



**Billing Code: 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 210, 215, 220, 225, and 226**

**[FNS-2019-0034]**

**RIN 0584-AE72**

**Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP)**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking proposes to amend the Summer Food Service Program (SFSP) regulations to strengthen program integrity by codifying in regulations changes that have been tested through policy guidance and by streamlining requirements among Child Nutrition Programs. These changes update important definitions, simplify the application process, enhance monitoring requirements, and provide more discretion at the State agency level to manage program operations. The intended effect of this rulemaking is to clarify, simplify, and streamline program administration in order to facilitate compliance with program requirements.

**DATES:** Written comments must be received on or before [insert date 60 days after date of publication in the Federal Register] to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Send comments to Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.

- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, 703-305-2590.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Summer Food Service Program (SFSP) is authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761. Its primary purpose is to provide free, nutritious meals to children from low-income areas during periods when schools are not in session.

Throughout the history of the SFSP, the United States Department of Agriculture (USDA) has striven to provide good customer service to children in need during the summer months while maintaining accountability and integrity in program operations. The SFSP is one of the USDA programs that collectively are known as the Child Nutrition Programs. For the purposes of this proposed rule, Child Nutrition Programs also include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), and Child and Adult Care Food Program (CACFP). Among Child Nutrition Programs, the SFSP is unique in many ways, including the seasonal nature of its operations, the diversity of organizations that participate in the program, and the range of sites at which meals are offered. State agencies, sponsors, and community organizations need flexibility to operate the SFSP in a manner that is responsive to local conditions. Such flexibility allows the SFSP to serve a diversity of communities efficiently and effectively. To that end, USDA is continually exploring options to increase administrative flexibility and reduce burden for SFSP sponsors and State agencies to facilitate compliance with program requirements.

To explore program options, USDA is dedicated to working collaboratively with State agencies, local level organizations, program operators, and the advocacy community to learn from their experiences administering and operating the SFSP. USDA has a strong history of soliciting feedback from stakeholders and participants in the SFSP through:

- Participation at multiple national conferences;
- Nationwide workgroups including stakeholders from State agencies, program operators, and advocacy groups to collect strategies to improve the delivery of

nutrition assistance to low-income children in the summer months, boost participation, and reduce unnecessary barriers to participation;

- Listening sessions and webinars;
- Partnerships with other government agencies, national nonprofit organizations, and faith-based communities; and
- A 2004 notice in the Federal Register (69 FR 3874 Page 3874) soliciting public comments on how to improve the program.

In response to the feedback received, USDA issued nationwide flexibilities and nationwide waivers of program regulations to facilitate sponsor and site participation and decrease paperwork burdens on both State agencies and sponsors – see following table entitled *FNS Policy Memoranda Addressed in This Rule*. While nationwide waivers of program regulations have largely supported improved program operations, the USDA Office of the Inspector General (OIG) audit entitled “FNS Controls Over the Summer Food Service Program” (27601-0004-41) prompted USDA to assess whether nationwide waivers issued through policy memoranda complied with section 12(l) of the NSLA, which provides the Secretary with the authority to waive certain statutory and regulatory provisions. Through this assessment, USDA determined that the issuance of certain nationwide waivers through policy memoranda was not fully consistent with all requirements to waive program regulations as outlined in section 12(l). As a result, USDA rescinded several nationwide waivers through two memoranda:

- SFSP 06-2018, *Summer Food Service Program Memoranda Rescission: SFSP 01-2007 and SFSP 06-2015*, May 24, 2018<sup>1</sup>; and
- SFSP 01-2019, *Summer Food Service Program Memoranda Rescission*, October 11, 2018<sup>2</sup>.

For summer 2019, State agencies or eligible service providers were able to submit individual requests for waivers that they believed were in the best interest of the program in their State, following the requirements outlined in section 12(1) of the NSLA and policy memorandum SP 15-2018, CACFP 12-2018, SFSP 05-2018: *Child Nutrition Program Waiver Request Guidance and Protocol – Revised*, published May 24, 2018<sup>3</sup>.

The aforementioned nationwide waivers were developed based on consistent input from stakeholders and have effectively supported improved program operations. The process of approving individual waiver requests for program year 2019 reaffirmed the continued value of these flexibilities. State agencies justified their 2019 waiver requests with goals of improved efficiency, reduced administrative cost, and commitment to program integrity – specifically, the ability of both program sponsors and State agencies to provide adequate and effective program oversight with limited resources. As such, USDA is proposing to codify many of the policies that were previously available as nationwide waivers, as well as a number of flexibilities that are currently available through policy guidance. In addition, USDA is seeking comments on several proposals for removing

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<sup>1</sup> <https://www.fns.usda.gov/sfsp/summer-food-service-program-memoranda-rescission-sfsp-01-2007-and-sfsp-06-2015>

<sup>2</sup> <https://www.fns.usda.gov/sfsp/summer-food-service-program-memoranda-rescission>

<sup>3</sup> <https://www.fns.usda.gov/child-nutrition-program-waiver-request-guidance-and-protocol-revised>

barriers to efficient program administration. Taken as a whole, the changes proposed in this rule would maintain program integrity. They would streamline SFSP requirements for sponsors that participate in other Child Nutrition Programs; facilitate compliance with program monitoring requirements; provide customer-friendly meal service; and clarify program requirements. The following table details FNS policy memoranda that are discussed in this rule, the specific provision(s) from each memorandum that is discussed, the status of the waiver or flexibility, and the section of the rule in which it is addressed.

<b>FNS Policy Memoranda Addressed in This Rule</b>			
<b>Policy Memorandum</b>	<b>Provision Addressed in Rule</b>	<b>Provision Status</b>	<b>Section of Rule</b>
<i>Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites, November 17, 2002<sup>1</sup></i>	Determining Eligibility for Closed Enrolled Sites	Rescinded in SFSP 01-2019	VII. B
<i>Field Trips in the Summer Food Service Program (SFSP) February 3, 2003<sup>2</sup> &amp; FNS Instruction 788-13: Sub-Sites in the Summer Food Service Program</i>	Reimbursement Claims for Meals Served Away from Approved Locations	Active	VI. A
<i>SFSP 12-2011, Waiver of Site Monitoring Requirements in the Summer Food Service Program, April 5, 2011<sup>3</sup></i>	First Monitoring Site Visits for Returning Sites	Rescinded in SFSP 01-2019	IV. A
<i>SFSP 05-2012, Simplifying Application Procedures in the Summer Food Service Program, October 31, 2011<sup>4</sup></i>	Application Procedures for New CACFP Sponsors	Active	III. A
	Demonstration of Financial and Administrative Capability for CACFP Institutions	Active	III. B
<i>SFSP 04-2013, Summer Feeding Options for School Food Authorities, November 23, 2012<sup>5</sup></i>	Application Procedures for New SFA Sponsors	Active	III. A
	Demonstration of Financial and Administrative Capability for SFAs	Active	III. B
	First Monitoring Site Visits for SFA Sponsors	Rescinded in SFSP 01-2019	IV. A
<i>SFSP 06-2014, Available Flexibilities for</i>	First Monitoring Site Visits	Rescinded in	IV. A

<i>CACFP At-Risk Sponsors and Centers Transitioning to SFSP</i> , November 12, 2013 <sup>6</sup>	for CACFP or SFA sponsors	SFSP 01-2019	
SFSP 07-2014, <i>Expanding Awareness and Access to Summer Meals</i> , November 12, 2013 <sup>7</sup>	Requirements for Media Release	Active	VI. C
SFSP 16-2015, <i>Site Caps in the Summer Food Service Program – Revised</i> , April 21, 2015 <sup>8</sup>	Establishing the Initial Maximum Approved Level of Meals for Vended Sponsors	Active	IV. B
SFSP 04-2017, <i>Automatic Revocation of Tax-Exempt Status – Revised</i> , December 1, 2016 <sup>9</sup>	Annual Verification of Tax-Exempt Status	Active	VI. D
SFSP 06-2017, <i>Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised</i> , December 05, 2016 <sup>10</sup>	Meal Service Times	Rescinded in SFSP 01-2019	V. A
	Off-site Consumption of Food Items	Active	V. B
	Offer versus Serve	Rescinded in SFSP 01-2019	V. C
SFSP 05-2018, <i>Child Nutrition Program Waiver Request Guidance and Protocol – Revised</i> , May 24, 2018 <sup>11</sup>	Overview of Statutory Waiver Authority Request Process	Active	VIII. A

**Endnotes:**

<sup>1</sup> No longer available

<sup>2</sup> <https://www.fns.usda.gov/sfsp-020303>

<sup>3</sup> No longer available

<sup>4</sup> <https://www.fns.usda.gov/simplifying-application-procedures-summer-food-service-program>

<sup>5</sup> <https://www.fns.usda.gov/summer-feeding-options-school-food-authorities>

<sup>6</sup> <https://www.fns.usda.gov/available-flexibilities-cacfp-risk-sponsors-and-centers-transitioning-summer-food-service-program>

<sup>7</sup> <https://www.fns.usda.gov/expanding-awareness-and-access-summer-meals>

<sup>8</sup> <https://www.fns.usda.gov/site-caps-summer-food-service-program-revised>

<sup>9</sup> <https://www.fns.usda.gov/sfsp/automatic-revocation-tax-exempt-status%E2%80%93revised>

<sup>10</sup> <https://www.fns.usda.gov/meal-service-requirements-summer-meal-programs-questions-and-answers-%E2%80%93-revised>

<sup>11</sup> <https://www.fns.usda.gov/child-nutrition-program-waiver-request-guidance-and-protocol-revised>

## II. Reorganization of § 225.6

As stated in the summary and background, the purpose of this proposed rule is to streamline and clarify program requirements. In order to meet that goal, this rule proposes to reorganize and streamline § 225.6 to more clearly present existing State agency requirements.

The proposed changes reorganize requirements in § 225.6(c), *Content of sponsor application*, to more clearly outline the requirements for complete applications.

Provisions found in § 225.6(c)(2) related to site information sheets would move to a new paragraph (g); provisions in § 225.6(c)(4) related to the free meal policy statement would move to a new paragraph (f).

The proposed changes would also reorder current § 225.6(d) through (i). This reorganization is necessary in order to add new paragraphs related to performance standards for determining financial and administrative capability (new paragraph (d)), and sponsor submission of a management plan (new paragraph (e)), both of which are described in more detail in the next section of this preamble. The table below provides an outline of the proposed revisions:

<b>Current Outline</b>	<b>Proposed Outline</b>
a. General Responsibilities.	a. General responsibilities.
b. Approval of sponsor applications.	b. Approval of sponsor applications.
c. Content of sponsor application. <ol style="list-style-type: none"> <li>1. Application forms.</li> <li>2. Requirements for new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems in the prior year.</li> <li>3. Requirements for experienced sponsors and experienced sites.</li> </ol>	c. Content of sponsor application. <ol style="list-style-type: none"> <li>1. Application form.</li> <li>2. Application requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year.</li> <li>3. Application requirements for experienced sponsors.</li> <li>4. Application requirements for</li> </ol>

	School Food Authorities and Child and Adult Care Food Program Institutions.
	d. Performance standards. 1. Performance standard 1. 2. Performance standard 2. 3. Performance standard 3.
	e. Management plan.
4. Free meal policy statement. 5. Hearing procedures statement	f. Free meal policy statement. 1. Nondiscrimination statement. 2. Hearing procedures statement.
	g. Site information sheets. 1. New sites. 2. Experienced sites.
d. Approval of sites.	h. Approval of sites.
e. State-sponsor agreement.	i. State-sponsor agreement.
f. Special account.	j. Special account.
g. FSMC registration.	k. Food Service Management Company registration.
h. Monitoring of FSMC procurements.	l. Monitoring of Food Service Management Company procurements.
i. Meal pattern exceptions.	m. Meal pattern exceptions.

### III. Streamlining Program Requirements

USDA is committed to decreasing paperwork burden across Child Nutrition Programs. In conjunction with decreasing paperwork, USDA has also found that supporting SFSP program operators that successfully operate other Child Nutrition Programs ensures that taxpayer money is used most efficiently. Therefore, through policy guidance, USDA has identified several ways to streamline the application process for SFSP sponsors also

participating in the NSLP and/or the CACFP that reduce administrative burden when applying to participate in the SFSP.

*A. Application Procedures for New Sponsors*

Current regulations in § 225.6(c) outline specific requirements for sponsors and sites applying to participate in the SFSP. The regulations in § 225.6(c)(2) require certain procedures for new sponsors, and sponsors that have experienced significant operational problems in the previous year, as determined by the State agency. For both new sponsors and those with operational problems, detailed information is required regarding site information, arrangements for meeting health and safety standards, and budgets, among other things. This information is necessary for State agencies to determine if new sponsors and sites, or those with previous operational problems, are capable of running the SFSP efficiently and effectively, and complying with all program requirements, thus maintaining program integrity.

For experienced sponsors that have already operated the SFSP without significant operational problems, applications must include condensed information that is more likely to change from year to year, as currently outlined in § 225.6(c)(3). Experienced sponsors are not required to submit the same level of detail with regard to organizational and operational information required of new sponsors and those with previous operational problems.

In an effort to recruit eligible organizations that have already proven capable of successfully running other Child Nutrition Programs, USDA outlined flexibilities in several policy memoranda for NSLP and CACFP sponsors in good standing (SFSP 05-2012, *Simplifying Application Procedures in the Summer Food Service Program*, October 31, 2011 and SFSP 04-2013, *Summer Feeding Options for School Food Authorities*, November 23, 2012). Through policy guidance, a sponsor is considered to be in “good standing” if it has been reviewed by the State agency in the last 12 months and had no major findings or program violations, or completed and implemented all corrective actions from the last compliance review. In addition, a sponsor may be considered in good standing if it has not been found to be seriously deficient by the State agency in the past two years and has never been terminated from another Child Nutrition Program.

The published guidance outlines flexibilities for school food authorities (SFAs) administering the NSLP or SBP and CACFP institutions in good standing that are applying to serve SFSP meals at the same sites where they provide meal services through the NSLP, SBP, or CACFP during the school year. Under this guidance, these institutions are permitted to follow the application requirements for experienced SFSP sponsors currently found in § 225.6(c)(3) instead of the application requirements for new sponsors and sites currently found in § 225.6(c)(2). While the guidance streamlines the requirements among programs, it also requires that NSLP or SBP SFAs and CACFP institutions using the experienced sponsor application procedures provide the following information:

- Whether the site is rural or non-rural;

- Whether the site's food service will be self-preparation or vended; and
- If a site will primarily serve the children of migrant families, certification from a migrant organization that the site serves children of migrant worker families and that it primarily serves migrant children if it also serves non-migrant children.

This additional site information is necessary for the State agency to make a determination about the approval of sites for experienced sponsors. Further, this rule proposes to provide State agencies the discretion to allow NSLP and SBP SFAs and CACFP institutions applying for participation in the SFSP for the first time to use this flexibility.

Accordingly, this rule proposes to codify under § 225.6(c)(4) the flexibilities extended through policy guidance for NSLP and SBP SFAs and CACFP institutions to use procedures for experienced sponsors.

#### *B. Demonstration of Financial and Administrative Capability*

Currently, SFSP regulations require sponsors applying to participate in the Program to demonstrate financial and administrative capability for program operations and accept financial responsibility for total program operations at all sites at which they propose to conduct a food service (§ 225.14(c)(1)). These two operational aspects underpin program integrity and promote effective use of taxpayer money. Demonstration of financial and administrative capability can include, but is not limited to, submission of budgets, financial records, documentation of organizational structure, and menu planning.

