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Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

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PART 225—SUMMER FOOD SERVICE PROGRAM

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APPENDIX A TO PART 225—ALTERNATE FOODS FOR MEALS

APPENDIX B TO PART 225 [RESERVED]

APPENDIX C TO PART 225—CHILD NUTRITION (CN) LABELING PROGRAM

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

SOURCE: 54 FR 18208, Apr. 27, 1989, unless otherwise noted.

Subpart A—General

§ 225.1 General purpose and scope.

This part establishes the regulations under which the Secretary will administer a Summer Food Service Program. Section 13 of the Act authorizes the Secretary to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

Act means the National School Lunch Act, as amended.

Administrative costs means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

Adult means, for the purposes of the collection of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

Advance payments means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

Areas in which poor economic conditions exist means:

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

(1) By information provided from departments of welfare and education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations;

(2) By the number of free and reduced-price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites; or

(3) From other appropriate sources;

or

(b) A closed enrolled site.

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Camps means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

Children means (a) persons 18 years of age and under, and (b) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or non-profit private school program established for the mentally or physically handicapped.

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).

Continuous school calendar means a situation in which all or part of the student body of a school is (a) on a vacation for periods of 15 continuous school days or more during the period October through April and (b) in attendance at regularly scheduled classes during most of the period May through September.

Costs of obtaining food means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

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

Department means the U.S. Department of Agriculture.

Disclosure means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Documentation means:

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

(1) Names of all household members;

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

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

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

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

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

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

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

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

Family means a group of related or nonrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

FDPIR household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food

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Fiscal year means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the Department.

FNSRO means the appropriate FNS Regional Office.

Food service management company means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in §225.15. Food service management companies may be: (a) Public agencies or entities; (b) private, nonprofit organizations; or (c) private, for-profit companies.

Food stamp household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

Household means "family," as defined in this section.

Income accruing to the program means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

Income standards means the family-size and income standards prescribed annually by the Secretary for determining eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Meals means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

Medicaid means the State medical assistance program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

Milk means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must

meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

Needy children means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

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

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

NYSP means the National Youth Sports Program administered by the National Collegiate Athletic Association.

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

OIG means the Office of the Inspector General of the Department.

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

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definition of *Areas in which poor economic conditions exist*.

Operating costs means the cost of operating a food service under the Program,

(a) Including the (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space, and (5) cost of transporting children in rural areas to feeding sites in rural areas, but

(b) Excluding (1) the cost of the purchase of land, acquisition or construction of buildings, (2) alteration of existing buildings, (3) interest costs, (4) the value of in-kind donations, and (5) administrative costs.

Private nonprofit means tax exempt under the Internal Revenue Code of 1986, as amended.

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

(a) Administers the Program:

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

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

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

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

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

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

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

Program means the Summer Food Service Program for Children authorized by Section 13 of the Act.

Program funds means Federal financial assistance made available to State

agencies for the purpose of making Program payments.

Program payments means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

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

Rural means (a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

School food authority means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, "school food authority" also means any college or university which participates in the Program.

Secretary means the Secretary of Agriculture.

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

Session means a specified period of time during which an enrolled group of children attend camp.

Site means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

Special account means an account which a State agency may require a vendor sponsor to establish with the State agency or with a Federally insured bank. Operating costs payable to

the sponsor by the State agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

Sponsor means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as “service institutions”.

Start-up payments means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative cost payments.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

State agency means the State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or, in States where FNS administers the Program, FNSRO.

State Children’s Health Insurance Program (SCHIP) means the State medical assistance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1,

1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Unit of local, municipal, county or State government means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

Vended sponsor means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s), or a sponsor which purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration’s Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

7 CFR part 3015 means the Uniform Federal Assistance Regulations published by the Department to implement certain policies applicable to all Department programs. The applicable provisions deal with competition for discretionary grants and cooperative agreements, costs requiring prior approval, acknowledgement of Department support in publications and audiovisuals produced under Department programs, intergovernmental review of Department programs under Executive Order 12372, and certain miscellaneous Department requirements.

7 CFR part 3016 means the Department’s Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 7 CFR part 3016 covers requirements for awards and subawards to State and local governmental organizations under Department programs.

7 CFR part 3019 means the Department’s Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,

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Hospitals, and Other Non-Profit Organizations. 7 CFR part 3019 covers requirements for awards and subawards to nongovernmental, nonprofit organizations under Department programs.

7 CFR part 3052 means the Department's regulations implementing OMB Circular A-133. (To obtain the OMB circular referenced in this definition, see 5 CFR 1310.3.)

[54 FR 18208, Apr. 27, 1989, as amended at 54 FR 27153, June 28, 1989; 55 FR 13466, Apr. 10, 1990; 61 FR 25553, May 22, 1996; 64 FR 72483, Dec. 28, 1999; 64 FR 72895, Dec. 29, 1999; 66 FR 2202, Jan. 11, 2001; 71 FR 39518, July 13, 2006; 72 FR 10895, Mar. 12, 2007]

§ 225.3 Administration.

