers the Program:

(1) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site; or

(2) With a waiver granted by the State in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(b) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(c) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(d) Provides ongoing year-round activities for children or families;

(e) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(f) Meets applicable State and local health, safety, and sanitation standards.

\* \* \* \* \*

*Sponsor* means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or

university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions".

\* \* \* \* \*

*TANF* means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

\* \* \* \* \*

3. In § 225.3, amend paragraph (b) by removing the third sentence and by revising the second sentence to read as follows:

##### § 225.3 Administration.

\* \* \* \* \*

(b) \* \* \* Each State agency must notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. \* \* \*

\* \* \* \* \*

4. In § 225.4, revise paragraph (d) to read as follows:

##### § 225.4 Program management and administration plan.

\* \* \* \* \*

(d) The Plan must include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plan for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children;

(3) The State's plans for providing technical assistance and training to eligible sponsors;

(4) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(5) The State's plan for timely and effective action against Program violators;

(6) The State's plan for ensuring the fiscal integrity of sponsors not subject to auditing requirements prescribed by the Secretary;

(7) The State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(h); and

(8) An estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

5. In § 225.6:

a. Revise the last sentence in paragraph (a)(2);

b. Remove paragraph (a)(3) and redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively;

c. Revise newly redesignated paragraph (a)(4);

d. Revise paragraph (b)(1), (b)(5), and (b)(6);

e. Amend paragraph (c)(2)(ii) introductory text by removing the words "or a homeless feeding site";

f. Revise paragraph (c)(2)(iv) and (c)(2)(v), paragraph (c)(3) introductory text, paragraph (c)(3)(i), paragraph (c)(3)(ii) introductory text, and paragraph (c)(3)(ii)(B);

g. Remove the words "or a homeless feeding site," from paragraph (d)(1)(i);

h. Revise paragraph (e) introductory text and paragraphs (e)(1) and (e)(2);

i. Redesignate paragraphs (e)(3) through (e)(15) as paragraphs (e)(4) through (e)(16), and add a new paragraph (e)(3);

j. Revise paragraph (g); and

k. Revise paragraph (h)(2)(v).

The revisions and addition read as follows:

#### § 225.6 State agency responsibilities.

(a) \* \* \*

(2) \* \* \* State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas.

\* \* \* \* \*

(4) In addition to the warnings specified in paragraph (a)(3) of this section, State agencies may include the following information on applications and pre-application materials distributed to prospective sponsors:

(i) The criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) that states substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or

indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property for personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(ii) The procedures for termination from Program participation of any site or sponsor which is determined to be seriously deficient in its administration of the Program. In addition, the application may also state that appeals of sponsor or site terminations will follow procedures mandated by the State agency and will also meet the minimum requirements of 7 CFR 225.13.

#### (b) *Approval of sponsor applications.*

(1) Each State agency must inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency must require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline for the Program application submission.

\* \* \* \* \*

(5) The State agency must use the following priority system in approving applicants to operate sites that propose to serve the same area or the same enrolled children:

(i) Public or nonprofit private school food authorities;

(ii) Public agencies and private nonprofit organizations that have demonstrated successful program performance in a prior year;

(iii) New public agencies; and

(iv) New private nonprofit organizations.

(v) If two or more sponsors that qualify under paragraph (b)(5)(ii) of this section apply to serve the same area, the State agency must determine on a case-by-case basis which sponsor or sponsors it will select to serve the needy children in the area. The State agency should consider the resources and capabilities of each applicant.

(6) The following limitations apply on the number of sites and children that may be served per day:

(i) The State agency must not approve any school food authority or public agency to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if the applicant can demonstrate that it has the capability of managing a program larger than these limits.

(ii) The State agency must not approve any private nonprofit organization to operate more than 25 sites. In addition, the State agency must not approve any private nonprofit organization to serve more than 300 children at any one site for any approved meal service. However, the State agency may grant a waiver to allow up to 500 children served at any one site operated by a private nonprofit organization. To be approved for the waiver, the private nonprofit organization must demonstrate that it is fully capable of managing a site with more than 300 children and that there are no other sponsors capable of serving the children in excess of 300.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) For sites that serve homeless children, information sufficient to demonstrate that the sites are not residential child care institutions, 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 these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to children.

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

\* \* \* \* \*

(3) Each applicant must submit a statement of nondiscrimination in its policy of serving meals to children. The statement must consist of an assurance that all children are served the same meals and that there is no discrimination in the course of the food service. A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request.

(i) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants except camps must include a statement that the meals served are free at all sites.