In order to streamline Child Nutrition Program requirements and encourage participation, USDA issued policy guidance that provided that NSLP and SBP SFAs and CACFP institutions in good standing applying to participate in the SFSP are not required to submit further evidence of financial and administrative capability, as required in § 225.14(c)(1) (SFSP 05-2012, *Simplifying Application Procedures in the Summer Food Service Program*, October 31, 2011 and SFSP 04-2013, *Summer Feeding Options for School Food Authorities*, November 23, 2012). NSLP and SBP SFAs and CACFP institutions already undergo a rigorous application process in order to participate in NSLP, SBP, and CACFP and have demonstrated that they have the financial and organizational viability, capability, and accountability necessary to operate a Child Nutrition Program; therefore, they have the capacity to operate the SFSP as well.

While the flexibility to not submit further evidence of financial and administrative capability is intended to decrease burden on both State agencies and sponsors applying for the program, State agencies must still be aware of the ways in which NSLP and SBP SFAs and, particularly, CACFP institutions have demonstrated their financial and administrative capabilities in the past. If the State agency has a reasonable belief that the operation of the SFSP would pose significant challenges for an NSLP or SBP SFA or CACFP sponsor applicant, the State agency may request additional evidence of financial and administrative capacity sufficient to ensure that the sponsor has the ability and resources to expand. For example, if an NSLP or SBP SFA or CACFP institution had a finding during a local review, the State agency may request additional evidence of financial and administrative capacity to demonstrate ability to administer the SFSP.

Additionally, in certain instances, different State agencies are responsible for the administration of the SFSP and school meals or CACFP. In these instances, to protect the integrity of the SFSP and ensure that financially and administratively capable sponsors are approved to operate the program, State agencies must share relevant sponsor information, including, but not limited to:

- Demonstration of fiscal resources and financial history;
- Budget documents;
- Demonstration of appropriate and effective management practices; and
- Demonstration of adequate internal controls and other management systems in effect to ensure fiscal accountability.

As this proposed rule would require State agencies to develop a process for sharing information across agencies if the agency that administers the SFSP is not the same as the one administering school meals or the CACFP, USDA is specifically seeking comment on the challenges and benefits of this requirement. Specifically, USDA is interested in the following questions:

- Would the sharing of information help improve the integrity of the program?
- Would developing an information sharing process create undue burden on State agencies?
- What are the potential costs of developing an information sharing process?

Accordingly, this rule proposes to amend regulations found at §225.14(c)(1) to include the flexibility outlined in previous guidance that SFAs and CACFP institutions in good standing applying to operate the SFSP do not have to provide further evidence of

financial and administrative capabilities. In addition, this rule proposes to add a requirement that State agencies develop an information sharing process if programs are administered by separate agencies within the State.

*C. Clarifying Performance Standards for Evaluating Sponsor Viability, Capability, and Accountability*

Organizations applying to participate as sponsors in the SFSP must demonstrate “financial and administrative capability for program operations” (§ 225.14(c)(1)). It is critical for State agencies to determine if an applicant has the potential to be viable, capable, and accountable for operating the SFSP with program integrity, and will accept financial and administrative responsibility at all sites it intends to operate. While USDA has provided technical assistance for how State agencies should determine if a sponsor is financially and administratively capable, the regulations do not include specific metrics for assessing an applicant’s capability for successful program participation. As a result, USDA has received requests from State agencies to provide additional clarity on the application requirements in § 225.14(c)(1).

In response to State agency requests regarding application requirements, and in an effort to streamline requirements across programs, this rule proposes to add performance standards for organizations applying to participate as SFSP sponsors that correspond to standards currently in place at § 226.6 for organizations applying to participate as CACFP sponsors. These detailed performance standards under §226.6 assist State agencies in assessing an applicant’s financial viability and financial management,

administrative capability, and accountability. In addition, the rule clarifies that sponsors must demonstrate compliance with these performance standards as part of their management plan. USDA recognizes that program operations, requirements, and monitoring responsibilities differ between the CACFP and the SFSP. However, the proposed standards would ensure that an organization meets basic requirements for operating any Child Nutrition Program. These standards would apply equally to the CACFP and the SFSP, and would provide more clarity to State agencies responsible for evaluating sponsor applications in SFSP.

USDA recognizes that including these detailed performance standards in the management plan may require some State agencies and sponsors to modify current practices. Although USDA prioritizes flexibility for stakeholders to the greatest extent possible, these changes would bolster program integrity by supporting the ability of State agencies to more efficiently and consistently evaluate an applicant sponsor's financial and administrative capability. The proposed performance standards and management plan align with current regulations requiring sponsors to demonstrate financial and administrative capability for program operations.

The proposed standards are composed of three main performance elements. Performance standard 1 addresses financial viability and financial management, performance standard 2 addresses administrative capability, and performance standard 3 addresses internal controls and management systems that ensure program accountability. The proposed regulations include additional criteria for assessing each performance standard. It is

important to note that these standards would not require anything new of SFSP operators. These standards are intended to clarify existing SFSP requirements and provide support and guidance to State agencies when evaluating sponsor applications.

Accordingly, this proposed rule would add performance standards for determining sponsor financial viability, administrative capability, and program accountability in a new § 225.6(d) against which State agencies must evaluate an applicant sponsor's financial and administrative capabilities. This rule also proposes to require in § 225.6(c)(2)(i) and new § 225.6(e) the submission of a management plan demonstrating compliance with the performance standards in the new § 225.6(d). Finally, this rule would amend §§ 225.14(a), 225.14(c)(1), and 225.14(c)(4) to reference application requirements, performance standards, and the management plan, respectively, in the reorganized §225.6.

#### **IV. Facilitating Compliance with Program Monitoring Requirements**

##### *A. First Week Site Visits*

Section 225.15(d)(2) of the current regulations requires sponsors to visit each of their sites at least once during the first week of operation in the program. The purpose of conducting monitoring visits during the first week of site operation is for the sponsor to provide technical assistance to improve service delivery and to take action to promptly correct any deficiencies in program operations at the site level.

USDA has received consistent feedback from State agencies and sponsors, through a national stakeholder workgroup and other means, that some sponsors lack sufficient resources to conduct monitoring visits during the first week of operation at all site locations. Minimal staff to conduct visits, large distances between sites, particularly in rural areas, and insufficient funding were all cited as barriers to fulfilling this requirement. In order to provide sponsors the option to target their technical assistance and monitoring resources towards activities that will have the greatest impact on program integrity, USDA issued policy guidance that waived the requirement that sponsors visit sites during the first week of operation for the following:

- Sponsors in good standing in the NSLP or CACFP (SFSP 04-2013, *Summer Feeding Options for School Food Authorities*, November 23, 2012 and SFSP 06-2014, *Available Flexibilities for CACFP At-Risk Sponsors and Centers Transitioning to SFSP*, November 12, 2013, respectively); and
- Sites that had operated successfully the previous summer (or other most recent period of operation) and had no serious deficiency findings (SFSP 12-2011, *Waiver of Site Monitoring Requirements in the Summer Food Service Program*, April 5, 2011).

The waivers noted above were rescinded in 2018, as discussed in the background section of this proposed rule. Through implementation of these waivers for a number of years, USDA learned that waiving the first week site visit requirement eased burden for the sponsors and sites that met the requirements of the waiver. However, USDA also determined that site visits during the first weeks of operation are a crucial part of program

monitoring and benefit sponsors and sites of all types. Early site visits facilitate good sponsor management at every site and ensure that site supervisors and staff are receiving the technical assistance needed to operate the SFSP in compliance with all program requirements, thereby maintaining program integrity.

As such, USDA is proposing to amend this site visit requirement in § 225.15(d)(2) to provide flexibility in the timeframe during which first monitoring visits must take place. This proposed rule would create a tiered framework, under which sponsors responsible for the management of 10 or fewer sites would be required to conduct the first site monitoring visit within the first week (seven calendar days) after the site begins program operations. Sponsors responsible for the management of more than 10 sites would be required to conduct the first site monitoring visits within the first two weeks (14 calendar days) after the site begins program operations. In cases where a site operates for one week or less, the site visit must be conducted during the period of operation. Based on currently available data from studies conducted by USDA and collected from State agencies, over 80 percent of sponsors participating in the program operate 10 sites or fewer. While this change would not impact the majority of sponsors, this flexibility would help alleviate logistical burdens for larger sponsors while strengthening monitoring practices.

In addition, the proposed rule includes changes to the current regulatory requirement that sponsors must conduct a review of the food service at each site during the first four weeks of program operations (§ 225.15(d)(3)). The proposed rule would allow these food

service reviews to occur at the same time as the first monitoring visit. This would provide all sponsors with the opportunity to manage their resources in a way that best suits their program operations.

The intent of these changes is to allow sponsors of different sizes to adequately distribute their resources as necessary. USDA recognizes that through the waiver process conducted for summer 2019, many State agencies expressed the need for significant flexibilities related to first week site visits. USDA seeks to balance program integrity and administrative flexibilities and will consider all comments in drafting the final rule. To understand the full impact of these proposed changes, USDA is seeking specific comments on the:

- Number of sites that sponsors manage;
- Number of staff available to conduct site visits;
- Logistics of conducting site visits;
- Time and resources necessary, as well as any other factors, that impact the ability of sponsors to fulfill this requirement;
- Proposed tiers and whether this provides sufficient flexibilities for sponsors; and
- Benefits of requiring first monitoring visits at all sites versus those sites that are new to the program or experienced operational or administrative difficulties in the past.

While the data shows that the vast majority of sponsors are responsible for program operations at 10 sites or fewer, USDA is interested in learning more about how the tiers,

as proposed, would affect sponsors of different sizes and that operate under varying conditions.

Accordingly, this rule proposes to amend § 225.15(d)(2) of the regulations to create a tiered framework for first monitoring visits. This rule also proposes to amend § 225.15(d)(3) to allow sponsors to conduct a first monitoring visit and a food service review at the same time.

*B. Establishing the Initial Maximum Approved Level of Meals for Sites of Vended Sponsors*

Program regulations found at §225.6(d) require that, when approving the application of a site, State agencies must establish for each meal service an approved level for the maximum number of children's meals which may be served under the program. This limit on the number of meals that may be served is commonly known as a “site cap.” For sites that prepare the meals that will be served and do not contract with a food service management company, this cap on the number of meals served may be no more than the number of children for which the facilities are adequate (§ 225.6(d)(1)(iii)). For sites that purchase meals from a food service management company, the regulations require that the initial maximum approved level be based on historical attendance, or by another procedure developed by the State agency if no accurate record from prior years is available. Once established, site caps may be increased or decreased based on information collected during site reviews or other documentation provided to the State agency by the sponsor demonstrating the need for an adjustment (§ 225.6(d)(2)). The

regulations further require that State agencies disallow payment on any meals served over the site cap at vended sites (§ 225.11(e)(3)).

The purpose of a site cap is to encourage sponsors and State agencies to work closely together to develop reasonable estimates of anticipated site attendance. This ensures that a site does not purchase or produce meals outside of the capacity of the site and the needs of the community. Site caps are also an important tool for State agencies to monitor program management and determine if there is need for technical assistance or corrective action to ensure program integrity. As such, State agencies should work with sponsors to establish reasonable site caps that reflect the true capacity and capability of sites.

However, USDA understands that State agencies and sponsors may have difficulty accurately assessing the capability of a site or the full needs of a community before operations begin. Circumstances may arise in which a site attracts more children than originally anticipated, such as an increase in the number of children coming for programs or activities offered at the same location. In other cases, a lack of historical data makes it difficult for State agencies and sponsors to accurately forecast participation levels.

In order to allow sponsors of vended sites to make timely adjustments to program operations, USDA issued policy guidance clarifying that sponsors may request an increase to existing site caps at any time prior to the submission of the meal claim forms for reimbursement that includes meals served in excess of the site cap (SFSP 16-2015, *Site Caps in the Summer Food Service Program – Revised*, April 21, 2015). As with any change to program operations, this guidance clarified that State agencies have the

discretion to approve the request. Providing sponsors of vended sites the flexibility to adjust site caps prior to submitting a claim for reimbursement gives them the freedom to right-size their program operations in real time, be responsive to local conditions, and provide better customer service to their communities. For sites with no accurate historical information, USDA recommends the State agency consider participation at other similar sites located in the same area, documentation of programming taking place at the site, or statistics on the number of children residing in the area when determining initial site caps.

Accordingly, this rule proposes to amend § 225.6(h)(2)(iii) of the regulations, as redesignated through this rule, to clarify that sponsors of vended sites may request an adjustment to the maximum approved level of meal service at any time prior to submitting a claim for reimbursement. This rule would also amend § 225.6(h)(2)(i), as redesignated through this rule, to include further guidance for determining the maximum approved level of meal service for sites lacking accurate records from prior years.

*C. Statistical Monitoring Procedures, Site Selection, and Meal Claim Validation for Site Reviews*

State agencies are responsible for reviewing sponsors and sites to ensure compliance with program regulations. Current regulations in § 225.7(d)(2) discuss the frequency and number of required reviews, including the requirement in § 225.7(d)(2)(ii)(E) that a State agency conducting a sponsor review must review at least 10 percent of the sponsor's sites, or one site, whichever number is greater. USDA guidance also instructs State

agencies to validate 100 percent of all meal claims from all sites under a sponsor that is being reviewed.

To provide flexibility to State agencies conducting sponsor and site reviews, § 225.7(d)(8) affords State agencies the option to use statistical monitoring procedures in lieu of the site monitoring requirements found in § 225.7(d)(2). However, USDA regulations and guidance do not provide clear instructions for how to develop and implement statistical monitoring procedures. In addition, USDA is not aware of any States that currently use statistical monitoring procedures. USDA reviewed feedback from State agencies, analyzed current State practices for selecting sites, and considered related sampling models that could be adapted as guidelines for statistical monitoring of sites in the SFSP. Through this process, USDA determined that it is not possible to create standard statistical monitoring procedures that will meet the needs of the program. As a result, USDA is proposing to remove the provision in § 225.7(d)(8) which currently allows the use of statistical monitoring for site reviews.

This rule will not change the current requirement that State agencies conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater. The rule proposes to increase the effectiveness of site reviews by providing guidance to assist State agencies and sponsors in selecting a sample of sites that is generally reflective of the variety of all a sponsor's sites. Through this guidance, site characteristics that will be reflected in a sponsor's sample include:

- The maximum number of meals approved to serve under §§ 225.6(h)(1)(iii) and 225.6(h)(2), as redesignated through this rule;
- Method of obtaining meals (i.e., self-preparation, vended meal service);
- Time since last review by the State agency;
- Site type (i.e., open, closed enrolled, camp);
- Type of physical location (e.g., school, outdoor area, community center);
- Rural designation (i.e., rural, as defined in § 225.2, non-rural); and
- Affiliation with the sponsor, as defined in § 225.2.

The State agency may use additional criteria to select sites including, but not limited to: recommendations from the sponsoring organization, findings of other audits or reviews, or any indicators of potential error in daily meal counts (e.g., identical or very similar claiming patterns, or large changes in meal counts).

Additionally, this rule proposes a new method for conducting meal claim validations as a part of the sponsor review. USDA recognizes that conducting 100 percent meal claim validations for all sites under the sponsor being reviewed, instead of just the sampled sites, may be burdensome for some State agencies. In the case of large sponsors with many sites, this requirement often uses significant State agency resources and, based on feedback from State agencies, does not necessarily help improve the integrity of the program. For sponsors that run effective programs in compliance with program requirements, only a small portion of meal claims may need to be validated in order to confirm compliance. In recognition of this, the proposed changes would include a multi-

step approach to site-based meal claim validation. State agencies would initially validate a small sample of claims and would only be required to validate additional claims if sufficient error is detected. The proposed method is shown in the table below.