(a) *Responsibility within the Department.* FNS shall act on behalf of the Department in the administration of the Program.

(b) *State administered programs.* Within the State, responsibility for the administration of the Program shall be in the State agency. Each State agency must notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's non-discrimination regulations (7 CFR part 15) issued under title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

(c) *Regional office administered programs.* The Secretary shall not administer the Program in the States, except that if a FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13466, Apr. 10, 1990; 64 FR 72483, Dec. 28, 1999]

Subpart B—State Agency Provisions

§ 225.4 Program management and administration plan.

(a) Not later than February 15 of each year, each State agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15 or, if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.5(a)(3).

(c) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

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

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

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

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

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

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

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

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

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

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13466, Apr. 10, 1990; 64 FR 72483, Dec. 28, 1999]

§ 225.5 Payments to State agencies and use of Program funds.

(a) *State administrative funds*—(1) *Administrative funding formula.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to

(i) 20 percent of the first \$50,000 in Program funds properly payable to the State in the preceding fiscal year;

(ii) 10 percent of the next \$100,000 in Program funds properly payable to the State in the preceding fiscal year;

(iii) 5 percent of the next \$250,000 in Program funds properly payable to the State in the preceding fiscal year; and

(iv) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year.

Provided, however, That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by in-

formation submitted in the State Program management and administration plan and any other information available to FNS. If a State agency fails to submit timely and accurate reports under § 225.8(c) of this part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FNS may recover, withhold, or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

(2) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(3) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) of this section to the total amount of Program payments made within the State during the prior fiscal year; or, 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) to the amount of Program funds estimated to be needed in the management and administration plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under this part.

(4) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(b) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of

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State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (a)(1) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) Any remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in paragraph (c) of this section. However, regardless of whether such assessment is made, the remaining administrative funds shall be paid no later than September 1. The remaining administrative payment shall be in an amount equal to that determined to be needed during the funding evaluation or, if such evaluation is not conducted, the amount owed the State in accordance with paragraph (a)(1) of this section, less the amounts paid under paragraphs (b) (1) and (2) of this section.

(c) *Administrative funding evaluation.* FNSRO shall conduct data on the need for Program and State administrative funding within any State agency if the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under paragraph (b) of this section to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and shall be collected during the period of Program operations. As soon as possible following this data collection, payment of any additional administrative funds owed shall be

made to the State agency. The payment may reflect adjustments made to the level of State administrative funding based on the information collected during the funding assessment. However, FNS shall not decrease the amount of a State's administrative funds as a result of this assessment unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.9(d)(8). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS.

(2) Based on the State agency's approved management and administration plan, FNS shall, if necessary, adjust the State's Letter of Credit to ensure that 65 percent of estimated current year Program operating and administrative funding needs is available. Such adjustment shall be made no later than May 15, or within 90 days of FNS receipt of the State agency's management and administration plan, whichever date is later.

(3) Subsequent to the adjustment provided for in paragraph (d)(2) of this section, FNS will, if necessary, make one additional adjustment to ensure that the State agency's Letter of Credit contains at least 65 percent of the Program operating and administrative funds needed during the current fiscal year. Such adjustment may be based on the administrative funding assessment provided for in paragraph (c) of this section, if one is conducted, or on any additional information which demonstrates that the funds available in the Letter of Credit do not equal at

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least 65 percent of current year Program needs. In no case will such adjustments be made later than September 1. Funds made available in the Letter of Credit shall be used by the State agency to make Program payments to sponsors.

(4) The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(5) FNS shall make available any remaining Program funds due within 45 days of the receipt of valid claims for reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted later than 60 days after the month covered by the claim unless an exception is granted by FNS.

(6) Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *Adjustment to Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(f) *Health inspection funds.* If the State agency's approved management and administration plan estimates a need for health inspection funding, FNS shall make available by letter of credit an amount up to one percent of Program funds estimated to be needed in the management and administration plan. Such amount may be adjusted, based on the administrative funding assessment provided for in paragraph (c) of this section, if such assessment is conducted. Health inspection funds shall be used solely to enable State or local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal qual-

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ity tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.6 State agency responsibilities.

(a) *General responsibilities.* (1) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(2) By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and actively seek eligible applicant sponsors to serve such areas. State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas.

(3) Each State agency shall require applicant sponsors submitting Program application site information sheets, Program agreements, or a request for advance payments, and sponsors submitting claims for reimbursement to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

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

(i) The criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) that states substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

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

(b) *Approval of sponsor applications.* (1) Each State agency must inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency must require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline for the Program application submission. Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) shall be exempt from the application submission deadline.

(2) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in §225.9(c). Where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in §225.9(a).

(3) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under §225.13.

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

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

(i) Public or nonprofit private school food authorities;

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

(iii) New public agencies; and

(iv) New private nonprofit organizations.

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

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

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

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

(7) The State agency shall review each applicant's administrative budget as a part of the application approval process in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to re-

view for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(8) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the Program's eligibility standards.

(9) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in § 225.11(c). However, the State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of the deficiencies.