(ii) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants that are camps that charge separately for meals must include the following:

\* \* \* \* \*

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods must ensure that households are permitted to apply on behalf of children who are members of households receiving food stamp, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f).

\* \* \* \* \*

(e) *State-Sponsor Agreement.* A sponsor approved for participation in the Program must enter into a written agreement with the State agency. If the sponsor is a school food authority that operates more than one child nutrition program (e.g., the National School Lunch Program, the School Breakfast Program, or the Child and Adult Care Food Program) under a single State agency, a single permanent agreement that includes all the child nutrition programs must be executed with the State agency, as described in § 210.9(b) of this chapter. All sponsors must agree in writing to:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system;

(2) For school food authorities, offer meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and offer the same meals to all children;

(3) For all other sponsors, serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

\* \* \* \* \*

(g) *Food service management company registration.* A State agency may require each food service management company, operating within the State, to register based on State procedures. A State agency may further require the food service management company to certify that the information

submitted on its application for registration is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(h) \* \* \*

(2) \* \* \*

(v) The food service management company must have State or local health certification for the facility in which it proposes to prepare meals for use in the Program. It must ensure that health and sanitation requirements are met at all times. In addition, the food service management company must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform with the standards set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency.

\* \* \* \* \*

6. In § 225.7:

a. Remove the last sentence in paragraph (a);

b. Amend paragraph (d)(2) introductory text by adding a sentence before the last sentence;

c. Remove paragraph (d)(2)(ii); and

d. Redesignate paragraph (d)(2)(iii) as paragraph (d)(2)(ii).

The addition reads as follows:

**§ 225.7 Program monitoring and assistance.**

\* \* \* \* \*

(d) \* \* \*

(2) *Sponsor and site reviews.* \* \* \*

When the same school food authority personnel administer this Program as well as the National School Lunch Program (part 210 of this chapter), 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. \* \* \*

\* \* \* \* \*

**§ 225.8 [Amended]**

7. In § 225.8, remove paragraphs (d) and (e).

8. In § 225.9:

a. Amend paragraph (c)(1)(i) by removing the second sentence and adding in its place two new sentences;

b. Remove paragraph (d)(10);

c. Redesignate paragraphs (d)(1) through (d)(9) as paragraphs (d)(2) through (d)(10);

d. Add a new paragraph (d)(1);

e. Revise newly redesignated paragraphs (d)(7), (d)(8) and (d)(9); and  
f. Amend the second sentence in paragraph (f) by removing the words "paragraph (d)(4)" and adding in their place "paragraph (d)(5)".

The revisions read as follows:

**§ 225.9 Program assistance to sponsors.**

\* \* \* \* \*

(c) \* \* \*

(1) *Operating costs.* (i) \* \* \* Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) School food authorities that operate the Program, and operate more than one child nutrition program under a single State agency, must use a common claim form (as provided by the State agency) for claiming reimbursement for meals served under those programs.

\* \* \* \* \*

(7) Payments to a sponsor for operating costs must equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section.

(8) Payments to a sponsor for administrative costs must equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section. Sponsors must be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement must be adjusted in accordance with paragraph (d)(9) of this section.

(9) On each January 1, or as soon thereafter or as practicable, FNS will publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (d)(7)(ii) and (d)(8)(iii) of this section. Adjustments will be based

upon changes in the series for food away from home of the Consumer Price Index (CPI) for all urban consumers since the establishment of the rates. Higher rates will be established for Alaska and Hawaii, based on the CPI for those States.

\* \* \* \* \*

#### § 225.13 [Amended]

9. In § 225.13, amend the first sentence of paragraph (a) by adding the words “, if applicable” after the word “registration” wherever it appears.

10. In § 225.14:

a. Amend paragraphs (c)(3) and (d)(1) by removing the words “or a homeless feeding site”;

b. Redesignate paragraphs (d)(6) through (d)(7) as paragraphs (d)(5) through (d)(6), respectively; and revise them to read as follows:

#### § 225.14 Requirements for sponsor participation.

\* \* \* \* \*

(d) \* \* \*

(5) If the sponsor administers NYSP sites, it must ensure that all children at such sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Administers the Program:

(A) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site or,

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(ii) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(iii) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(iv) Provides ongoing year-round activities for children or families;

(v) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(vi) Meets applicable State and local health, safety, and sanitation standards.