<b>Meal Claim Validation Process</b>		
<b>Step</b>	<b>Outcome</b>	<b>Result</b>
Step 1: Validate 100 percent of meal claims only for the sites being reviewed to satisfy the requirement that State agencies must review 10 percent of sites, or one site, whichever is greater, operated by the sponsor being reviewed.	An average percent error of less than 5 percent is found.	<ul style="list-style-type: none"> <li>• The review of meal claims for this sponsor is complete.</li> <li>• If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP.</li> </ul>
	An average percent error of 5 percent or more is found.	<ul style="list-style-type: none"> <li>• The State agency must move to Step 2.</li> </ul>
Step 2: Expand validation of meal claims to all meals for the review period for 25 percent of the sponsor's total sites.	An average percent error of less than 5 percent is found in the additional sites validated.	<ul style="list-style-type: none"> <li>• The review of meal claims for this sponsor is complete.</li> <li>• If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP.</li> </ul>
	An average percent error of 5 percent or more is found in the additional sites validated.	<ul style="list-style-type: none"> <li>• The State agency must move to Step 3.</li> </ul>
Step 3: Expand validation of meal claims to all meals for the review period for 50 percent of the sponsor's sites.	An average percent error of less than 5 percent is found in the additional sites validated.	<ul style="list-style-type: none"> <li>• The review of meal claims for this sponsor is complete.</li> <li>• If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP.</li> </ul>
	An average percent error of 5 percent or more is found.	<ul style="list-style-type: none"> <li>• The State agency must move to Step 4.</li> </ul>
Step 4: Expand validation of meal claims to all meals for the review period for 100 percent of the sponsor's total sites.	An average percent error of less than 5 percent is found in the additional sites	<ul style="list-style-type: none"> <li>• The review of meal claims for this sponsor is complete.</li> <li>• If necessary, the State agency must take fiscal action per the disregard threshold</li> </ul>

	validated.	established for SFSP.
	An average percent error of 5 percent or more is found.	<ul style="list-style-type: none"> <li>• The review of meal claims for this sponsor is complete.</li> <li>• The State agency must take fiscal action, per the disregard threshold established for SFSP.</li> </ul>
* Fractions must be rounded up ( $\geq 0.5$ ) or down ( $< 0.5$ ) to the nearest whole number.		

To calculate the percent error, subtract the total meals validated by the State agency for the reviewed sites from the total meals claimed by the sponsor for the reviewed sites, then divide by the total meals claimed by the sponsor for the reviewed sites and multiply by 100. By taking the absolute value, the percent error will be expressed as a positive number. An overclaim or an underclaim above the error threshold signals the need to expand the meal claim validation. Refer to the equations below for clarification.

**Percent Error Formula:**

$$\frac{M_R - MV_R}{M_R} * 100$$

Where:

$M_R$  = total meals claimed by sponsor for reviewed sites

$MV_R$  = total meals validated by State agency for reviewed sites

This incremental approach is intended to use State agency resources more efficiently and provide State agencies with a more targeted method for review. USDA is requesting specific comments on this process, including the anticipated impact on State agencies and burden, the accuracy of claim validations under this process, and the stepped increases and the percentage expanded at each step.

Accordingly, § 225.7(e)(5), as redesignated in this rule, includes site selection criteria. Section 225.7(e)(6), as redesignated in this rule, proposes a method for conducting meal claim validations. The proposed rule also removes the option for statistical monitoring currently found in § 225.6(d)(8). Finally the rule proposes to renumber and rephrase portions of § 225.7 to make the regulations easier to understand.

## **V. Providing a Customer-Service Friendly Meal Service**

### *A. Meal Service Times*

Section 225.16(c) of the current regulations sets forth restrictions on when meals can be served in the SFSP. Three hours are required to elapse between the beginning of one meal service, including snacks, and the beginning of another, with the exception that four hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. Further, the regulations state that the service of supper cannot begin later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances; however, in no case may the service of supper extend beyond 8 p.m. The duration of the meal service is limited to two hours for lunch or supper and one hour for all other meals. These restrictions do not apply to residential camps.

These strict requirements did not provide sufficient control at the State agency and sponsor level to allow for planned meal services that meet the needs of the community. Dating as far back as 1998, USDA has issued guidance that waives these requirements at certain sites where the requirements proved to create significant barriers to efficient

program operations and good customer service for the communities served. USDA heard consistent feedback from stakeholders that the restrictions presented challenges to aligning meal services with access to public transportation and community services. The waiver of meal time restrictions helped decrease administrative burden and provided more local level control to sponsors to plan the most effective meal services, thereby improving program operations. Therefore, in 2011, USDA published guidance that waived the meal service time restrictions for all SFSP sites while still requiring sponsors to submit meal service times to the State agency for approval (originating guidance has since been superseded and incorporated into SFSP 06-2017, *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised*, December 05, 2016). These waivers were rescinded in 2018, as discussed in the background section of this proposed rule. In 2019, 42 State agencies requested a waiver of meal time restrictions to allow them to continue implementation of what had previously been in effect through guidance. Of those 42 State agencies, 39 asserted that the waiver would result in improved program operations and, therefore, efficient use of resources.

USDA supports flexibilities that provide the best possible customer service without compromising program integrity. Through implementation of this waiver for many years, USDA learned that allowing sponsors and State agencies more latitude to schedule meal service times gives sponsors the ability to best meet the needs of their community.

However, removing meal service time restrictions also allowed for meal services to be scheduled one right after another, without any time elapsing between the end of one meal service and the beginning of another. This is not in keeping with the intent of the SFSP to

maintain service of distinct meals, and poses a potential risk to program integrity by making it more difficult for sites to keep accurate records of meals served and to monitor the meal service itself. Therefore, this rulemaking proposes to remove all existing meal service time restrictions, and would add a requirement that, at all sites except residential camps, a minimum of one hour must elapse between the end of one meal service and the beginning of another. While this rule is proposing to remove meal time restrictions, USDA encourages State agencies to work with sponsors to establish distinct meal times that not only meet the needs of the community, but also allow the State agency to conduct all necessary monitoring requirements. State agencies should only approve extended meal service times if they have the capability to properly monitor the sites.

Sponsors have also expressed the need for flexibilities to conduct meal services in the event of an unforeseen circumstance, such as a delayed delivery. Therefore, USDA also proposes to allow a State agency to approve for reimbursement meals served outside of the approved meal service time if an unanticipated event, outside of the sponsor's control, occurs. The State agency may request documentation to support approval of meals claimed when unanticipated events occur.

In recent years, it has come to USDA's attention that some sponsors have served a meal, which meets the meal pattern requirements for breakfast, in the afternoon after a lunch service was provided and claimed this meal as a reimbursable "breakfast." The SFSP is statutorily designed to support "programs providing food service similar to food service made available to children during the school year" under the NSLP and SBP (42 U.S.C.

1761(a)(1)(D)). Currently, regulations governing the SBP define breakfast as a meal which is served to children in the morning hours and must be served “at or close to the beginning of the child’s day at school” (7 CFR 220.2). As such, the service of a reimbursable, three component meal, or “breakfast”, in the afternoon following the service of lunch is not supported by the statute. Therefore, a meal otherwise meeting the requirements for a breakfast meal is not eligible for reimbursement as a breakfast if it is served after any lunch or supper has been served and claimed for reimbursement.

This rule also proposes to amend § 225.16(c) to make it easier for users to locate and understand key information. Section 225.16(c)(1) will consolidate meal service time requirements currently referenced in other sections of part 225. This would specify that meal service times must be established by the sponsor for each site, be included in the sponsor’s application, and be approved by the State agency. Current § 225.16(c)(6), which specifies that a sponsor may claim for reimbursement only the type(s) of meals for which it is approved to serve, would move to § 225.16(b). In addition, a reference to approved meal service times would be added to the State-sponsor agreement information in redesignated § 225.6(i)(7)(iv).

Accordingly, this proposed rule would amend § 225.16(c) to:

- Remove meal service time restrictions;
- Add a requirement that a minimum of one hour elapse between the end of one meal service and the beginning of another;

- Allow a State agency to approve for reimbursement meals served outside of the approved meal service time if an unanticipated event occurs;
- Clarify that meals claimed as a breakfast must be served at or close to the beginning of a child’s day, and prohibit a three component meal from being claimed for reimbursement as a breakfast if it is served after a lunch or supper is served; and
- Reorganize § 225.16(c) to improve the clarity of the text.

This proposed rule would also amend §§ 225.16(b) and 225.6(i)(7)(iv) to improve the clarity of the regulations.

*B. Off-site Consumption of Food Items*

Serving children in a supervised, safe, and congregate setting is a strength of the SFSP. Feeding children in a group setting has many benefits such as providing an opportunity for children to socialize, creating time for sites to offer activities, and allowing adults to monitor food safety and encourage healthy eating practices. The statutory requirement that children consume program meals onsite is found in the NSLA, which states that meal service in the SFSP is to be “similar to food service made available to children during the school year” under the NSLP and SBP (42 U.S.C. 1761). Current regulations provide that sponsors must agree to “maintain children on site while meals are consumed” (§ 225.6(e)(15)). USDA has heard from stakeholders that, in some cases, the congregate feeding requirement poses a barrier to participation and compliance with program requirements. Program operators have expressed that some children, particularly those who are younger, are unable to eat all of the meal components in one sitting and have

suggested that they be allowed to take certain components off-site for later consumption. Further, sponsors and site supervisors have raised concerns about plate waste and the need to provide as much nutritious food as possible to children who receive a meal but may not be able to consume a complete meal in one sitting. As the SFSP operates in a wide variety of settings, including sites that do not offer activities or programming separate from the meal service, some sponsors report that keeping children on site for the entire consumption of the meal offered is challenging.

USDA initially issued guidance in 1998 that provided flexibilities for a fruit or vegetable item of the meal to be taken off-site for later consumption, with State agency approval, for sponsors with adequate staffing to administer this option (originating guidance has since been superseded and incorporated into SFSP 06-2017 – *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised*, December 5, 2016<sup>4</sup>). USDA subsequently amended this flexibility in response to stakeholder feedback that it could be implemented in a way that maintained health and safety requirements. In 2013, USDA issued guidance that extended this option to all sponsors without the requirement for State agency approval, and expanded the eligible food items to include grains, allowing for a single item of fruit, vegetable, or grain to be taken off-site for later consumption (originating guidance has since been superseded and incorporated into SFSP 06-2017). However, the guidance maintained the State agencies’ discretion to prohibit individual sponsors on a case-by-case basis from using the option if the State agency had concerns about adequate site monitoring, and provided that the State agency’s decision to

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<sup>4</sup> <https://www.fns.usda.gov/meal-service-requirements-summer-meal-programs-questions-and-answers-%E2%80%93-revised>

prohibit a sponsor from utilizing this option is not an appealable action. This flexibility is still in effect and is found in guidance issued in SFSP 06-2017.

In order to provide flexibilities that are responsive to stakeholder needs, USDA is seeking specific comments on State agencies' ability to monitor the effective implementation of this option. Additionally, USDA is interested in learning whether State agencies would use the discretion to prohibit certain sponsors from utilizing this option on a case-by-case basis.

Accordingly, this rule proposes to codify the flexibility for sponsors to allow children to take certain food items (i.e., fruit, vegetable, or grain items) off-site for later consumption by amending § 225.6(i)(15), as redesignated through this rule, and adding a new § 225.16(h).

### *C. Offer versus Serve*

Current regulations in § 225.16(f)(1)(ii) allow SFAs that are program sponsors to “permit a child to refuse one or more items that the child does not intend to eat.” This concept is known as “offer versus serve” (OVS). The regulations also require that an SFA using the OVS option must follow the requirements for the NSLP set out in § 210.10. Finally, the regulations state that the sponsor’s reimbursement must not be reduced if children do not take all required food components of the meal that is offered.

OVS is a useful tool that applies to menu planning and meal service, which allows children to decline some of the food offered in a reimbursable breakfast, lunch, or supper, excluding snacks. The goals of OVS are to simplify program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meal that is served. As the SFSP operates on a short timeframe, efficiently managing costs is a significant concern for sponsors. USDA has explored many options to help sponsors maintain effective practices that reduce costs while maintaining high quality meal service. The use of OVS was first extended to SFSP operations through the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193) which permitted SFAs sponsoring the SFSP to use OVS on school grounds. This change was made on the basis that since the option is regularly implemented during the school year, these sponsors could successfully implement the option during the summer. Recognizing that OVS was a useful tool to reduce food waste and food costs, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) extended the use of OVS to all SFSP sites sponsored by SFAs.

OVS has proved to be a popular method among both sponsors and participants.

After observing SFA sponsors successfully utilizing the option for many years and receiving significant feedback from stakeholders, including Congressional testimony about the positive effects of OVS on reducing food waste and containing program costs, USDA extended the option to use OVS to non-SFA sponsors (SFSP 11-2011, *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program*, October 31, 2011). USDA continued to clarify policies surrounding OVS,

including guidelines for required meal service components under the SFSP meal pattern (SFSP 08-2014, *Meal Service Requirements*, November 12, 2013) and extending the use of the SFSP OVS meal pattern guidelines to SFA sponsors that had previously been required to follow the OVS requirements for the NSLP (SFSP 05-2015 (v.2), *Summer Meal Programs Meal Service Requirements Q&As – Revised*, January 12, 2015). This guidance took into account the distinguishing nature of the SFSP and NSLP, including variations in settings and resources, and adjusted the OVS requirements for use in the SFSP accordingly.

As mentioned in the background of this proposed rule, these waivers and extensions of statutory and regulatory requirements pertaining to OVS were rescinded in 2018. In 2019, 37 State agencies requested a waiver of programs requirements to allow them to continue utilizing OVS as had previously been permitted through guidance. State agencies that submitted OVS waiver requests for program year 2019 cited simplifying program administration, reductions in food waste, and efficient uses of program funds to maintain program integrity, to illustrate the importance of this waiver.

While USDA appreciates the positive benefits of the OVS option, the Department has some concerns about the effective implementation of OVS by non-SFA sponsors.

Through on-site reviews, USDA has found meal pattern violations tied to the improper use of the OVS guidelines, specifically at sites sponsored by non-SFAs. The purpose of OVS is to decrease administrative burden and food costs while maintaining the nutritional integrity of meals served to children. In light of these findings, this rule

proposes to retain the requirement that only SFA sponsors may utilize the OVS option; however, this rule also proposes to allow SFA sponsors electing to use the SFSP meal pattern to use SFSP OVS guidelines.

USDA is dedicated to providing effective flexibilities for sponsors to operate the program efficiently, which maintains program integrity without impacting the nutritional quality and service of meals provided to children. Understanding that OVS can be beneficial to sponsor operations if used properly, USDA is interested in learning more about the implementation of OVS by non-SFA sponsors, when allowed under a waiver.

Specifically:

- What level of training do non-SFA sponsors receive in order to be able to properly implement OVS?
- Do non-SFA sponsors have the resources needed to properly implement OVS?
- What level of technical assistance do non-SFA sponsors receive?
- How would non-SFA sponsors be impacted if OVS were no longer an available option?
- What are the specific benefits to sponsors that use OVS?

Accordingly, this rule proposes to amend § 225.16(f)(1) of the regulations to clarify meal service requirements for SFA sponsors electing to use OVS under the SFSP meal pattern.

## **VI. Clarification of Program Requirements**

### *A. Reimbursement Claims for Meals Served Away from Approved Locations*

As defined in § 225.2, a site is “a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.” Meals are reimbursable only when served at sites that have been approved by the State agency. Site approval applies only to the specific location that was approved, not to meals removed from that site for service at another location that has not been approved. The State agency must approve any changes in site service time or location after the initial site approval. However, USDA granted State agencies the flexibility to approve exceptions to this requirement for the operation of field trips under FNS Instruction 788-13: *Sub-Sites in the Summer Food Service Program* and policy guidance, *Field Trips in the Summer Food Service Program (SFSP)*, February 3, 2003<sup>5</sup>.