(10) If the sponsor's application to participate is denied, the official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Pending the outcome of a review of a denial, the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (b)(5) of this section, without regard to the application under review.

(11) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or which knowingly withholds information that may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

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

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State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years. The State agency may use the application form developed by FNS, or it may develop an application form, for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

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

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

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

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

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

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

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

(G) For open sites and restricted open sites, documentation supporting the eligibility of each site as serving an

area in which poor economic conditions exist. However, for sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation;

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

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

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

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

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

(ii) *Other application requirements.* New sponsors and sponsors which in the determination of the State agency

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have experienced significant operational problems in the prior year shall also include in their applications:

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

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

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

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

(3) *Requirements for experienced sponsors and experienced sites.*—(i) *Site information sheets.* At a minimum, the application submitted by experienced sponsors shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for experienced sponsors and experienced sites must demonstrate or describe the information below. The State agency also may re-

quire experienced sponsors and experienced sites to provide any of the information required in paragraph (c)(2) of this section.

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

(B) For open sites and restricted open sites, new documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist shall be submitted. Such documentation shall be submitted every three years when school data are used. When census data are used, such documentation shall be submitted when new census data are available, or earlier if the State agency believes that an area's socioeconomic status has changed significantly since the last census. For sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation of serving an area in which poor economic conditions exist;

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

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

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

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

(B) A complete administrative and operating budget for State agency review and approval. The administrative

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

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

(4) *Free meal policy statement.* (i) Each applicant must submit a statement of nondiscrimination in its policy for serving meals to children. The statement must consist of an assurance that all children are served the same meals and that there is no discrimination in the course of the food service. A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request. In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants except camps must include a statement that the meals served are free at all sites.

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

(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 or methods to be used in accepting appli-

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

(C) A description of the method 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 a hearing procedure for families wishing to appeal a denial of an application for free meals. Such hearing procedures shall meet the requirements set forth in paragraph (c)(5) of this section;

(E) An assurance that, if a family requests a hearing, the child shall 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 handicap.

(5) *Hearing procedures statement.* Each applicant that is a camp shall submit with its application a copy of its hearing procedures. At a minimum, these procedures shall provide:

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

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

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

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

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

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

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(vii) That 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) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall 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) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(d) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency shall ensure that:

(i) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal;

(iii) The site is approved to serve no more than the number of children for which its facilities are adequate and;

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

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency shall establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels shall

be established in accordance with the following provisions:

(i) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(ii) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor shall inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children attending is below the site's approved level, the sponsor

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shall adjust meal orders with the objective of serving only one meal per child as required under § 225.15(b)(3).

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

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

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

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

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

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

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

(4) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(5) Issue a free meal policy statement in accordance with § 225.6(c);

(6) Meet the training requirement for its administrative and site personnel, as required under § 225.15(d)(1);

(7) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's sites if such levels are required under § 225.6(d)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;

(8) Submit claims for reimbursement in accordance with procedures established by the State agency, and those stated in § 225.9;

(9) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(10) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(11) Have access to facilities necessary for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency;

(13) Maintain on file documentation of site visits and reviews in accordance with § 225.15(d) (2) and (3);

(14) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(15) Maintain children on site while meals are consumed; and

(16) Retain final financial and administrative responsibility for its program.

(f) *Special Account.* In addition, the State agency may require any vended sponsor to enter into a special account

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agreement with the State agency. The special account agreement shall stipulate that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State. The agreement shall also stipulate that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain such other terms, agreed to by both the sponsor and the food service management company, which are consistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

(g) *Food service management company registration.* A State agency may require each food service management company, operating within the State, to register based on State procedures. A State agency may further require the food service management company to certify that the information submitted on its application for registration is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(h) *Monitoring of food service management company procurements.* (1) The State agency shall ensure that sponsors' food service management company procurements are carried out in accordance with §§ 225.15(h) and 225.17 of this part.

(2) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. Sponsors which are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors whose food service management company contract(s) do not exceed \$10,000 in aggregate value may use their existing or usual form of contract, provided that such form of contract has been submitted to and ap-

proved by the State agency. The standard contract developed by the State agency shall expressly and without exception provide that:

(i) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the State agency has approved, pursuant to paragraph (h)(3) of this section, a request for exceptions to the unitizing requirement for certain components of a meal;

(ii) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal;

(iii) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under § 225.6(d)(2), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(iv) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor;

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

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set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency.

(vi) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(vii) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved;

(viii) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(ix) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(x) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(xi) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(xii) All meals served under the Program shall meet the requirements of § 225.16;

(xiii) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source;

(xiv) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments in accordance with the conditions set forth in § 225.6(f), the contract shall so specify;

(xv) The food service management company shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline; and

(xvi) The food service management company shall comply with the appropriate bonding requirements, as set forth in § 225.15(h)(6) through (h)(8).

(3) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing in sufficient time for the State agency to respond prior to the sponsor's advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(4) Each State agency shall have a representative present at all food service management company procurement bid openings when sponsors are expected to receive more than \$100,000 in Program payments.