11. In § 225.15:

a. Amend paragraph (a)(2) by removing the second sentence and by adding in its place two new sentences;

b. Amend the last sentence of paragraph (e) by removing the words “food stamp households or AFDC assistance units” and adding in their place “households receiving food stamp, FDPIR, or TANF benefits”;

c. Revise paragraph (f);

d. Remove paragraph (g)(2) and redesignate paragraphs (g)(3) through (g)(8) as paragraphs (g)(2) through (g)(7), respectively;

e. Amend newly redesignated paragraph (g)(2) by removing the words “except a private nonprofit organization” in the first sentence;

f. Remove newly redesignated paragraph (g)(4)(x) and redesignate newly redesignated paragraphs (g)(4)(xi) through (g)(4)(xiii) as paragraphs (g)(4)(x) through (g)(4)(xii), respectively.

The revisions and addition read as follows:

#### § 225.15 Management responsibilities of sponsors.

(a) \* \* \*

(2) \* \* \* In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a “charitable institution”, as defined in §§ 250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children’s meals served. \* \* \*

\* \* \* \* \*

(f) *Application for free Program meals.*—(1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of “areas in which poor economic conditions exist”, in § 225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.

(2) *Application procedures based on household income.* The household member completing the application on behalf of the child enrolled in the Program must provide the following information:

(i) The names of all children for whom application is made;

(ii) The names of all other household members;

(iii) The social security number of the adult household member who signs the application or an indication that the household member does not have a social security number;

(iv) The income received by each household member identified by source of income;

(v) The signature of an adult household member;

(vi) The date the application is completed and signed.

(3) *Application based on the household’s receipt of food stamp, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of food stamp, FDPIR, or TANF benefits by providing the following information:

(i) The name(s) and food stamp, FDPIR, or TANF case number(s) of the child(ren) who are enrolled in the Program; and

(ii) The signature of an adult household member.

(4) *Information or notices required on application forms.* Application forms or descriptive materials given to households about applying for free meals must contain the following information:

(i) The family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals (Note: The income levels for free school meal eligibility must not be included on the application or in other materials given to the household).

(ii) A statement that a child who is a member of a household that receives food stamp, FDPIR, or TANF benefits is automatically eligible to receive free meals in the Program;

(iii) A statement that reads, “In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.”;

(iv) The following statement that provides notice to the household member whose social security number is disclosed: “We are required by the National School Lunch Act in section 9 to ask for a social security number. Unless a food stamp, FDPIR, or TANF case number is provided for your child, the application cannot be approved without either the social security number of the person who signs the application or an indication that he or she does not have a social security number. The social security number provided may be used to identify the person in checking the correctness of the information provided on the application. This may occur during reviews, audits or investigations of the Program, and it may involve contacting employers to determine income. It also may involve contacting the food stamp or welfare office to determine if your household is receiving benefits. It may be necessary to check with the State employment security office to determine the amount of benefits your household

is receiving. Other income information provided by you may be checked. If the information you provide is incorrect, your household may lose benefits and/or claims or legal action may be taken against your household."

(v) The statement used to inform the household about the use of social security numbers must comply with the Privacy Act of 1974 (Pub. L. 93-579). If a State or local agency plans to use the social security numbers for uses not described in paragraph (f)(4)(iv) of this section, the notice must be revised to explain those uses.

(vi) Examples of income that should be provided on the application, including: Earnings, wages, welfare benefits, pensions, support payments, unemployment compensation, social security, and other cash income;

(vii) A notice placed immediately below the signature block stating that the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and

(viii) A statement that if food stamp, FDIPIR, or TANF case numbers are provided, they may be used to verify the current food stamp, FDIPIR, or TANF certification for the children for whom free meals benefits are claimed.

(5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing. State agencies must ensure that the notice of information about the use of social security numbers provided on applications complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974). Households must be informed of the following:

(i) They must provide a social security number for each adult household member, or indicate that an adult household member does not have a social security number, or provide proof that they are receiving food stamp, FDIPIR, or TANF benefits;

(ii) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(iii) Social security numbers may be used to determine the correctness of information on applications and continued eligibility for Program benefits;

(iv) They will be given the name and phone number of an official who can assist in the verification process;

(v) Verification may occur during program reviews, audits, and investigations;

(vi) Verification may include contacting employers, food stamp or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of food stamp, FDIPIR, TANF, or unemployment benefits; and