USDA is proposing to amend § 225.6(i), as redesignated through this rule, and add a new § 225.16(g) to allow sponsors the option to receive reimbursement for meals served away from the approved site. In accordance with current guidance, sponsors would be required to notify the State agency in advance that meals will be served away from the site, but formal approval of the alternative meal service is not a requirement. Under these proposed changes, State agencies have the discretion to set time limits for how far in advance of the field trip sponsors would send notification to the administering agency. This procedure is similar to the notification requirements of field trips in the CACFP, where providers must notify either their sponsoring organization or the State agency in advance of a planned field trip. If the State agency is not notified prior to the SFSP field trip, meals served may be considered “consumed off-site” and the State agency has the

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<sup>5</sup> <https://www.fns.usda.gov/sfsp-020303>

discretion to not reimburse those meals. In addition, in order to operate field trips in the SFSP, the sponsor would have to be capable of meeting all Program requirements on field trip days, including applicable State and local health, safety, and sanitation standards, as determined by the State agency. When considering if sponsors are eligible to receive reimbursement for meals served away from approved sites, State agencies should determine that all program requirements, including all applicable State and local health, safety, and sanitation standards will be met while traveling and at the field trip meal service location.

The proposed rule would also require sponsors of open sites to continue operating at the approved open site location while the field trip occurs. If this is not possible (for example, if there is limited staff coverage), the sponsor must notify the community of the change in meal service and provide information about alternative open sites where community children can receive free summer meals. Accordingly, the proposed rule addresses meals served away from the approved site location during a field trip at redesignated § 225.6(i)(7)(v) and in a new § 225.16(g).

#### *B. Timeline for Reimbursements to Sponsors*

Current regulations in § 225.9(d)(4) require that State agencies must forward reimbursements to sponsors within 45 calendar days of receiving a valid claim. The regulations also require that if a sponsor submits a claim for reimbursement that is incomplete or invalid, the State agency must return the claim to the sponsor within 30 calendar days with an explanation of the reason for disapproval. If the sponsor submits a

complete revised claim, the State agency must take final action within 45 calendar days of receipt. These requirements are necessary to ensure that sponsors receive reimbursement for meals served in a timely manner.

However, certain circumstances may arise that would require State agencies to conduct an extended review of a sponsor's claim for reimbursement to determine if it is incomplete or invalid, and if the claim should be denied. In recent years, USDA has received numerous inquiries and waiver requests to extend the timeline for taking final action on a claim for reimbursement within 45 calendar days of receiving a revised claim, as required in § 225.9(d)(4), due to concerns that the sponsor may have engaged in unlawful acts such as fraud. State agencies have stated that the 45 calendar day timeline to complete a final action is not sufficient to conduct a thorough review of all the sponsor's records and make a determination that the claim is valid.

After notifying the sponsor of disapproval of the claim within 30 calendar days of receipt, the State agency can expand the review and meal claims validations in order to prevent the potential payment of a suspected unlawful claim. While § 225.9(d)(10) of the regulations provides State agencies with the ability to use evidence found in audits, reviews, or investigations as the basis for nonpayment of a claim for reimbursement, the State agency may not be able to make this determination within the given timeframe. Therefore, this rule proposes to clarify that even if a State agency determines, in accordance with § 225.9(d)(10), that there is reason to believe the sponsor has engaged in unlawful acts, the State agency must still return the claim to the sponsor within 30

calendar days with an explanation of the reason for disapproval. Additionally, this rule proposes to exempt the State agency from requirements in § 225.9(d)(4) to take final action on a claim within 45 calendar days of receipt of a revised claim if the State agency has reason to believe that the sponsor has engaged in unlawful acts that would necessitate an expanded review. However, the State agency must still communicate its findings to the sponsor and allow the sponsor to submit a revised claim as allowed by § 225.9(d)(4). The State agency must complete final action on the revised claim once the review has concluded. Once final action is taken, the State agency must advise the sponsor of its rights to appeal consistent with the due process provided by the regulations in § 225.13(a).

Accordingly, this rule proposes to amend regulations found in § 225.9(d)(4) to include the clarification that if the claim is determined to be potentially unlawful based on § 225.9(d)(10), the State agency must still disapprove the claim within 30 calendar days with an explanation of the reason for disapproval. This rule also proposes to amend regulations in § 225.9(d)(10) to clarify that State agencies may be exempt from the 45 calendar day timeframe for final action in § 225.9(d)(4) if more time is needed to complete a thorough examination of the sponsor's claim.

### *C. Requirements for Media Release*

An essential component to the successful operation of the SFSP is outreach and notification to the community about the availability of meals. Current regulations at § 225.15(e) require all sponsors operating the SFSP, including sponsors of open sites,

camps, and closed enrolled sites, to annually announce the availability of free meals in the media serving the area from which the sponsor draws its attendance. The regulations specify that media releases issued by sponsors of camps or closed enrolled sites must include income eligibility standards, a statement about automatic eligibility to receive free meal benefits at eligible program sites, and a civil rights statement. However, the requirements of each type of sponsor are not clearly presented, leaving some State agencies and sponsors to make inadvertent errors in fulfilling requirements. Additionally, USDA has received questions from State agencies and has analyzed data from management evaluations that show that the current requirements are difficult to understand and implement correctly. To assist sponsors, USDA has issued guidance and resources encouraging State agencies to complete this requirement on behalf of all sponsors of open sites in their State through an all-inclusive Statewide media release (SFSP 07-2014, *Expanding Awareness and Access to Summer Meals*, November 12, 2013).

In order to make it easier for SFSP sponsors to satisfy community notification requirements, USDA is proposing to codify current guidance allowing State agencies the discretion to issue a media release on behalf of all sponsors operating SFSP sites, including camps, in the State. This rule would require State agencies using this option to ensure that all notification requirements for camps and other sites not eligible under § 225.2, paragraphs (a) through (c), in the definition of “areas in which poor economic conditions exist” are met. The proposed changes also clarify that, in the absence of a Statewide notification, sponsors of camps and other sites not eligible under § 225.2,

paragraphs (a) through (c), in the definition of “areas in which poor economic conditions exist” are only required to notify participants or enrolled children of the availability of free meals, and do not need to issue a media release to the public at large. This would limit the sponsor’s responsibility to notify only those who could potentially receive meals at the site. However, sponsors could still opt to issue public notification of their meal program if they determine it is appropriate. Finally, the section would be renamed “Notification to the Community” to more accurately describe the types of activities required of sponsors, including sponsors of camps and closed enrolled sites that will no longer be required to issue a media release.

Accordingly, this rule proposes to amend § 225.15(e) by renaming the subsection “Notification to the Community,” specifying that State agencies may issue a media release on behalf of all sponsors operating open SFSP sites in the State, and clarifying that sponsors of camps and other sites not eligible under the definition of “areas in which poor economic conditions exist” must *only* notify participants or enrolled children of the availability of free meals.

#### *D. Annual Verification of Tax-Exempt Status*

In order to be eligible to participate in the SFSP, sponsors must maintain their nonprofit status (§§ 225.2 and 225.14(b)(5)). In 2011, the Internal Revenue Service changed its filing requirements for some tax-exempt organizations. Failure to comply with these requirements could result in the automatic revocation of an organization’s tax-exempt status. Due to this change, USDA released guidance for confirming sponsors’ tax-exempt

status, which requires that State agencies annually review a sponsor's tax-exempt status (SFSP 04-2017, *Automatic Revocation of Tax-Exempt Status – Revised*, December 1, 2016). Accordingly, this rule proposes to codify the requirement for annual confirmation of tax-exempt status at the time of application by amending § 225.14(b)(5).

## **VII. Important Definitions in the SFSP**

### *A. Self-Preparation versus Vended Sites*

Current regulations in § 225.2 define the terms “self-preparation sponsor” and “vended sponsor.” These definitions are critical to the proper administration of the SFSP because reimbursement rates are determined, in part, based on the sponsor's classification as either self-preparation or vended. Per statutory requirements, reimbursement rates are calculated using operating and administrative costs (42 U.S.C. 1761(b)(1) and 42 U.S.C. 1761(b)(3)) to determine a reimbursement rate for each meal served. Rates are higher for sponsors of sites located in rural areas and for “self-preparation” sponsors that prepare their own meals at sites or at a central facility instead of purchasing from vendors. This is due to the higher administrative costs associated with program operation in rural areas and preparing meals rather than contracting with a food service management company. Therefore, correct classification of self-preparation or vended sponsors is necessary for proper program management and maintaining the fiscal integrity of the program.

In recent years, advances in technology have allowed State agencies and sponsors to develop increasingly sophisticated reporting systems that are capable of collecting detailed information on the number and type of meals being served. Some State agencies

have systems that allow sponsors to report the number and type of meals served at each site, rather than aggregating and reporting this information at the sponsor level, which is the current requirement. Accordingly, some State agencies have developed the ability to classify individual sites as self-preparation or vended sites, rather than classifying a sponsor and all of its sites as one type or the other. USDA is aware that some State agencies that have these capabilities also provide reimbursements based on the classification of the individual sites. For example, if a sponsor operates some sites as self-preparation and some sites as vended, the State agency provides a mix of reimbursements. This is significant because individual sponsors may support a range of sites, including sites self-preparing meals, sites utilizing a vendor contract to receive meals, or sites that use both methods of obtaining meals (e.g., offering a self-prepared breakfast and a vended lunch). Providing reimbursements to sponsors that operate a mix of sites based on the individual site classification is more accurate and helps protect the integrity of the SFSP.

In recognition of the advances being made at the State agency and local level, this rule proposes to add definitions for “self-preparation site” and “vended site,” and to require that sponsors and sites include in their application to participate in the SFSP information about how meals will be obtained for each site. While adding these definitions is an important first step, USDA is interested in learning more about current data collection practices. At this time, USDA does not have information on how many State agencies are capable of collecting meal claim information at the site level, how many State agencies currently collect information at the site level, how many State agencies provide

reimbursement based on the individual site classification, and the potential impact of this practice on claiming and monitoring. To better understand the current state of claiming systems nationwide and the implications for policy development, including potential changes to regulatory requirements, USDA is gathering more information by soliciting specific feedback on this issue. Therefore, this proposed rule is requesting comments on the following questions:

- How many State agencies have systems that are capable of receiving claims at the site level? Are any State agencies currently receiving claims at the site level and providing reimbursement based on the individual site classification?
- What are the costs and benefits of implementing systems that can receive claims at the site level?
- How common or uncommon is it for a site to use two different methods of obtaining meals (e.g., offering a self-prepared breakfast and a vended lunch)?
- Do any State agencies have systems that are able to account for different methods of obtaining meals within the same site?
- What would be the impact on claiming and monitoring of collecting and paying claims at the site level?

Accordingly, this rule proposes to add definitions to § 225.2 for “self-preparation site” (i.e., a site which prepares the majority of meals that will be served at its site and does not contract with a food service management company for unitized meals, with or without milk, or for management services) and “vended site” (i.e., a site which serves unitized meals, with or without milk, from a food service management company). In addition, this

rule proposes to amend §§ 225.6(c)(2)(viii) and 225.6(c)(3)(v) to require a summary of how meals will be obtained at each site as part of the sponsor application.

*B. Eligibility for Closed Enrolled Sites*

The current definition of closed enrolled sites included in § 225.2 requires that at least 50 percent of the enrolled children at the site are eligible for free or reduced-price meals under the NSLP and the SBP, as determined by approval of applications in accordance with § 225.15(f). This section outlines the requirement to use income eligibility forms 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”. To reduce administrative burden on sponsors, USDA published guidance in 2002 that permitted closed enrolled sites to establish eligibility based on data of children eligible for free and reduced priced meals in the area where the site was located (*Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites*, November 17, 2002<sup>6</sup>). After over 15 years of implementing this waiver, this flexibility has been shown to reduce administrative burden on sponsors of closed enrolled sites and eliminate barriers to participation for children and families enrolled at these sites. State agency waiver requests for Program year 2019 confirm that these remain the principal benefits of permitting closed enrolled sites to rely on area eligibility rather than applications. Requests from 36 out of 40 State agencies noted that the reduction in administrative costs can be more productively invested in technical assistance and oversight to improve the quality of services provided to participants and strengthen

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<sup>6</sup> No longer available

program integrity. Further, the Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296, amended the definition of “areas in which poor economic conditions exist” in the NSLA. This revised definition allows for enrolled sites to demonstrate eligibility through “other means approved by the Secretary.”

Accordingly, this proposed rule would amend the definitions of “areas in which poor economic conditions exist” and “closed enrolled site” in § 225.2 to clarify eligibility requirements and include eligibility determination based on area data of children eligible for free and reduced-price meals. This proposed rule would also update redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to establish the frequency at which the site must re-establish eligibility, if based on area data. This rule would make a technical correction to § 225.15(f) to reflect changes made to the definition of “areas in which poor economic conditions exist.”

### *C. Roles and Responsibilities of Site Supervisors*

Currently, SFSP regulations do not have a singular definition outlining the roles and responsibilities of site supervisors. USDA does publish guidance specifically for site supervisors as a tool to facilitate program operations that are consistent with regulations. The role of the site supervisor is critically important to proper management of the SFSP. USDA has determined that clearly defining the role of the site supervisor, including requiring that the site supervisor must be on site during the meal service, would help sponsors comply with program requirements and improve program integrity.

Accordingly, this rule proposes to add the following definition in § 225.2 for “site supervisor:” the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including but not limited to: ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

#### *D. Unaffiliated Sites*

In the SFSP, many sponsors operate sites with which they have a legal affiliation. However, there are instances when a sponsor will provide meals to a site with which it has no legal affiliation other than an agreement to conduct a meal service. Section IV. C of this rule proposes to include this type of situation as a characteristic that should be taken into consideration when determining which sites a State agency should choose to review during a sponsor review in order to fulfill requirements set forth in § 225.7(e)(4)(v). The current regulations under § 225.2 do not include a definition for “unaffiliated site.” Therefore, this rule would add a definition for “unaffiliated site” to help State agencies determine which sites should be selected for review when conducting a sponsor review. Accordingly, this rule proposes to add the following definition in § 225.2 for “unaffiliated site:” a site that is legally distinct from the sponsor.

#### *E. Unanticipated School Closure*

The NSLA allows service institutions to provide meal services to children who are not in school for a period during the months of October through April due to a natural disaster,

building repair, court order, or similar cause. The statute further requires that the meal service must take place at non-school sites. The service of meals during these unanticipated school closures makes the SFSP a critical piece of the food safety net, especially in disaster situations. While the regulations currently provide requirements for approving sponsors to serve during unanticipated school closures, there is not a specific regulatory definition of unanticipated school closure. This rule proposes to add a definition of “unanticipated school closure” that aligns with statutory requirements outlined in section 13(c)(1) of the NSLA, 42 U.S.C. 1761(c)(1), and existing regulatory provisions related to unanticipated school closures. Including this definition would also allow regulatory text to be streamlined and remove duplicative and repetitive references throughout the regulations. Accordingly, this rule proposes to add a definition in § 225.2 for “unanticipated school closure” and revise all references to unanticipated school closures.

*F. Nonprofit Food Service, Nonprofit Food Service Account, Net Cash Resources*

Financial management in the SFSP is critical to the success of the Program, especially considering the short duration during which most summer programs operate. As such, it is important that key terms related to financial management are clearly defined. To create consistency across Child Nutrition Programs, this rule proposes to include definitions of “nonprofit food service,” “nonprofit food service account,” and “net cash resources” that would align with the terms already defined under the NSLP in 7 CFR 210.2. Accordingly, this rule proposes to add definitions in § 225.2 for “nonprofit food service,” “nonprofit food service account,” and “net cash resources.”

## **VIII. Miscellaneous**

This rule proposes four other miscellaneous provisions that will help clarify program requirements.