(5) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations. Sponsors shall also submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen.

(6) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling \$100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

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(7) Failure by a sponsor to comply with the provisions of this paragraph or § 225.15(h)(1) shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.18(b).

(i) *Meal pattern exceptions.* The State agency shall review and act upon requests for exceptions to the meal pattern in accordance with the guidelines and limitations set forth in § 225.16.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13467, Apr. 10, 1990; ; 64 FR 72484, Dec. 28, 1999; 64 FR 72896, Dec. 29, 1999; 72 FR 10895, Mar. 12, 2007]

§ 225.7 Program monitoring and assistance.

(a) *Training.* Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration to sponsor personnel, food service management company representatives, auditors, and health inspectors who will participate in the Program in that State. Prior to Program operations, the State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize in such training, and in the training of site personnel, sponsor personnel who have previously participated in the Program. Training should be made available at convenient locations. State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

(b) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to prepare adequately for the Program.

(c) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all spon-

sors minimum food specifications and model meal quality standards which shall become part of all contracts between vended sponsors and food service management companies.

(d) *Program monitoring and assistance.* The State agency shall conduct Program monitoring and provide Program assistance according to the following provisions:

(1) *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:

(i) All applicant sponsors which did not participate in the program in the prior year. However, if a sponsor is a school food authority, has been 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 during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be conducted at the discretion of the State agency;

(ii) All applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit; and

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

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

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

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

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

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

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

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

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

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

(4) *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.

(5) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency.

(6) *Food service management company facility visits.* As a part of the review of any vended sponsor which contracts for the preparation of meals, the State agency shall inspect the food service management company's facilities. Each State agency shall establish an

order of priority for visiting facilities at which food is prepared for the Program. The State agency shall respond promptly to complaints concerning facilities. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in §225.5(f) may be used for conducting food service management company facility inspections.

(7) *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 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.

(8) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (d)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors as specified in paragraph (d)(2) of this section.

(9) *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.

(e) *Other facility inspections and meal quality tests.* In addition to those inspections required by paragraph (d)(6)

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of this section, the State agency may also conduct, or arrange to have conducted: inspections of self-preparation and vended sponsors' food preparation facilities; inspections of food service sites; and meal quality tests. The procedures for carrying out these inspections and tests shall be consistent with procedures used by local health authorities. For inspections of food service management companies' facilities not conducted by State agency personnel, copies of the results shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting these inspections and tests.

(f) *Financial management.* Each State agency shall establish a financial management system, in accordance with 7 CFR part 3015, and 7 CFR part 3016 or 7 CFR part 3019, as applicable, and FNS guidance, to identify allowable Program costs and to establish standards for sponsor recordkeeping and reporting. The State agency shall provide guidance on these financial management standards to each sponsor.

(g) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits

of, or be otherwise subjected to discrimination under, the Program.

(2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, DC 20250. A State agency which has an established grievance or complaint handling procedure may resolve sex and handicap discrimination complaints before referring a report to FNS.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13468, Apr. 10, 1990; 64 FR 72485, Dec. 28, 1999; 64 FR 72898, Dec. 29, 1999; 71 FR 39518, July 13, 2006]

§ 225.8 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF-269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.13, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) Each State agency shall submit to FNS a final report on the Summer Food Service Program Operations (FNS-418) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be

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made without FNS authorization, regardless of when it is determined that such adjustments need to be made. Adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Action may be taken against the State agency, in accordance with § 225.5(a)(1), for failure to submit accurate and timely reports.

(c) The State agency must submit to FNS a final Financial Status Report no later than 120 days after the end of the fiscal year, on a form (SF-269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves such an increase, it will make payment, subject to availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.12(d), except that amounts recovered may not be used to make Program payments.

(d)(1) By May 1 of each year, State agencies must submit to the appropriate FNSRO a list of potential private nonprofit organization sponsors. The list must include the following information for each applicant sponsor:

- (i) Name and address;
- (ii) Geographical area(s) proposed to be served;
- (iii) Proposed number of sites; and
- (iv) Any available details of each proposed site including address, dates of operation, and estimated daily attendance.

(2) State agencies must also notify the appropriate FNSRO within 5 work-

ing days after they approve each private nonprofit organization to participate as a SFSP sponsor. When State agencies notify the FNSRO of sponsor approval, they must provide the following information:

- (i) Any changes to site locations, dates of operation, and estimated daily attendance that was previously provided;
- (ii) The hours and type(s) of approved meal service at each site;
- (iii) The type of site approval—open, restricted open, closed enrolled, or camp; and
- (iv) Any other important details about each site that would help the FNSRO plan reviews, including whether the site is rural or urban, or vended or self-preparation.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990; 64 FR 72485, Dec. 28, 1999; 65 FR 82251, Dec. 28, 2000]

§ 225.9 Program assistance to sponsors.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Commodity assistance.* (1) Sponsors eligible to receive commodities under the Program include: Self-preparation sponsors; sponsors which have entered into an agreement with a school or school food authority for the preparation of meals; and sponsors which are school food authorities and have competitively procured Program meals from the same food service management company from which they competitively procured meals for the National School Lunch Program during the last period in which school was in session. The State agency shall make available to these sponsors information on available commodities. Sponsors shall use in the Program food donated

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by the Department and accepted by sponsors.