(vii) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

\* \* \* \* \*

#### 12. In § 225.16:

a. Revise paragraph (b) introductory text and paragraph (b)(1)(i);

b. Remove paragraph (b)(2) and redesignate paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(2), (b)(3), and (b)(4), respectively;

c. Revise newly redesignated paragraphs (b)(2), (b)(3), and the first sentence of (b)(4);

d. Revise the first sentence in paragraph (c)(1);

e. Amend the introductory text of paragraph (d) by adding a sentence at the end;

f. Revise paragraph (d)(1) introductory text;

g. Revise the entry for "Eggs" in the table under Meat and Meat Alternates (Optional) in paragraph (d)(1);

h. Revise paragraph (d)(2) introductory text;

i. Revise the centered heading and the introductory text of paragraph (d)(3);

j. Revise the entry for "Eggs" in the table under Meat and Meat Alternates in paragraph (d)(3);

k. Remove paragraph (e) and redesignate paragraphs (f) and (g) as paragraphs (e) and (f), respectively; and

l. Revise newly redesignated paragraph (f)(1).

The revisions and addition read as follows:

#### § 225.16 Meal service requirements.

\* \* \* \* \*

(b) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplements, referred to from this point as "snacks". No sponsor may be approved to provide more than two snacks per day. A sponsor may only be reimbursed for meals served in accordance with this section.

(1) \* \* \*

(i) Each day a camp may serve up to three meals or two meals and one snack;

\* \* \* \* \*

(2) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites.

(3) *Restrictions on the number and type of meals served.* Food service sites

other than camps and sites that primarily serve migrant children may serve either:

(i) One meal each day, a breakfast, a lunch, or snack; or

(ii) Two meals each day, if one is a lunch and the other is a breakfast or a snack.

(4) *Sites which serve children of migrant families.* Food service sites that primarily serve children from migrant families may be approved to serve each day up to three meals or two meals and one snack. \* \* \*

(c) *Time restrictions for meal service.*

(1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. \* \* \*

\* \* \* \* \*

(d) \* \* \* Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
* * * * *	* * *
Meat and Meat Alternates (Optional)	
* * * * *	* * *
Eggs .....	1/2 large egg.
* * * * *	* * *
* * * * *	

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

\* \* \* \* \*

#### Snacks

(3) The minimum amounts of food components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
* * * * *	* * *
Eggs .....	1/2 large egg.
* * * * *	* * *
* * * * *	

(f) *Exceptions to and variations from the meal pattern.*—(1) *Meals provided by school food authorities.*—(i) *Meal pattern substitution.* School food authorities that are Program sponsors and that participate in the National School Lunch or School Breakfast Program during any time of the year may substitute the meal pattern requirements of the regulations governing those programs (Parts 210 and 220 of this chapter, respectively) for the meal pattern requirements in this section.

(ii) *Offer versus serve.* School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this “offer versus serve” option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the “offer versus serve” must not be reduced because children choose not to take all components of the meals that are offered.

\* \* \* \* \*

#### **§ 225.18 [Amended]**

13. In § 225.18, remove paragraph (i).

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33503 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–30–U

## **DEPARTMENT OF AGRICULTURE**

### **Rural Utilities Service**

#### **7 CFR Part 1721**

#### **Post-Loan Policies and Procedures for Insured Electric Loans**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** As a part of its ongoing program to streamline regulations, the Rural Utilities Service (RUS) is amending its regulation on the advance of funds to reflect an increase in the threshold limit from \$25,000 to \$100,000 for which plant investments may be made in the borrowers' systems and be eligible for insured loan fund financing without being included in an RUS-approved construction work plan (CWP). In addition, RUS has determined to no longer limit borrowers to 130 percent of the project cost estimate for projects in the CWP or amendment and approved loan, as amended, for which

prior RUS approval must be obtained. These changes will have the effect of reducing the number of actions by borrowers that would otherwise require RUS approval and will reduce administrative costs to borrowers and to the agency.

**DATES:** This rule will become effective February 11, 2000 unless we receive written adverse comments or notice of intent to submit adverse comments on or before January 27, 2000. If we receive such comments or notice, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** stating that the rule will not become effective until we have addressed the comments received and published a final rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This 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 (OMB).

##### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture

Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

#### **Regulatory Flexibility Act Certification**

The Administrator of RUS has determined that this rule relating to RUS' electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, received economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

#### **Information Collection and Recordkeeping Requirements**

The Office of Management and Budget has approved the reporting and recordkeeping requirements contained in 7 CFR part 1721 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned control number 0572–0032. This rule contains no additional information collection or recordkeeping requirements.

#### **National Environmental Policy Act Certification**

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### **Catalog of Federal Domestic Assistance**

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

##### **Executive Order 12372**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State local, and tribal governments or the private sector. A final rule related notice entitled, “Department Programs and Activities Excluded from Executive