### *A. Authority to Waive Statute and Regulations*

Section 12(l) of the NSLA, 42 U.S.C 1760(l), provides the Secretary with the authority to waive statutory requirements under the NSLA or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and any regulations issued under either Act for State agencies and eligible service providers if certain conditions are met. The Secretary may only approve requests that facilitate the ability of the State agency or eligible service provider to carry out the purpose of the program and that do not increase the overall cost of the Federal Government program. The Secretary does not have the authority to waive certain requirements including, but not limited to, the nutritional content of the meals served, Federal reimbursement rates, or the enforcement of any statutory right of any individual. USDA has issued guidance on the process for requesting a waiver and data reporting requirements for approved waivers (SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol – Revised*, May 24, 2018).

USDA routinely works with State agencies to determine when and how waiver authority can best be applied to improve program operations. In 1996, USDA issued technical assistance that outlined the responsibilities of State agencies, especially when submitting a waiver request on behalf of eligible service providers. The State agency should act as

both a facilitator and a collaborator, and as such, is expected to provide technical assistance to eligible service providers requesting a waiver. As State agencies have the ability to best assess sponsor operations and capability, State agencies should review waiver requests from eligible service providers and determine whether the requesting sponsor has the capacity to implement the waiver. This includes the eligible service provider's ability to maintain a high level of program integrity and to capture data on the impacts of the waiver. State input on the capabilities of the eligible service provider are critical to helping USDA make a determination about whether an approval of the waiver would benefit the program. USDA is not in a position to evaluate a sponsor's capability to implement a waiver while maintaining program integrity, and relies upon a State agency's assessment of the sponsor's ability to do so. This rule proposes to address this responsibility in regulatory text.

Further, State agencies are responsible for monitoring sponsor activities, including the implementation of waivers. State agencies and sponsors must work together in partnership to ensure that all monitoring requirements are met. The approval of a waiver of certain statutory or regulatory requirements does not alleviate the State agency or the eligible service provider of the responsibility to properly monitor program operations. If a State agency sends forward a waiver request, whether Statewide or for individual service providers, the State agency is agreeing that it can and will fulfill all other regulatory requirements, including monitoring and oversight. Additionally, by submitting a request, the State agency attests that the request meets all requirements for waiver requests outlined in section 12(l) of the NSLA.

Under the proposed changes in this rule, the State agency would also have the discretion to deny a waiver submitted by an eligible service provider. There are many reasons why a State agency may choose to deny a request from an eligible service provider. For example, if the request does not meet the criteria for approvable requests outlined in section 12(1) of the NSLA, the State agency should deny the request or work with the eligible service provider to ensure that all statutory requirements are met. Additionally, as mentioned previously in this section, the State agency plays an important role in evaluating and monitoring sponsor operations. The State agency could deny the request of a sponsor if the State agency does not have confidence that the sponsor has the capability to implement the waiver while maintaining a high level of program integrity. Further, if the State agency or the sponsor does not have the resources to properly implement, monitor, and evaluate the impacts of the waiver, the State agency could deny the request.

To ensure the waiver process is efficient and upholds a high level of program integrity, USDA is seeking comments on the process of requesting a waiver, monitoring implementation of the waiver, and reporting data on waivers issued through this authority.

Although regulations are not needed to continue implementing regulatory waivers, this rule proposes to clarify that USDA has the authority to issue waivers of statutory and regulatory requirements for all Child Nutrition Programs. Accordingly, this rule proposes

to add the following new paragraphs to codify USDA's authority to waive statutory and regulatory requirements for all Child Nutrition Programs:

- § 210.3(d);
- § 215.3(e);
- § 220.3(d);
- § 225.3(d); and
- § 226.3(e).

#### *B. Duration of Eligibility*

Statutory requirements found in the NSLA at 42 U.S.C. 1761(a)(1)(A)(i)(I-II) authorize the use of school data and census data to establish area eligibility in the SFSP. The NSLA also establishes that area eligibility determinations made using school or census data must be redetermined every five years. This rule proposes to amend the duration of eligibility for open sites and restricted open sites based on school and census data from three years to five years, in accordance with the NSLA. Accordingly, this rule proposes to change the regulations in redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to require submission of eligibility documentation every five years.

#### *C. Methods of Providing Training*

As technology has advanced, sponsors and State agencies have the capability to provide mandatory trainings via the Internet. Having a variety of training opportunities and formats can accommodate varying sponsor needs, while at the same time minimizing the time and expense incurred by the State agency. Accordingly, this rule proposes to amend

regulations in § 225.7(a) to include the option for training to be conducted via the Internet.

#### *D. Meal quality facility reviews*

Current regulations require that part of any review of a vended sponsor must include a food service management company facility visit. Through management evaluations and technical assistance, USDA has learned that this requirement is unclear and places undue burden on State agencies. The purpose of the food service management company facility visit is to verify that meals being served are prepared, stored, and transported in such a manner that complies with local health and safety standards. In order to clarify review requirements, this rule proposes to rename the section title from “Food Service Management Company Visits” in current § 225.7(d)(6) to “Meal Quality Facility Review,” to clarify that each facility should be reviewed at least one time during the program year, and redesignate as § 225.7(i).

### **Procedural Matters**

#### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined

to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### Regulatory Impact Analysis

Economic Summary for “Strengthening Integrity in the Summer Food Service Program”  
Proposed Rule

As described in the preamble to the proposed rule, changes made by the proposed rule “update important definitions, simplify the application process, enhance monitoring requirements, and provide more discretion at the State agency level to manage program operations.”

The proposed rule codifies in regulation a number of waivers and policy guidance currently in place to “streamlin[e] and clarify program requirements.”

Although not currently in regulation, a majority of the proposed changes have already been implemented in the operation of the SFSP through policy guidance and remain in effect. Other proposed changes were previously implemented through policy guidance, but were rescinded in October 2018. These rescinded policies are currently in effect through approved individual State waivers. The proposed changes that have already been implemented in the operation of the SFSP through policy guidance or waivers are as follows:

1. Streamlining Program Requirements

- a. Application Procedures for New Sponsors<sup>7</sup>
- b. Demonstration of Financial and Administrative Capability
2. Facilitating Compliance with Program Monitoring Requirements
  - a. Establishing the Initial Maximum Approved Level of Meals for Sites of Vended Sponsors
3. Providing a Customer-Service Friendly Meal Service
  - a. Meal Service Times
  - b. Off-site Consumption of Food Items
  - c. Offer versus Serve<sup>8</sup>
4. Clarification of Program Requirements
  - a. Annual Verification of Tax-Exempt Status
5. Important Definitions in the SFSP
  - a. Eligibility for Closed Enrolled Sites
  - b. Unanticipated School Closure
6. Miscellaneous
  - a. Authority to Waive Statute and Regulations

Since the above changes are currently in effect in program operations through policy guidance or State waivers, we estimate no change in participation, meal costs, or costs to

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<sup>7</sup> Although this flexibility is currently implemented in policy guidance (and therefore we do not estimate a separate savings for this provision), we note that this provision provides most of the burden hour savings as detailed in the ICR table on p. 76-77.

<sup>8</sup> As mentioned in the background of the proposed rule, the waivers and guidance that allowed non-SFA sponsors to implement offer versus serve were rescinded in 2018, effective for the 2019 summer meals program. The proposed rule keeps the requirement that only SFA providers may use offer versus serve; therefore, we estimate no change in costs or burden due to this provision, since it reflects existing requirements.

State agencies, sponsors, or sites, beyond the savings generated by the decreased burden needed to fulfill program requirements under the proposed changes.

A table with all of the burden changes as outlined in the ICR is available in this document.

The proposed changes that are not currently implemented in program operations through policy guidance are as follows (each proposed change includes a description of the expected impact to the program, and an explanation for why we do not estimate additional costs associated with the proposed changes):

1. Streamlining Program Requirements

- a. Clarifying Performance Standards for Evaluating Sponsor Viability, Capability, and Accountability

- i. Program Impact: This rule proposes to add performance standards for organizations applying to participate as SFSP sponsors that correspond to standards currently in place at § 226.6 for organizations applying to participate as CACFP sponsoring organizations, in response to State agency requests regarding application requirements, and in an effort to streamline requirements across programs. These detailed performance standards under § 226.6 assist State agencies in assessing an applicant's financial viability and financial management, administrative capability, and accountability.

ii. Cost Impact: USDA recognizes that including these detailed performance standards in the management plan may require some State agencies and sponsors to modify current practices. Although USDA prioritizes flexibility for stakeholders to the greatest extent possible, these changes would bolster program integrity by supporting the ability of State agencies to more efficiently and consistently evaluate an applicant sponsor's financial and administrative capability. However, we do not estimate any cost or participation effects. It is possible that adopting these performance standards could generate program efficiencies and potential savings in the long-term, as applicants to sponsor the Program must demonstrate their ability to meet the performance standards for financial viability, administrative capability, and Program accountability to be able to operate the program. Cost impacts would be difficult to quantify because any savings directly tied to the performance standards would be challenging to isolate.

## 2. Clarification of Program Requirements

### a. Reimbursement Claims for Meals Served Away from Approved Locations

i. Program Impact: SFSP meals are reimbursable only at approved sites. Via policy guidance, USDA granted State agencies the flexibility to approve exceptions to this requirement for the operation of field trips. This rule proposes to clarify the regulatory

requirements that if an SFSP sponsor wishes to serve a meal away from the approved site location, they are required to notify the State agency, but formal approval of the alternative meal service is not a requirement.

- ii. **Cost Impact:** This provision may reduce the burden on both State agencies and sponsors, if State agencies had interpreted previous guidance to mean that State agencies had to formally approve field trips, instead of simply receiving notification of the field trip. According to an internal USDA analysis, 76 percent of sponsors and 63 percent of sites reported serving program meals during off-site field trips at some point in time during the summer.<sup>9</sup> However, estimating any potential burden reduction is difficult because prior policy guidance on State approval for serving meals at an alternate location may have been inconsistently applied. As a result, this provision would provide a minimal reduction in burden for some States (i.e., States that currently allow for service of field trip meals with just a notice to the State agency) and a larger impact for States that use a formal approval process. This provision is providing clarity on the requirement currently provided through policy guidance.

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<sup>9</sup> 2015 USDA internal SFSP study. (In 2015, USDA collected information about SFSP operations, sponsors, and sites through a nationally representative survey administered to State agencies, SFSP sponsors, and SFSP sites.)

- b. Timeline for Reimbursements to Sponsors
  - i. Program Impact: This provision clarifies a point of confusion for State agencies not addressed in current regulation. The proposed rule would state that if a sponsor’s claim is determined to be potentially unlawful based on § 225.9(d)(10), the State agency must still disapprove the claim within 30 calendar days with an explanation of the reason for disapproval. This rule also proposes to amend regulations in § 225.9(d)(10) to clarify that State agencies may be exempt from the 45 calendar day timeframe for final action in § 225.9(d)(4) if more time is needed to complete a thorough examination of the sponsor’s claim.
  - ii. Cost Impact: We estimate no change in cost associated with this provision.
- c. Requirements for Media Release
  - i. Program Impact: Current regulations at § 225.15(e) outline the requirement for each sponsor operating the SFSP to annually announce the availability of free meals in the media serving the area from which it draws its attendance, but the current requirements are not clear about what is required to be included in the release and, therefore, cause significant confusion. The changes clarify that sponsors of camps and other sites not eligible under the definition of “areas in which poor economic conditions exist” must only notify participants or enrolled children of the availability of

free meals. This rule also proposes to include a flexibility that provides State agencies the discretion to issue a media release for all sponsors operating SFSP sites in the State, as long as the notification meets the requirements outlined in the provision.

ii. Cost Impact: We estimate no change in cost associated with this provision. It should be noted that this requirement will likely result in a burden reduction, especially for sponsors of closed sites, such as camps, and potentially on all sponsors in a State, if the State agency issues a compliant statewide notification.

### 3. Facilitating Compliance with Program Monitoring Requirements

#### a. First Week Site Visits

i. Program Impact: Existing regulatory requirements state that sponsors are required to visit each of their sites at least once during the first week of operation under the program and must promptly take such actions as are necessary to correct any deficiencies. Although USDA had previously waived some of these requirements, these waivers were rescinded in 2018. This proposed rule would create a tiered framework, under which sponsors responsible for the management of 10 or fewer sites would be required to conduct the first site monitoring visit within the first week (seven calendar days) after the site begins program operations. Sponsors responsible for the management of more than 10 sites would be required to conduct the first site

monitoring visits within the first two weeks (14 calendar days) after the site begins program operations. In cases where a site operates for one week or less, the site visit must be conducted during the period of operation. Based on currently available data from studies conducted by USDA and collected from State agencies, over 80 percent of sponsors participating in the program operate 10 sites or fewer. While this change would not impact the majority of sponsors, this flexibility in the timeline during which the first monitoring visit must take place would help alleviate logistical burdens for larger sponsors while maintaining strong monitoring practices.

- ii. Cost Impact: We estimate minimal change in costs due to this provision. This provision will not affect the regulatory and statutory requirements for most providers, and it provides additional flexibility to the sponsors it does affect. Therefore, this provision may create cost savings for some sponsors with more than 10 sites (in 2015, 18.4 percent of sponsors had more than 10 sites),<sup>10</sup> though we are not able to estimate any possible savings.

b. Statistical Monitoring Procedures, Site Selection, and Meal Claim

Validation for Site Reviews

- i. Program Impact: In order to provide flexibility to State agencies conducting sponsor and site reviews, current regulations at §

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<sup>10</sup> 2015 USDA internal SFSP study.

225.7(d)(8) provide State agencies with the flexibility to use statistical monitoring procedures in lieu of the site monitoring requirements found in § 225.7(d)(2). However, USDA regulations and guidance do not provide clear instructions for how to develop statistical monitoring procedures. After significant research and feedback from State agencies obtained through various workgroups, USDA has determined that any measure or formula that would be statistically significant and thus provide adequate monitoring of site meal claim forms is not feasible. Accordingly, USDA is proposing to remove the provision at § 225.7(d)(8) allowing the use of statistical monitoring during site reviews and validation of meal claims. Additionally, this rule proposes to codify a method for conducting meal claim validations. The Department recognizes that the guidance for conducting 100 percent meal claim validations may be burdensome for some State agencies. Therefore, this rule proposes a stepped increase for meal claim validations (e.g., if the State agency reviews 10 percent of a sponsor's sites and finds a 5 percent or greater error rate, the State agency must take fiscal action and expand the meal validation review to 25 percent of the sponsor's sites; if a 5 percent or greater error rate is found, the State agency must then review 50 percent of the sponsor's sites; and if a 5 percent or

greater rate continues to be found, then the State agency must review 100 percent of a sponsor's sites). This incremental approach will use State agency resources more efficiently and provide State agencies a more targeted method for review.

- ii. Cost Impact: These changes remove an unused option for site monitoring (statistical monitoring procedures) and increase State flexibility in how to conduct meal validation reviews. Although it is likely these flexibilities will generate some savings for State agencies, the impacts are not included as potential savings in our savings estimates for this rule because USDA lacks sufficient information to develop sound estimates. This provision impacts sponsors with more than one site (in 2015, 57 percent of sponsors had one site, while 43 percent of sponsors had more than one site).<sup>11</sup> The impact of the proposed meal claim validation process would depend on the average error rate, which determines how many claims the State will ultimately review. USDA does not know the distribution of meal claim error rates in SFSP and cannot estimate how many fewer claims would be reviewed under this proposed rule.