(2) Not later than June 1 of each year, State agencies shall prepare a list of the sponsors which are eligible to receive commodities and the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it deems necessary.

(c) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to sponsors which have executed Program agreements in order to assist these sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (c) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total operating costs paid to the sponsor for the same calendar month in the preceding year; or

(B) For vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one-third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for 10 or more days in only one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one-half, and no more than two-thirds, of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed \$40,000 unless the

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State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under §225.12.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(d) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and administrative costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

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

(2) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim and, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(3) Sponsors which operate less than 10 days in the final month of operations shall submit a combined claim for the final month and the immediate preceding month within 60 days of the last day of operation.

(4) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(5) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Summer Food Service Program Operations required under §225.8(b). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The costs of meals served to adults performing necessary food service labor may be included in the claim. Under no circumstances may a sponsor claim the cost of any disallowed meals as operating costs.

(6) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within the 60 day deadline shall not be paid

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with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FNS-418). Upward adjustments in Program funds claimed which are not reflected in the final FNS-418 for the month covered by the claim cannot be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization, regardless of when it is determined that such adjustments are necessary.

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

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

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

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

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

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

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

bursement must be adjusted in accordance with paragraph (d)(9) of this section.

(9) On each January 1, or as soon thereafter or as practicable, FNS will publish a notice in the FEDERAL REGISTER announcing any adjustment to the reimbursement rates described in paragraphs (d)(7)(ii) and (d)(8)(iii) of this section. Adjustments will be based upon changes in the series for food away from home of the Consumer Price Index(CPI) for all urban consumers since the establishment of the rates. Higher rates will be established for Alaska and Hawaii, based on the CPI for those States.

(10) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented. Sponsors of NYSP sites shall only claim reimbursement for meals served to children enrolled in the NYSP.

(11) 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.

(e) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(f) The sponsor shall not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under §225.6(d)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(5) of this section. In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in §225.15(b)(4).

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990; 64 FR 72485, Dec. 28, 1999]

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§ 225.10 Audits and management evaluations.

(a) *Audits.* State agencies shall arrange for audits of their own operations to be conducted in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with 7 CFR part 3015. State agencies shall provide OIG with full opportunity to audit the State agency and sponsors. Unless otherwise exempt, audits at the State and sponsor levels shall be conducted in accordance with OMB Circular A-133 and the Department's implementing regulations at 7 CFR part 3052. (To obtain the OMB circular referenced in this paragraph, see 5 CFR 1310.3.) While OIG shall rely to the fullest extent feasible upon State-sponsored audits of sponsors, it shall, when considered necessary, (1) make audits on a State-wide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(b) *Management evaluations.* (1) State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS.

(2) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation.

(3) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(c) *Disregards.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed \$100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for

the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

[54 FR 18208, Apr. 27, 1989, as amended at 71 FR 39518, July 13, 2006]

§ 225.11 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* Except as specified below, the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

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(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph; and

(4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c);

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* With the exception for residential camps set forth at § 225.16(b)(1)(ii), the State agency shall restrict to one meal service per day:

(1) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(2) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c).

If this action results in children not receiving meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for these children.

(e) *Meal disallowances.* (1) If the State agency determines that a sponsor has failed to plan, prepare, or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow the number of children's meals prepared or ordered in excess of the number of children served.

(2) If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow children's meals which are in excess of a site's approved level established under § 225.6(d)(2).

(f) *Corrective action and termination of sites.* (1) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken.

(2) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the corrective action plan.

(3) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(4) If the site is vended, the State agency shall within 48 hours notify the food service management company providing meals to the site of the site's termination.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990]

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§ 225.12 Claims against sponsors.

(a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.10(c). State agencies may consider claims for reimbursement not properly payable if a sponsor's records do not justify all costs and meals claimed. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested;

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to the appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized to make Program payments to

sponsors for the period for which the funds were initially available and/or to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

§ 225.13 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant appealing: A denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(5)); a State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration, if applicable; or the revocation of a food service management company's registration, if applicable. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

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(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the adminis-

trative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

[54 FR 18208, Apr. 27, 1989, as amended at 64 FR 72486, Dec. 28, 1999]

Subpart C—Sponsor and Site Provisions

§ 225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors shall make written application to the State agency to participate in the Program. 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 during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be

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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.

(b) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps;

(3) Units of local, municipal, county, or State governments;

(4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and

(5) Private nonprofit organizations as defined in § 225.2.

(c) *General requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(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;

(2) Has not been seriously deficient in operating the Program;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp;

(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);

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.6(b)(4);

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served; and

(7) Enters into a written agreement with the State agency upon approval of its application, as required in § 225.6(e).