#### 4. Important Definitions in the SFSP

##### a. Self-Preparation versus Vended Sites

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<sup>11</sup> 2015 USDA internal SFSP study.

i. Program Impact: As sponsor sophistication and technology have developed, the operation of SFSP has shifted. State agencies have systems that allow for site based claiming, which provides more granular information about the number and types of meals being served at individual sites, rather than aggregating this information at the sponsor level. Additionally, as sponsors have grown, many used a mixed model of sponsorship, with some sites self-preparing meals and others utilizing a vendor contract to receive meals. In light of these changes, State agencies have the ability to classify sites as self-preparation or vended sites, rather than sponsors. As such, the regulations require updates that reflect the current nature of program operations. Accordingly, this rule proposes to add definitions to § 225.2 for “self-preparation site” and “vended site”. Additionally, this rule proposes to clarify requirements at § 225.6(c)(2) to require a summary of how meals will be obtained at each site as part of the sponsor application.

ii. Cost Impact: We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

b. Roles and Responsibilities of Site Supervisors

i. Program Impact: Currently, SFSP regulations do not have a singular definition outlining the roles and responsibilities of site supervisors. USDA does publish guidance specifically for site

supervisors as a tool to facilitate program operations that are in compliance with regulations. The role of the site supervisor is critically important to proper management of the SFSP. Using a variety of methods (including nationwide studies conducted by the department), USDA has received the feedback that clearly defining the role of the site supervisor, including requiring that the site supervisor must be on site during the meal service, would greatly facilitate sponsors' ability to comply with requirements and improve program integrity. Accordingly, this rule proposes to add a definition at § 225.2 for site supervisor, which outlines the role and responsibilities required of a site supervisor.

ii. Cost Impact: We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

c. Unaffiliated Sites

i. Program Impact: In the SFSP, many sponsors operate sites with which they have a legal affiliation. However, there are instances when a sponsor will provide meals to a site with which it has no legal affiliation other than an agreement to conduct a meal service. Section IV. C of this rule proposes to include this type of situation as a characteristic that should be taken into consideration when determining which sites a State agency

should choose to review during a sponsor review in order to fulfill requirements set forth in § 225.7(e)(4)(v). The current regulations under § 225.2 do not include a definition for unaffiliated site. Therefore, this rule would add a definition for unaffiliated site to help State agencies determine which sites should be selected for review when conducting a sponsor review.

ii. Cost Impact: We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

d. Nonprofit Food Service, Nonprofit Food Service Account, Net Cash Resources

i. Program Impact: Financial management in the SFSP is critical to the success of the program, especially considering the short duration during which most summer programs operate. As such, it is important that key terms related to financial management are clearly defined. To create consistency across Child Nutrition Programs, this rule proposes to include definitions of nonprofit food service, nonprofit food service account, and net cash resources that would align with the terms already defined under the National School Lunch Program in part 210.

- ii. Cost Impact: We estimate no change in cost associated with this provision. This would just ensure consistency across the SFSP and NSLP.

## 5. Miscellaneous

- a. Duration of Eligibility: decreases burden for sites and sponsors using area eligibility and aligns SFSP regulations with NSLP regulations
  - i. Program Impact: Statutory requirements found in the NSLA at 42 U.S.C. 1761(a)(1)(A)(i)(I-II) authorize the use of school data and census data to establish area eligibility in the SFSP. The NSLA also establishes that area eligibility determinations made using school or census data must be redetermined every five years. This rule proposes to amend the duration of eligibility for open sites and restricted open sites for school and census data from three years to five years, in accordance with the NSLA. Accordingly, this rule proposes to change the regulations in redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to require submission of eligibility documentation every five years.
  - ii. Cost Impact: We estimate no change in cost associated with this provision. The proposed change will decrease the burden on sponsors using school or census data for area eligibility determinations of sites. We are not able to estimate any potential participation effects, but we note that there is very little annual

variation in the census data, so any participation or eligibility effects are likely to be minimal.

b. Methods of Providing Training

- i. Program Impact: As technology has advanced, sponsors and State agencies have the capability to provide mandatory trainings via the Internet. Accordingly, this rule proposes to update regulations at § 225.7(a) to include the option for training to be conducted via the Internet.
- ii. Cost Impact: The proposed change may decrease training costs for State agencies and sponsors who switch from in-person trainings to online trainings, though we are not able to estimate this potential savings.

c. Food Service Management Company Facility Visits

- i. Program Impact: Current regulations require that part of any review of a vended sponsor must include a food service management company facility visit. In order to clarify review requirements, this rule proposes to rename the section titled ‘Food Service Management Company Visits’ in current § 225.7(d)(6) to ‘Meal Quality Facility Review.’ This rule would also reorganize the requirements in a more logical manner and amend to clarify that each facility should be reviewed at least one time during the program year, and redesignate as § 225.7(i).

- ii. Cost Impact: We estimate no change in cost associated with this provision. The proposed change clarifies current requirements; it makes no changes to current requirements.

We estimate that these new changes will not impact participation, meal costs, or costs to State agencies, sponsors, or sites, beyond accounting for the decreased burden needed to fulfill program requirements under the proposed changes, as the proposed changes streamline and/or decrease administrative requirements, increase flexibilities for State agencies and/or sponsors, and/or provide clarity where current program requirements are currently unclear.

More generally, this action streamlines SFSP operations for both State agencies and program operators. It codifies policies that have proven effective in improving efficiencies in the operation of the SFSP. These flexibilities have provided significant relief from some program administrative burdens and have reduced paperwork for those sponsors experienced in other Child Nutrition Programs that wish to become SFSP operators. These waivers and flexibilities have also proven to improve compliance with program regulations. We estimate that there are no increased costs to State agencies or SFSP operators and no Federal costs associated with implementation of this rule.

There may be some savings associated with this rule due to the reduction in burden associated with streamlining operations and reducing SFSP paperwork for experienced sponsors. Depending on the position of the staff person submitting the paperwork, this action is estimated to save approximately \$0.13 million annually if performed by an administrative-level position, or about \$0.23 million annually if performed by a director-

level position. This would result in approximately \$0.7 million to \$1.2 million in savings over five years, depending on the position level of the person submitting the paperwork.<sup>12</sup>

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. The totality of the proposed changes aim to decrease overall burden on the affected parties, which include the small entities covered by the proposed rule (i.e., small sponsors and sites). However, the majority of the proposed provisions are currently in effect via policy guidance or State waivers. In addition, changes that would affect burden primarily impact State agencies and larger sponsors, such as the requirement that State agencies share information, the flexibility on first monitoring visits for sponsors with more than ten sites, and the multi-step approach for States conducting claim validations.

### **Executive Order 13771**

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled

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<sup>12</sup> These ranges were calculated by taking the hourly total compensation from BLS for FY2017 (for all State and Local workers for the director-level position estimate, and for a private administrative assistant for the administrative-level estimate) and inflating that hourly total compensation figure according to the ECI wage increase in OMB's economic assumptions for the President's Budget for years FY2018-FY2022. That hourly compensation figure was then multiplied by the decrease in burden hours as estimated in the ICR to generate the yearly and 5-year savings estimate.

through a budgeting process. If finalized as proposed, this rule would be an Executive Order 13771 deregulatory action. This rule codifies flexibilities that were previously extended via policy guidance. We estimate that this rule, if finalized as proposed, will save the affected parties at least \$0.13-\$0.23 million annually, or at least \$0.7-\$1.2 million over the next five years.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, USDA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### **Executive Order 12372**

SFSP is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.559 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).

### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications and either impose substantial direct compliance costs on State and local governments or preempt State law, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has determined that this rule does not have Federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does it impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not 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 and timely implementation.

### **Civil Rights Impact Analysis**

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the SFSP.

### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. This regulation has possible Tribal implications, so consultation is required. FNS will seek consultation on this rule prior to implementing a final rule. If further consultation is requested, the Office of Tribal Relations (OTR) will work with FNS to ensure quality consultation is provided.

## **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires that the OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule is revising existing information collection requirements which are subject to review and approval by OMB. These existing requirements are currently approved under OMB Control Number 0584-0280 7 CFR part 225, SFSP. The proposals outlined in this rule are expected to reduce the burden for some of the information requirements approved in that collection.

Comments on this proposed rule and changes in the information collection burden must be received by [insert date that is 60 days from publication in the Federal Register].

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. 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 shall 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 the collection of information on those who are to respond,

including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR Part 225, Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program

OMB Control Number: 0584-0280

Expiration Date: 12/31/2022

Type of Request: Revision

Abstract: This is a revision of requirements in the information collection under OMB Control Number 0584-0280 that are being impacted by this rulemaking. USDA proposes to modify regulatory requirements for sponsors and State agencies in the SFSP to streamline program requirements for participation. This proposed rule impacts information reporting at the sponsor level, monitoring requirements for State agencies, and public disclosure.

Under this rule, USDA is proposing to codify current guidance allowing State agencies the discretion to issue a media release on behalf of all sponsors operating SFSP sites, including camps, in the State. This burden is reflected in OMB Control Number 0584-0280. USDA does not expect that the proposals outlined in this rule will have any impact on either the requirements or the burden related to the media releases; therefore, they will not be included as part of the rulemaking submission.

Additionally, USDA is proposing a change in the meal claim validation process that State agencies must follow during sponsor monitoring reviews. Currently, meal claims have to be validated for 100 percent of a sponsor's sites. This rule proposes to reduce the initial validation requirement to 10 percent of a sponsor's sites, then establishes a stepped meal claim validation process for sponsors that exceed a 5 percent error rate. The burden for validating meal claims of 100 percent of a sponsor's sites for 53 State agencies is estimated at 2,055 hours annually. The proposed claim validation process is expected to result in an overall reduction of burden, from an estimated 2,055 hours annually to an estimated 287.58 hours annually (a decrease of 1,767.42 hours). This stepped validation process is included as a line item in the ICR associated with this rulemaking.

For experienced sponsors and sites that have already operated the SFSP without significant operational problems, applications must include condensed information that is more likely to change from year to year, as currently outlined in § 225.6(c)(3).

Experienced sponsors are not required to submit the same level of detail with regard to the organizational and operational information that is required of new sponsors.

This rule proposes to permit sponsors in good standing in other Child Nutrition Programs (NSLP, CACFP, etc.) to follow the application requirements for experienced sponsors and sites when applying to SFSP, instead of the application requirements for new sponsors and sites found at § 225.6(c)(2). Through policy guidance, a sponsor is considered to be in "good standing" if it has been reviewed by the State agency in the last

12 months and had no major findings or program violations, or has completed and implemented all corrective actions from the last compliance review. In addition, a sponsor may be considered in good standing if it has not been found to be seriously deficient by the State agency in the past two years and has never been terminated from another Child Nutrition Program.

This proposed rule change would eliminate duplicative documentation and paperwork, which saves time for SFSP's 5,524 sponsors (3,314 local/tribal government sponsors and 2,210 businesses). The amount of time needed for a sponsor to complete a SFSP application would decrease from 39.5 hours to 38.74 hours. FNS currently estimates a total of 218,198 burden hours for completing these applications. As a result of this change, FNS estimates a total of 213,999.76 hours for these applications. Additionally, these proposals will decrease the time needed for sponsors to submit site information from 1 hour to 0.89 hours. FNS currently estimates a total of 5,524 hours to submit site information (for 640 new and 2,675 experienced local/tribal government sponsors, and 426 new and 1,783 experienced business sponsors). As a result of this proposed rule, FNS estimates a total of 4916.36 burden hours for submitting this site information.

Currently, SFSP regulations require sponsors applying to participate in the Program to demonstrate financial and administrative capability for program operations and accept financial responsibility for total program operations at all sites at which they propose to conduct a food service (§225.14(c)(1)). SFAs and CACFP institutions already undergo a rigorous application process in order to participate in NSLP and CACFP and have

demonstrated that they have the financial and organizational viability, capability, and accountability necessary to operate a Child Nutrition Program, and therefore have the potential to operate the SFSP as well.

In order to streamline requirements between Child Nutrition Programs and encourage participation, this rule proposes to modify the requirement for SFAs and CACFP institutions applying to participate in the SFSP to submit further evidence of financial and administrative capability, as detailed in § 225.14(c)(1). Roughly 10 percent (553) of sponsors (332 local/tribal government and 221 business sponsors) are asked to produce this information annually. It currently takes SFAs and CACFP institutions 7.2 minutes (0.12 hours) to supply the required information, for an estimated total of 67.836 burden hours. As a result of these proposals, FNS estimates that it will take 5.6 minutes (.093 hours) to provide the required information, for an estimated total of 51.429 burden hours.

The current approved burden for OMB Control #0584-0280 is 338,411 hours. This rule is expected to reduce the total burden by 6,590 hours, resulting in a revised burden of 331,821 hours.

Respondents: SFSP Sponsors

§§ 225.6(c)(1) and (4), 225.14(a)

Estimated Number of Respondents: 5,524

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Responses: 5,524

Estimated Time per Response: 38.74

Estimated Burden Hours: 213,999.76

**§ 225.6(c)(2) and (3)**

Estimated Number of Respondents: 5,524

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Responses: 5,524

Estimated Time per Response: 0.89

Estimated Burden Hours: 4,916

**§§ 225.6(e), 225.14(c)(7)**

Estimated Number of Respondents: 553

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Responses: 553

Estimated Time per Response: 0.093

Estimated Burden Hours: 51

Respondents: State Agencies

**§ 225.7(e)(6)**

Estimated Number of Respondents: 53

Estimated Number of Responses per Respondent: 65.38

Estimated Total Annual Responses: 3,465

Estimated Time per Response: 0.083

Estimated Burden Hours: 287.58

Estimated Total Annual Responses: 15,066

Estimated Total Annual Burden on Respondents: 219,255

Reporting								
State Agency Level								
CFR Citation	Description	Estimated Number of Respondents	Estimated Frequency of Responses	Total Annual Records	Estimated Avg. # of Hours per response	Estimated Total Hours	Current OMB Approved Burden Hours in 0584-0280	Difference Due to Program Changes 0584-0280
225.7(e)(6)	State agencies utilize a multi-step process for meal claim validation based on amount of error detected	53	65.38	3,465	.083	287.58	2,055	-1767.42
<b>State Agency Level Total Change:</b>								
Sponsor Level								
CFR Citation	Affected Public/Description	Estimated Number of Respondents	Estimated Frequency of Responses	Total Annual Records	Estimated Avg. # of Hours per response	Estimated Total Hours	Current OMB Approved Burden Hours in 0584-0280	Difference Due to Program Changes
225.6(c)(1) and (4), 225.14(a)	Sponsors submit written application to SAs for participation in SFSP.	3,314 local or tribal government	1	3,314	38.74	128,384.36	130,903.00	-2,518.64
225.6(c)(1) and (4), 225.14(a)	Sponsors submit written application to SAs for participation in SFSP.	2,210 business sponsors	1	2,210	38.74	85,615.40	87,295.00	-1,679.6000
	Total for sponsor applications	5524	1	5524	38.74	213,999.76	218,198	-4198.24
225.6(c)(2) and (3)	Sponsors submit site information for each site where a food service operation is proposed.	640 new local or tribal government sponsors	1	640	0.89	569.60	640	-70.40
225.6(c)(2) and (3)	Sponsors submit site information for each site where a food service operation is proposed.	2,675 experienced local or tribal government sponsors	1	2,675	0.89	2,380.75	2,675	-294.25

225.6(c)(2) and (3)	Sponsors submit site information for each site where a food service operation is proposed.	426 new business sponsors	1	426	0.89	379	426	-46.8600
225.6(c)(2) and (3)	Sponsors submit site information for each site where a food service operation is proposed.	1,783 experienced business sponsors	1	1,783	0.89	1,587	1,783	-196.1300
	Total for sponsors' site information	5524	1	5,524	0.89	4916	5,524	-608
225.6(e), 225.14(c)(7)	Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements	332 local/tribal government sponsors	1	332	0.093	30.88	40.84	-9.96
225.6(e), 225.14(c)(7)	Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements	221 business sponsors	1	221	0.093	21	27	-6.4470
	Total for sponsor written agreements	553	1	553	0.09	51	68	-16
<b>Sponsor Level Total Change:</b>		<b>5524</b>	<b>2.1</b>	<b>11,601</b>	<b>18.874</b>	<b>218,967.549</b>	<b>223,789.836</b>	<b>-4822.3</b>

\*Numbers presented based on the percentage of sites reviewed under the multi-tiered process

\*\*Totals may differ due to rounding

	Estimated # Respondents	Number of Responses per Respondent	Total Annual Responses (Col. BxC)	Estimated Avg. # of Hours Per Response	Estimated Total Hours (Col. Dx E)	Current Approved Burden in #0584-0280	Difference Due to Program Changes
<b>Reporting</b>							
State Agency Level	53	65.38	3,465	0.08	287.61	2,055	-1,767.42

Sponsor Level	5,524	2.1	11,601	18.875	218,968	223,790	-4,822.3
Total Reporting	5,577	2.7	15,066	14.552	219,255	225,845	-6,590

\*Some totals may not add due to rounding

## **E-Government Act Compliance**

USDA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects**

#### 7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

#### 7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

#### 7 CFR Part 220

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

#### 7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 220, 215, 225, and 226 are proposed to be amended as follows:

**PART 210 – NATIONAL SCHOOL LUNCH PROGRAM**

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

**Authority:** 42 U.S.C. 1751-1760, 1779.

2. In § 210.3, add paragraph (e) to read as follows:

**§ 210.3 Administration.**

\* \* \* \* \*

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that

operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with: the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

## **PART 215 – SPECIAL MILK PROGRAM FOR CHILDREN**

3. The authority citation for part 215 continues to read as follows:

**Authority:** 42 U.S.C. 1772 and 1779.

4. In § 215.3, add paragraph (e) to read as follows:

**§ 215.3 Administration.**

\* \* \* \* \*

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

- (A) The request meets all requirements for waiver submissions; and
- (B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.
- (iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

**PART 220 – SCHOOL BREAKFAST PROGRAM**

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

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

6. In § 220.3, add paragraph (f) to read as follows:

**§ 203.3 Administration.**

\* \* \* \* \*

(f) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (f)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (f)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

## **PART 225 – SUMMER FOOD SERVICE PROGRAM**

7. The authority citation for 7 CFR part 225 continues to read as follows:

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

8. In § 225.2:

a. Revise the definitions of “Areas in which poor economic conditions exist” and “Closed enrolled site”;

- b. In the definition of “Documentation”, redesignate paragraphs (a)(1) through (4) as paragraphs (1)(i) through (iv), respectively and redesignate paragraphs (b)(1) and (2) as paragraphs (2)(i) and (ii), respectively;
- c. In the definition of “Private nonprofit”, redesignate paragraphs (a) through (e) as paragraph (1) through (5), respectively;
- d. Add in alphabetical order definitions for “Net cash resources”, “Nonprofit food service”, and “Nonprofit food service account”;
- e. In the definition of “Rural”, redesignate paragraphs (a) and (b) as paragraph (1) and (2), respectively; and
- f. Add in alphabetical order definitions for “Self-preparation site”, “Site supervisor”, “Unaffiliated site” and “Vended site”.

The revisions and additions read as follows:

**§ 225.2 Definitions.**

\* \* \* \* \*

*Areas in which poor economic conditions exist* means:

- (1) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;
- (2) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(3) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program; or

(4) A closed enrolled site in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

\* \* \* \* \*

*Closed enrolled site* means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f), or on the basis of documentation that the site meets subsections (1) through (3) of the definition of “areas in which poor economic conditions exist” as provided in this section.

\* \* \* \* \*

*Net cash resources* means all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a sponsor's nonprofit food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

\* \* \* \* \*

*Nonprofit food service* means all food service operations conducted by the sponsor principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

*Nonprofit food service account* means the restricted account in which all of the revenue from all food service operations conducted by the sponsor principally for the benefit of children is retained and used only for the operation or improvement of the nonprofit food service. This account shall include, as appropriate, non-Federal funds used to support program operations, and proceeds from non-program foods.

\* \* \* \* \*

*Self-preparation site* means a site that prepares the majority of meals that will be served at its site and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

\* \* \* \* \*

*Site supervisor* means the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including, but not limited to: ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

\* \* \* \* \*

*Unaffiliated site* means a site that is legally distinct from the sponsor.

\* \* \* \* \*

*Unanticipated school closure* means any period from October through April (or any time of the year in an area with a continuous school calendar) during which children who are not in school due to a natural disaster, building repair, court order, labor-management disputes, or, when approved by the State agency, similar cause, may be served meals at non-school sites through the Summer Food Service Program.

\* \* \* \* \*

*Vended site* means a site that serves unitized meals, with or without milk, from a food service management company.

\* \* \* \* \*

9. In § 225.3, add paragraph (d) to read as follows:

**225.3 Administration.**

\* \* \* \* \*

(d) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such Acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (d)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (d)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

#### **§ 225.4 [Amended]**

10. In § 225.4, amend paragraph (d)(7) by removing “§ 225.6(h)” and adding “§ 225.6(l)” in its place.

11. In § 225.6:

a. In the last sentence of paragraph (b)(1), remove “during the period from October through April (or at any time of the year in an area with a continuous school calendar)”;

- b. In the second sentence of paragraph (b)(4), remove “during the period from October through April (or at any time of the year in an area with a continuous school calendar)”;
- c. Revise paragraph (c);
- d. Redesignate paragraphs (d) through (i) as paragraphs (h) through (m), respectively, and add new paragraphs (d) through (g);
- e. Add a sentence to the end of newly redesignated paragraphs (h)(2)(i) and (iii);
- f. Revise newly redesignated paragraphs (i)(7) and (15);
- g. In newly designated paragraph (l)(2)(i), remove “(h)(3)” add “(l)(3)” in its place;
- h. In newly designated paragraph (l)(2)(iii), remove “§ 225.6(d)(2)” and add “§ 225.6(h)(2)” in its place; and
- i. In newly designated paragraph (l)(2)(xiv), remove “§ 225.6(f)” and add “§ 225.6(j)” in its place.

The additions and revisions read as follows:

**225.6 State agency responsibilities**

\* \* \* \* \*

(c) *Content of sponsor application*—(1) *Application form*. (i) The sponsor must submit a written application to the State agency for participation in the Program. The State agency may use the application form developed by FNS, or develop its own application form.

Application to sponsor the Program must be made on a timely basis within the deadlines established under § 225.6(b)(1).

(ii) At the discretion of the State agency, sponsors proposing to serve an area affected by an unanticipated school closure may be exempt from submitting a new application if they

have participated in the Program at any time during the current year or in either of the prior two calendar years.

(iii) Requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year, as determined by the State agency, are found under paragraph (c)(2) of this section.

(iv) Requirements for experienced sponsors are found under paragraph (c)(3) of this section.

*(2) Application requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year.* New sponsors and sponsors that have experienced significant operational problems in the prior year, as determined by the State agency, must include the following information in their applications:

(i) A complete management plan, as described in paragraph (e) of this section;

(ii) A free meal policy statement, as described in paragraph (f) of this section;

(iii) A site information sheet for each site where a food service operation is proposed, as described in paragraph (g)(1) of this section;

(iv) Information in sufficient detail to enable the State agency to determine that the sponsor meets the criteria for participation in the Program, as described in § 225.14;

(v) Information on the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable;

(vi) A staffing and monitoring plan;

(vii) A complete administrative budget for State agency review and approval, which includes:

(A) The projected administrative expenses that the sponsor expects to incur during the operation of the Program; and

(B) Information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement.

(viii) A summary of how meals will be obtained at each site (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company);

(ix) If an invitation for bid is required under § 225.15(m), a schedule for bid dates and a copy of the invitation for bid; and

(x) For each sponsor which seeks approval as a unit of local, municipal, county or State government under § 225.14(b)(3) or as a private nonprofit organization under § 225.14(b)(5), certification that the sponsor has administrative oversight, as required under § 225.14(d)(3).

(3) *Application requirements for experienced sponsors.* The following information must be included in the applications of experienced sponsors:

(i) A site information sheet for each site where a food service operation is proposed, as described under paragraph (g)(2) of this section;

(ii) Information on the extent of Program payments needed, including a request for advance payments and start-up payments, if it is applicable;

(iii) A staffing and monitoring plan;

(iv) A complete administrative budget for State agency review and approval, which includes:

(A) The projected administrative expenses which a sponsor expects to incur during the operation of the Program; and

(B) Information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement.

(v) If the method of obtaining meals is changed, a summary of how meals will be obtained at each site (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company); and

(vi) If an invitation for bid is required under § 225.15(m), a schedule for bid dates, and a copy of the invitation for bid, if it is changed from the previous year.

(4) *Applications for school food authorities and Child and Adult Care Food Program institutions.* At the discretion of the State agency, school food authorities in good standing in the National School Lunch Program or School Breakfast Program, as applicable, and institutions in good standing in the Child and Adult Care Food Program may apply to operate the Program at the same sites where they provide meals through the aforementioned Programs by following the procedures for experienced sponsors outlined in paragraph (c)(3) of this section.

(d) *Performance Standards.* The State agency may only approve the applications of those sponsors that meet the three performance standards outlined in this section: financial viability, administrative capability, and Program accountability. The State agency must deny applications that do not meet all of these standards. The State agency must consider past performance in the SFSP or another Child Nutrition Program, and any other factors

it deems relevant when determining whether the sponsor's application meets the following standards:

(1) *Performance Standard 1*. The sponsor must be financially viable. The sponsor must expend and account for Program funds, consistent with this part; FNS Instruction 796-4, *Financial Management in the Summer Food Service Program*; 2 CFR part 200, subpart D; and USDA regulations 2 CFR parts 400 and 415. To demonstrate financial viability and financial management, the sponsor's management plan must:

(i) Describe the community's need for summer meals and the sponsor's recruitment strategy:

(A) Explain how the sponsor's participation will help ensure the delivery of Program benefits to otherwise unserved sites or children; and

(B) Describe how the sponsor will recruit sites, consistent with any State agency requirements.

(ii) Describe the sponsor's financial resources and financial history:

(A) Show that the sponsor has adequate sources of funds available to operate the Program, pay employees and suppliers during periods of temporary interruptions in Program payments, and pay debts if fiscal claims are assessed against the sponsor; and

(B) Provide audit documents, financial statements, and other documentation that demonstrate financial viability.

(iii) Ensure that all costs in the sponsor's budget are necessary, reasonable, allowable, and appropriately documented.

(2) *Performance Standard 2*. The sponsor must be administratively capable. Appropriate and effective management practices must be in effect to ensure that Program operations

meet the requirements of this part. To demonstrate administrative capability, the sponsor must:

- (i) Have an adequate number and type of qualified staff to ensure the operation of the Program, consistent with this part; and
- (ii) Have written policies and procedures that assign Program responsibilities and duties and ensure compliance with civil rights requirements.

(3) *Performance Standard 3*. The sponsor must have internal controls and other management systems in place to ensure fiscal accountability and operation of the Program, consistent with this part. To demonstrate Program accountability, the sponsor must:

- (i) Demonstrate that the sponsor has a financial system with management controls specified in written operational policies that will ensure that:
  - (A) All funds and property received are handled with fiscal integrity and accountability;
  - (B) All expenses are incurred with integrity and accountability;
  - (C) Claims will be processed accurately, and in a timely manner;
  - (D) Funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and
  - (E) A system of safeguards and controls is in place to prevent and detect improper financial activities by employees.
- (ii) Maintain appropriate records to document compliance with Program requirements, including budgets, approved budget amendments, accounting records, management plans, and site operations.

(e) *Management plan*—(1) *Compliance*. The State agency must require the submission of a management plan to determine compliance with performance standards established under paragraph (d) of this section.

(2) *Contents*. Sponsors must submit a complete management plan that includes:

- (i) Detailed information on the sponsor's management and administrative structure, including information that demonstrates the sponsor's financial viability and financial management described under paragraph (d)(1) of this section;
- (ii) Information that demonstrates compliance with each of the performance standards outlined under paragraph (d) of this section;
- (iii) A list or description of the staff assigned to perform Program monitoring required under § 225.15(d)(2) and (3) of this part;
- (iv) An administrative budget that includes projected SFSP administrative earnings and expenses, in order for the State agency to fulfill responsibilities under paragraph (b)(7) of this section; and
- (v) For each sponsor which submits an application under paragraph (c)(1) of this section, information in sufficient detail to demonstrate that the sponsor will:
  - (A) Provide adequate and not less than annual training of sponsor's staff and sponsored sites, as required under § 225.15(d)(1);
  - (B) Perform monitoring consistent with § 225.15(d)(2) and (3), to ensure that all site operations are accountable and appropriate;
  - (C) Accurately classify sites consistent with § 225.6(g)(1) and (2);
  - (D) Demonstrate the sponsor's compliance with meal service, recordkeeping, and other operational requirements of this part;

(E) Provide meals that meet the meal patterns set forth in § 225.16;

(F) Have a food service that complies with applicable State and local health and sanitation requirements;

(G) Comply with civil rights requirements;

(H) Maintain complete and appropriate records on file; and

(I) Claim reimbursement only for eligible meals.

(f) *Free meal policy statement*—(1) *Nondiscrimination statement*. (i) Each sponsor must submit a nondiscrimination statement of its policy for serving meals to children. The statement must consist of:

(A) An assurance that all children are served the same meals and that there is no discrimination in the course of the food service; and

(B) Except for camps, a statement that the meals served are free at all sites.

(ii) 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.

(iii) In addition to the information described in paragraph (i) of this section, the policy statement of all camps that charge separately for meals must also include:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced-price school meals;

(B) A description of the method to be used in accepting applications from families for Program meals that ensures that households are permitted to apply on behalf of children

who are members of households receiving SNAP, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method to be used by camps for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the camp will establish hearing procedures for families requesting to appeal a denial of an application for free meals. These procedures must meet the requirements set forth in paragraph (f)(2) of this section;

(E) An assurance that, if a family requests a hearing, the child will continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or disability.

(2) *Hearing procedures statement.* Each camp must submit a copy of its hearing procedures with its application. At a minimum, the camp's procedures must provide that:

(i) A simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) The family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) The family will have an opportunity to examine the documents and records supporting the decision being appealed, both before and during the hearing;

(iv) The hearing will be reasonably prompt and convenient for the family;

(v) Adequate notice will be given to the family of the time and place of the hearing;

- (vi) The family will have an opportunity to present oral or documented evidence and arguments supporting its position;
  - (vii) The family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;
  - (viii) The hearing will be conducted and the decision made by a hearing official who did not participate in the action being appealed;
  - (ix) The decision will be based on the oral and documentary evidence presented at the hearing and made a part of the record;
  - (x) The family and any designated representative will be notified in writing of the decision;
  - (xi) A written record will be prepared for each hearing, which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and
  - (xii) The written record will be maintained for a period of three years following the conclusion of the hearing and will be available for examination by the family or its representatives at any reasonable time and place.
- (g) *Site information sheet.* The State agency must develop a site information sheet for sponsors.
- (1) *New sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. At a minimum, the site information sheet must demonstrate or describe the following:

- (i) An organized and supervised system for serving meals to children who come to the site;
- (ii) The estimated number of meals to be served, types of meals to be served, and meal service times;
- (iii) Whether the site is rural, as defined in § 225.2, or non-rural;
- (iv) Whether the site's food service will be self-prepared or vended, as defined in § 225.2;
- (v) Arrangements for delivery and holding of meals until meal service times and storing and refrigerating any leftover meals until the next day, within standards prescribed by State or local health authorities;
- (vi) Access to a means of communication to make necessary adjustments in the number of meals delivered, based on changes in the number of children in attendance at each site;
- (vii) Arrangements for food service during periods of inclement weather; and
- (viii) For open sites and restricted open sites:
  - (A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;
  - (B) When school data are used, new documentation is required every five years;
  - (C) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census; and
  - (D) At the discretion of the State agency, sponsors proposing to serve an area affected by an unanticipated school closure may be exempt from submitting new site documentation if the sponsor has participated in the Program at any time during the current year or in either of the prior two calendar years.