(d) *Requirements specific to sponsor types.* (1) If the sponsor is a camp, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(2) If the sponsor administers the Program at sites that provide summer school sessions, it must ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have direct operational control. Operational control means that the sponsor shall be responsible for:

(i) Managing site staff, including the hiring, terminating, and determining conditions of employment for site staff; and

(ii) Exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in § 225.15.

(4) If the sponsor administers homeless feeding sites, it must:

(i) Document that the site is not a residential child-care institution as defined in paragraph (c) of the definition of 'School' contained in § 210.2 of this chapter;

(ii) Document that the primary purpose of the homeless feeding site is to provide shelter and meals to homeless families; and

(iii) Certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

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

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

(i) Administers the Program:

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

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(6)(ii), not more than 500 children being served at any approved meal service at any one site;

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

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

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

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

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

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13469, Apr. 10, 1990; 64 FR 72486, Dec. 28, 1999; 64 FR 72898, Dec. 29, 1999; 65 FR 50128, Aug. 17, 2000]

§ 225.15 Management responsibilities of sponsors.

(a) *General.* (1) Sponsors shall operate the food service in accordance with: the provisions of this part; any instructions and handbooks issued by FNS under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part.

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a "charitable institution", as defined in §§ 250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative costs in accordance with the definition of "income accruing to the Program" at § 225.2 and with the regulations at § 225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(b) *Meal Ordering.* (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under § 225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

(3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with § 225.9(d)(4). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type

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(i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

(c) *Records and claims.* (1) Sponsors shall maintain accurate records which justify all costs and meals claimed. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(2) Sponsors shall submit claims for reimbursement in accordance with this part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar). Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are

provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(3) Sponsors shall review 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.

(e) *Media Release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall include: the Secretary's family-size and income standards for reduced price school meals labelled "SFSP Income Eligibility Standards"; a statement that children who are members of households receiving food stamp, 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 handicap.

(f) *Application for free Program meals.*—(1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of "areas in which poor economic conditions exist", in § 225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information

described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.

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

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

(ii) The names of all other household members;

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

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

(v) The signature of an adult household member;

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

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

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

(ii) The signature of an adult household member.

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

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

(ii) A statement that a child who is a member of a household that receives food stamp, FDPIR, or TANF benefits

is automatically eligible to receive free meals in the Program;

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

(iv) A Privacy Act notice informing households of how the social security number and other information provided on the application will be used. Each free and reduced price meal application must include substantially the following statement, "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the Program." When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be added to the Privacy Act notice/statement. State agencies and sponsors are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

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

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section, the notice must be revised to explain those uses.

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

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

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

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

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

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

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

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

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

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

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

(g) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or sponsor, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or sponsor may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or sponsor that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free and reduced price meal eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to

know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or sponsor, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or sponsor, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

- (i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (parts 210, 215, 220, 226 and 246, respectively, of this chapter);

- (ii) The Comptroller General of the United States for purposes of audit and examination; and

- (iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and sponsors may use children's free and reduced price meal eligibility information for administering or enforcing the Summer Food Service Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Summer Food Service Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parental/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1) of this section are met. The State agency or sponsor, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal applications or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

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(1) The State agency must ensure that:

(i) The sponsors and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or the State Children's Health Insurance Program (SCHIP), that are permitted access to children's eligibility information, without parental/guardian consent, the State agency or sponsor, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement

to the Privacy Act notice/statement required under paragraph (f)(4)(iv) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children determined eligible for free meals through the direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or sponsor, as appropriate, by a date specified by the State agency or sponsor, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you

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tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(j) *Other disclosures.* State agencies and sponsors that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(k) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or sponsor, as

appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(1) *Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(m) *Food service management companies.* (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with § 225.18.

(2) Any sponsor may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at § 225.6(h)(3).

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(3) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this part.

(4) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities and which have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed \$10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures set forth in this paragraph shall ensure, at a minimum, that:

(i) All proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;

(ii) The bids are publicly opened;

(iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;

(iv) The invitation to bid does not specify a minimum price;

(v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;

(vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;

(vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(viii) Neither the invitation to bid nor the contract provides for loans or

any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(x) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;

(xi) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder; and

(xii) All bids in an amount which exceeds the lowest bid and all bids totaling \$100,000 or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(5) Each food service management company which submits a bid over \$100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(6) Each food service management company which enters into a food service contract for over \$100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract, as determined by the State agency, of the value of the contract for which the bid is made. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds \$100,000. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

(7) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No

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sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(n) *Other responsibilities.* Sponsors shall comply with all of the meal service requirements set forth in § 225.16.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13470, Apr. 10, 1990; 61 FR 25553, May 22, 1996; 64 FR 72486, Dec. 28, 1999; 64 FR 72898, Dec. 29, 1999; 65 FR 82251, Dec. 28, 2000; 66 FR 2202, Jan. 11, 2001; 72 FR 10895, Mar. 12, 2007]

§ 225.16 Meal service requirements.

(a) *Sanitation.* Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Sponsors shall ensure that adequate facilities are available to store food or hold meals. Within two weeks of receiving notification of their approval, but in any case prior to commencement of Program operation, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

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

(1) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which meet the eligibility standards for this Program. The sponsor shall maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

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

(ii) Residential camps are not subject to the time restrictions for meal service set forth at paragraphs (c) (1) and (2) of this section; and

(iii) A camp shall be approved to serve these meals only if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

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

(3) *Restrictions on the number and type of meals served.* Food service sites other than camps and sites that primarily serve migrant children may serve either:

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

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

(4) *Sites which serve children of migrant families.* Food service sites that primarily serve children from migrant families may be approved to serve each day up to three meals or two meals and one snack. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(c) *Time restrictions for meal service.* (1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The

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time restrictions in this paragraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals which are not prepared at the food service site shall be delivered no earlier than one hour prior to the beginning of the meal service (unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations) and no later than the beginning of the meal service.

(6) The sponsor shall claim for reimbursement only the type(s) of meals for which it is approved under its agreement with the State agency.

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program. Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

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

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	½ cup. ¹
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	½ cup (4 fluid ounces).
Bread and Bread Alternates²	
Bread or	1 slice.
Combread, biscuits, rolls, muffins, etc. or	1 serving. ³
Cold dry cereal or	¾ cup or 1 ounce. ⁴
Cooked cereal or cereal grains or	½ cup.
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk⁵	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).
Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish or	1 ounce.
Alternate protein product ⁶ or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	¼ cup.
Peanut butter or an equivalent quantity of any combination of meat/meat alternate or	2 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup.

¹ For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
² Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
³ Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
⁴ Either volume (cup) or weight (ounces), whichever is less.
⁵ Milk shall be served as a beverage or on cereal or used in part for each purpose.
⁶ Must meet the requirements in appendix A of this part.

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

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Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	2 ounces.
Alternate protein products ¹ or	2 ounces.
Cheese or	2 ounces.
Egg (large) or	1.
Cooked dry beans or peas or	½ cup. ²
Peanut butter or soynut butter or other nut or seed butters or	4 tablespoons.
Peanuts or soynuts or tree nuts or seed ³ or	1 ounce=50%. ⁴
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	8 ounces or 1 cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) ⁵	¾ cup total.
Bread and Bread Alternatives ⁶	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving. ⁷
Cooked pasta or noodle products or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fluid ounces).

¹ Must meet the requirements of appendix A of this part.
² For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
³ Tree nuts and seeds that may be used as meat alternate are listed in program guidance.
⁴ No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry or fish.
⁵ Serve 2 or more kinds of vegetable(s) and/or fruits or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
⁶ Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
⁷ Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

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

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	1 ounce.
Alternate protein products ¹ or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	¼ cup ² .
Peanut butter or soynut butter or other nut or seed butters or	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds ³ or	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounce or ½ cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	¾ cup.
Full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruits(s) and juice.	¾ cup (6 fluid ounces).
Bread and Bread Alternates ⁴	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving. ⁵
Cold dry cereal or	¾ cup or 1 ounce. ⁶
Cooked cereal or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.

Food components	Minimum amount
Milk⁷	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).

¹ Must meet the requirements in appendix A of this part.
² For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
³ Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
⁴ Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
⁵ Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
⁶ Either volume (cup) or weight (ounces), whichever is less.
⁷ Milk should be served as a beverage or on cereal, or used in part for each purpose.

(e) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Enriched macaroni with fortified protein may be used to meet part but not all of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(5) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this section under paragraph (e)(3) and in this part under Appendix A: Alternate Foods for Meals. As noted in paragraph (d)(2) of this sec-

tion, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement for lunch or supper. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement. For the supplemental food pattern, nuts or seeds may be used to fulfill all of the meat/meat alternate requirement.

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

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

(2) *Children under 6.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (d) of this section to children under six years of age if the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. Sponsors wishing to

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serve children under one year of age shall first receive approval to do so from the State agency. In both cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child and Adult Care Food Program regulations (7 CFR part 226).

(3) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations to the meal requirements are authorized: A serving of a starchy vegetable—such as ufi, tanniers, yams, plantains, or sweet potatoes—may be substituted for the bread requirements.

(4) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (d) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(5) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(6) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(7) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the milk components set forth in paragraph (d) of this section. In addition, the State agency may approve the use of nonfat dry milk in meals

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served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(8) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

[54 FR 18208, Apr. 27, 1989, as amended at 54 FR 27153, June 28, 1989; Amdt. 2, 55 FR 1377, Jan. 14, 1990; 55 FR 13470, Apr. 10, 1990; 61 FR 37672, July 19, 1996; 62 FR 10191, Mar. 6, 1997; 64 FR 72487, Dec. 28, 1999; 64 FR 72487, Dec. 28, 1999; 65 FR 12437, Mar. 9, 2000; 65 FR 82251, Dec. 28, 2000]

Subpart D—General Administrative Provisions

§ 225.17 Procurement standards.