(ix) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced-price school meals for each of these sites; or

(B) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(C) When school data are used, new documentation is required every five years;

(D) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census.

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

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

(xii) For sites that will serve children of migrant workers:

(A) Certification from a migrant organization, which attests that the site serves children of migrant workers; and

(B) Certification from the sponsor that the site primarily serves children of migrant workers, if non-migrant children are also served.

(2) *Experienced sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. The State agency may require sponsors of experienced sites to provide information described in

paragraph (g)(1) of this section. At a minimum, the site information sheet must demonstrate or describe the following:

(i) The estimated number of meals, types of meals to be served, and meal service times;  
and

(ii) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every five years;

(C) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census; and

(D) Any site that a sponsor proposes to serve during an unanticipated school closure, which has participated in the Program at any time during the current year or in either of the prior two calendar years, is considered eligible without new documentation.

(iii) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced-price school meals for each of these sites; or

(B) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(C) When school data are used, new documentation is required every five years;

(D) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census.

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

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

\* \* \* \* \*

(h) \* \* \*

(2)\* \* \*

(i) \* \* \* The State agency may consider participation at other similar sites located in the area, documentation of programming taking place at the site, or statistics on the number of children residing in the area.

\* \* \* \* \*

(iii) \* \* \* The sponsor may request an upward adjustment at any point prior to submitting the claim for the impacted reimbursement period.

\* \* \* \* \*

(i) \* \* \*

(7) Claim reimbursement only for the types of meals specified in the agreement that are served:

(i) Without charge to children at approved sites, except camps, during the approved meal service time;

(ii) Without charge, in camps, to children who meet the Program's income standards;

(iii) Within the approved level for the maximum number of children’s meals that may be served, if a maximum approved level is required under § 225.6(h)(2);

(iv) At the approved meal service time, unless a change is approved by the State agency, as required under § 225.16(c); and

(v) At the approved site, unless the requirements in § 225.16(g) are met.

\* \* \* \* \*

(15) Maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in § 225.16(h) are met; and

\* \* \* \* \*

12. In § 225.7:

a. In paragraph (a), add the words “or via the Internet” at the end of the fifth sentence and remove the words “during the period from October through April (or at any time of the year in an area with a continuous school calendar)” in the sixth sentence;

b. Revise paragraph (d);

c. Redesignate paragraphs (e), (f), and (g) as paragraphs (l), (m), and (n), respectively; and

d. Add new paragraphs (e) through (k).

The revision and additions read as follows:

**§ 225.7 Program monitoring and assistance.**

\* \* \* \* \*

(d) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for

successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(1) All applicant sponsors that did not participate in the program in the prior year.

However, if a sponsor is a school food authority, was reviewed by the State agency under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency. In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures may be conducted at the discretion of the State agency;

(2) All applicant sponsors that had operational problems noted in the prior year; and

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

(e) *Sponsor and site reviews*—(1) *General*. The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15), and any other applicable instructions issued by the Department.

(2) *Sample selection*. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews.

(3) *School Food Authorities*. When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the NSLP operations have been reviewed and determined to be satisfactory.

(4) *Frequency and number of required reviews.* State agencies must:

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

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

(iii) Annually review every sponsor that experienced significant operational problems in the prior year;

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

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

(5) *Site selection criteria.* (i) When selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v) of this section, State agencies should, to the maximum extent possible, select sites that reflect the sponsor's entire population of sites. Site characteristics that should be reflected in the sites selected include:

(A) The maximum number of meals approved to serve under § 225.6(h)(1) and (2);

(B) Method of obtaining meals (i.e., self-preparation, vended meal service);

(C) Time since last site review by State agency;

(D) Site type (i.e., open, closed, camp);

(E) Type of physical location (e.g., school, outdoor area, community center);

(F) Rural designation (i.e., rural, as defined in § 225.2, or non-rural); and

(G) Affiliation with the sponsor, as defined in § 225.2.

(ii) The State agency may use additional criteria to select sites including, but not limited to: recommendations from the sponsoring organization, findings of other audits or

reviews, or any indicators of potential error in daily meal counts (e.g., identical or very similar claiming patterns, or large changes in free meal counts).

(6) *Meal claim validation.* As part of every sponsor review, the State agency must validate the sponsor's meal claim utilizing a record review process developed by the State agency that must include, at a minimum, reconciling delivery receipts, daily meal counts from sites, and the sponsor's claim consolidation spreadsheet against the meals claimed for reimbursement by the sponsor for the period under review. For the purposes of this section, the average percent error includes both overclaims and underclaims.

Claims against sponsors as a result of meal claim validation should be assessed after the conclusion of the meal claim validation process in accordance with § 225.12. State agencies must follow the process identified below to conduct the meal claim validation:

(i) The State agency must complete an initial validation of 100 percent of meal claims within the review period for the sites under review to satisfy the requirements outlined in paragraph (e)(4)(v) of this section. In determining the percentage of error, fractions must be rounded up ( $\geq 0.5$ ) or down ( $< 0.5$ ) to the nearest whole number.

(ii) If the initial validation yields an average percent error of five percent or more, the State agency must expand validation of all meal claims within the review period for 25 percent of the sponsor's total sites. If the initial validation yields an average percent error of five percent or less, the State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(iii) If the second round of validation yields an average percent error of five percent or more, the State agency must expand validation of all meal claims within the review

period for 50 percent of the sponsor's total sites. If the second round of validation yields an average percent error of five percent or less, the State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(iv) If the third round of validation yields an average percent error of five percent or more, the State agency must expand validation of meal claims to all meal claims within the review period for 100 percent of the sponsor's total sites. The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(7) *Review of sponsor operations.* State agencies should determine if:

(i) Expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the food service are properly identified and recorded as food service revenue;

(ii) Expenditures are consistent with budgeted costs, and the previous year's expenditures taking into consideration any changes in circumstances;

(iii) Reimbursements have not resulted in accumulation of net cash resources as defined in paragraph (m) of this section; and

(iv) The level of administrative spending is reasonable and does not affect the sponsor's ability to operate a nonprofit food service and provide a quality meal service.

(f) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(g) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the sponsor's food service

management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(h) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency three years after submission in accordance with § 225.8(a).

(i) *Meal quality facility reviews.* As part of the review of any food service management company or vended sponsor that contracts for the preparation of meals, the State agency must review the food service management company or vendor's meal production facility and meal production documentation for compliance with program requirements.

(1) Each State agency must establish an order of priority for visiting facilities at which food is prepared for the Program. Each facility should be reviewed at least one time during a Program year.

(2) The State agency must respond promptly to complaints concerning facilities. If the food service management company or vendor fails to correct violations noted by the State agency during a review, the State agency must notify the sponsor and the food service management company or vendor that reimbursement must not be paid for meals prepared by the food service management company or vendor after a date specified in the notification.

(3) Funds provided in § 225.5(f) may be used for conducting food service management company or vendor meal quality facility reviews.

(j) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, the time of the

reviewer's arrival and departure, the site supervisor's printed name and signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions.

(k) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.11. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

\* \* \* \* \*

13. In § 225.9,

a. Revise paragraphs (d)(4) and (10); and

b. In paragraph (f), remove “§ 225.6(d)(2)” and add “§ 225.6(h)(2)” in its place.

The revisions read as follows:

**§ 225.9 Program assistance to sponsors.**

\* \* \* \* \*

(d) \* \* \*

(4) The State agency must forward reimbursements within 45 calendar days of receiving valid claims. If a claim is incomplete, invalid, or potentially unlawful per paragraph (d)(10) of this section, the State agency must return the claim to the sponsor within 30 calendar days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action must be completed within 45 calendar days of receipt unless the State agency has reason to believe the claim is unlawful per paragraph (d)(10) in this section.

\* \* \* \* \*

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement. The State agency may be exempt from the requirement stated in paragraph (d)(4) of this section that final action on a claim must be complete within 45 calendar days of receipt of a revised claim if the State agency determines that a thorough examination of potentially unlawful acts would not be possible in the required timeframe.

\* \* \* \* \*

**§ 225.11 [Amended]**

14. In § 225.11, in paragraph (e)(3), remove “§ 225.6(d)(2)” and add “§ 225.6(h)(2)” in its place.

**§ 225.13 [Amended]**

15. In § 225.13, in paragraph (c), remove “§ 225.6(g)” and add “§ 225.6(k)” in its place.

16. In § 225.14:

- a. Revise paragraph (a);
- b. At the end of paragraph (b)(5), add the words “, as determined annually”;
- c. Revise paragraphs (c)(1) and (4); and
- d. In paragraph (c)(7), remove “§ 225.6(e)” and add “§ 225.6(i)” in its place.

The revisions read as follows:

**§ 225.14 Requirements for sponsor participation.**

(a) *Applications.* Sponsors must make written application to the State agency to participate in the Program which must include all content required under § 225.6(c). Such application shall be made on a timely basis in accordance with the requirements of § 225.6(b)(1). Sponsors proposing to operate a site during an unanticipated school closure may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

\* \* \* \* \*

(c) \* \* \*

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service in accordance with the performance standards described under § 225.6(d) of this part.

(i) If the applicant sponsor is a school food authority in good standing in the National School Lunch Program or an institution in good standing in the Child and Adult Care Food Program, no further demonstration of financial and administrative capability for Program operations is required unless requested by the State agency. The State agency may request additional evidence of financial and administrative capability sufficient to ensure that the school food authority or institution has the ability and resources to operate the Program if the State agency has reason to believe that this would pose significant challenges for the applicant.

(ii) If the State agency approving the application for the Program is not responsible for the administration of the National School Lunch Program or the Child and Adult Care

Food Program, the State agency must develop a process for sharing information with the agency responsible for approving these programs in order to receive documentation of the applicant sponsor's financial and administrative capability.

\* \* \* \* \*

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in § 225.15(d)(2) and (3), as demonstrated in the Management Plan submitted with the program application described under § 225.6(e);

\* \* \* \* \*

17. In § 225.15:

- a. Remove “§ 225.6(d)(2)” and add “§ 225.6(h)(2)” in its place in paragraphs (b)(2) and (3);
- b. In paragraph (d)(1), remove the words “during the period from October through April (or at any time of the year in an area with a continuous school calendar)” from the second sentence;
- c. Revise paragraphs (d)(2) and (3) and (e);
- d. Revise the first sentence in paragraph (f)(1); and
- e. In paragraph (m)(2), remove “§ 225.6(h)(3)” and add “§ 225.6(l)(3)” in its place.

The revisions read as follows:

**§ 225.15 Management responsibilities of sponsors.**

\* \* \* \* \*

(d) \* \* \*

(2) Sponsors responsible for meal service at 10 or fewer meal sites must conduct the first monitoring visit within the first seven calendar days after the site begins operations under the Program and must promptly take such actions as are necessary to correct any deficiencies. Sponsors responsible for meal service at more than 10 meal sites must conduct the first monitoring visits within the first 14 calendar days after the site begins operations under the Program and must promptly take such actions as are necessary to correct any deficiencies. In cases where the site operates for seven calendar days or fewer, the first monitoring visit must be conducted during the period of operation.

(3) Sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews. Sponsors have the option to conduct a full review of food service operations at the same time as the first monitoring visit.

(e) *Notification to the community.* Each sponsor must annually announce in the media serving the area from which it draws its attendance the availability of free meals.

Sponsors of camps and other sites not eligible under § 225.2 – “areas in which poor economic conditions exist” sub-sections (a) through (c) – must notify participants of the availability of free meals for those enrolled children that meet income eligibility guidelines, as outlined in § 225.15(f). Notification to enrolled children must include: the Secretary's family-size and income standards for reduced price school meals labeled “SFSP Income Eligibility Standards;” a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically

eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or disability. State agencies have the discretion to issue a media release for all sponsors operating SFSP sites in the State as long as the notification meets the requirements in this section.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \* The application is used to determine the eligibility of children attending camps and the eligibility of sites that do not meet the requirements in paragraphs (a) through (c) of the definition of “areas in which poor economic conditions exist” in § 225.2. \* \* \*

\* \* \* \* \*

18. In § 225.16:

- a. Add a new third sentence in paragraph (b) introductory text;
- b. Revise paragraphs (c) and (f)(1)(ii); and
- c. Add paragraphs (g) and (h).

The additions and revisions read as follows.

**§ 225.16 Meal service requirements.**

\* \* \* \* \*

(b) \* \* \* A sponsor may claim reimbursement only for the types of meals for which it is approved under its agreement with the State agency. \* \* \*

\* \* \* \* \*

(c) *Meal service times.* (1) Meal service times must be:

- (i) Established by sponsors for each site;
- (ii) Included in the sponsor’s application; and

(iii) Approved by the State agency.

(2) Breakfast meals must be served at or close to the beginning of a child's day. Three component meals served after a lunch or supper meal service are not eligible for reimbursement as a breakfast.

(3) At all sites except residential camps, meal services must start at least one hour after the end of the previous meal or snack.

(4) Meals served outside the approved meal service time:

(i) Are not eligible for reimbursement; and

(ii) May be approved for reimbursement by the State agency only if an unanticipated event, outside of the sponsor's control, occurs. The State agency may request documentation to support approval of meals claimed when unanticipated events occur.

(5) The State agency must approve any permanent or planned changes in meal service time.

(6) If meals are not prepared on site:

(i) Meal deliveries must arrive before the approved meal service time; and

(ii) Meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

\* \* \* \* \*

(f)\*\*\*

(1)\*\*\*

(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

reimbursements to school food authorities for Program meals served under this “offer versus serve” option must not be reduced because children choose not to take all components of the meals that are offered. The school food authority may use the following options for meal service:

(A) The school food authority can elect to provide meal service under the rules followed for the National School Lunch Program, as described in part 210 of this chapter.

(B) The school food authority can elect to provide meal service under the following guidelines for the Program described in paragraph (d) of this section:

(1) *Breakfast meals.* Sponsoring organizations must offer four items from all three components specified in the meal pattern in paragraph (d)(1) of this section. Children may be permitted to decline one item.

(2) *Lunch and supper meals.* Sponsoring organizations must offer five food items from all four components specified in the meal pattern in paragraph (d)(2) of this section. Children may be permitted to decline two components.

\* \* \* \* \*

(g) *Meals served away from approved locations.* (1) Sponsors may be reimbursed for meals served away from the approved site location if the following conditions are met:

(i) The sponsor notifies the State agency in advance that meals will be served away from the approved site;

(ii) The State agency has determined that all Program requirements in this part will be met, including applicable State and local health, safety, and sanitation standards;

(iii) The meals are served at the approved meal service time, unless a change is approved by the State agency, as required under paragraph (c) of this section; and

(iv) Sponsors of open sites continue operating at the approved location if feasible, or notify the community of the change in meal service and provide information about alternative open sites.

(2) The State agency may determine that meals served away from the approved site location are not reimbursable if the sponsor did not provide notification in advance of the meal service. The State agency may establish guidelines for the amount of advance notice needed.

(h) *Off-site consumption of food items.* Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption without prior State agency approval provided that all applicable State and local health, safety, and sanitation standards will be met. Sponsors should only allow an item to be taken off-site if it has adequate staffing to properly administer and monitor the site. State agencies may prohibit individual sponsors on a case-by-case basis from using this option if the sponsor's ability to provide adequate oversight is in question. The State agency's decision to prohibit a sponsor from utilizing this option is not an appealable action.

## **PART 226 – CHILD AND ADULT CARE FOOD PROGRAM**

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

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

20. In § 226.3, add new paragraph (e) to read as follows:

### **§ 226.3 Administration.**

\* \* \* \* \*

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

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Stephen L. Censky  
Deputy Secretary  
U.S. Department of Agriculture  
[FR Doc. 2020-00919 Filed: 1/17/2020 4:15 pm; Publication Date: 1/23/2020]

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Date: January 8, 2020.