(a) State agencies and sponsors shall comply with the requirements of 7 CFR part 3016 or 7 CFR part 3019, as applicable, concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the program efficiently and economically and in compliance with applicable laws and executive orders. Sponsors may use their own procedures for procurement with Program funds to the extent that:

(1) Procurements by public sponsors comply with applicable State or local laws and the standards set forth in 7 CFR part 3016; and

(2) Procurements by private non-profit sponsors comply with standards set forth in 7 CFR part 3019.

(b) The State agency shall make available to sponsors information on 7 CFR part 3016 or 7 CFR part 3019, as applicable.

(c) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with approval of FNS, to prevent fraud, waste, and Program abuse.

(d) The State agency shall ensure that each sponsor is aware of the following practices specified in 7 CFR part 3016 or 7 CFR part 3019, as applicable, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

[54 FR 18208, Apr. 27, 1989, as amended at 71 FR 39518, July 13, 2006]

§ 225.18 Miscellaneous administrative provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with 7 CFR part 3016 or 7 CFR part 3019, as applicable.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date, and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds.

(2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program.

(3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS

from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligation properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

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(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$100,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of title 28, U.S. Code, to conduct litigation on behalf of the United States.

(i) *Data collection related to sponsors.*

(1) Each State agency must collect data related to sponsors that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those sponsors that participated only for part of the fiscal year. Such data shall include:

(i) The name of each sponsor;

(ii) The city in which each participating sponsor was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the sum of the amount of federal funds reimbursed for operating and administrative cost; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and “other.”

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (i)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13471, Apr. 10, 1990; 64 FR 72488, Dec. 28, 1999; 71 FR 39518, July 13, 2006; 72 FR 24183, May 2, 2007]

§ 225.19 Regional office addresses.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222-1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, NJ 08691-1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW., Room 8T36, Atlanta, GA 30303-3415.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, IL 60604-3507.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, TX 75242-9980.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204-3581.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108-2518.

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13471, Apr. 10, 1990; 65 FR 12439, Mar. 9, 2000; 65 FR 82251, Dec. 28, 2000]

§ 225.20 Information collection/record-keeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
225.3-225.4	0584-0280
225.6-225.10	0584-0280
225.12-225.13	0584-0280
225.15-225.18	0584-0280

[61 FR 25554, May 22, 1996]

APPENDIX A TO PART 225—ALTERNATE FOODS FOR MEALS

ALTERNATE PROTEIN PRODUCTS

A. What Are the Criteria for Alternate Protein Products Used in the Summer Food Service Program?

1. An alternate protein product used in meals planned under the provisions in §225.16 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A. 2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

- (1) The amount by weight of dry alternate protein product in the package;
- (2) Hydration instructions; and
- (3) Instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the Summer Food Service Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in §225.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the Summer Food Service Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

[65 FR 12439, Mar. 9, 2000]

APPENDIX B TO PART 225 [RESERVED]

APPENDIX C TO PART 225—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review

of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern

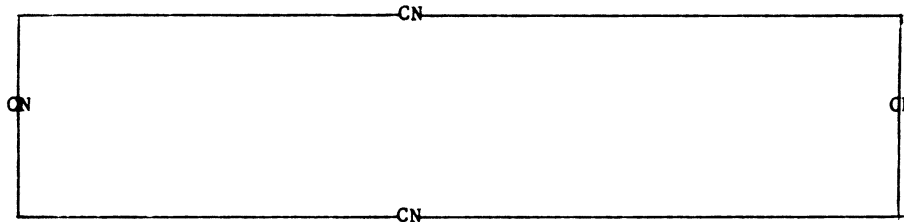
requirements of 7 CFR 210.10, 225.16, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) *CN label* is a food product label that contains a CN label statement and CN logo as defined in paragraph 3(b) and (c) below.

(b) The *CN logo* (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The *CN label statement* includes the following:

(1) The product identification number (assigned by FNS);

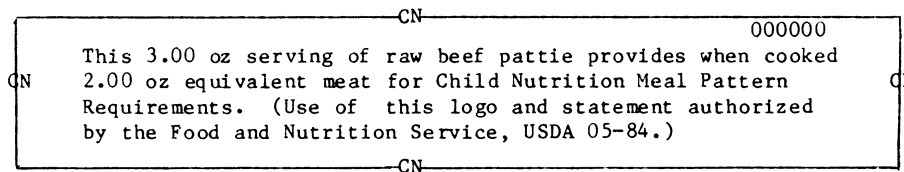
(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit

component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements.

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:



(d) *Federal inspection* means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or

USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate and the

manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

<p>INSPECTED BY THE U.S. DEPT. OF AGRICULTURE IN ACCORDANCE WITH FNS REQUIREMENTS</p>
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(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report on the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Service of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken: (a) The company's CN label may be revoked for a specific period of time; (b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product; (c) The company's name will be circulated to regional FNS offices; and (d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures, write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

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Subpart F—Food Service Equipment Provisions

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Subpart G—Other Provisions

- 226.25 Other provisions.
- 226.26 Program information.
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- APPENDIX B TO PART 226 [RESERVED]
- APPENDIX C TO PART 226—CHILD NUTRITION (CN) LABELING PROGRAM