

Sunshine Act Meetings

Federal Register

Vol. 54, No. 80

Thursday, April 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

April 25, 1989.

Clarification of Item No. 2 of Common Carrier Agenda for Open Meeting of April 26, 1989

The Federal Communications Commission previously announced on April 19, 1989 its intention to hold an Open Meeting on *Applications for Review of Common Carrier Bureau's grant of waiver of General Telephone Company of California to construct coaxial cable transport facilities in Cerritos, California.*

The subject matter has been changed to read as follows:

Title: Applications for Review of Common Carrier Bureau's grant of waiver of General Telephone Company of California to construct coaxial cable transport facilities in Cerritos, California, and Application of General Telephone Company of California for authority to construct fiber optic transport facilities in Cerritos, California.

Summary: The Commission will consider three applications for review of Common Carrier Bureau's decision in File No. W-P-C 5927 (3FCC Rcd 2317 (1988)) and an application by GTE California Incorporated for authority to construct fiber optic transport facilities in Cerritos, California (File No. W-P-C-6250).

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

Action by the Commission April 25, 1989. Commissioners Patrick, Chairman; Quello and Dennis voting to consider this change.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: April 25, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10249 Filed 4-25-89; 2:11 pm]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

ACTION: Amendment of notice published 4/26/89, to include an additional proceeding to the conference.

TIME AND DATE: 10:00 a.m., Tuesday, May 2, 1989.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

MC-C-30090

National Industrial Transportation League—Petition For Declaratory Order On Negotiated Motor Common Carrier Rates and

Ex Parte MC-177

National Industrial Transportation League—Petition To Institute Rulemaking On Negotiated Motor Common Carrier Rates

CONTACT PERSON FOR MORE

INFORMATION: Dennis A. Watson, Office of Government and Public Affairs, Telephone: (202) 275-7242.

Noreta R. McGee

Secretary

[FR Doc. 89-10220 Filed 4-25-89; 10:25 am]

BILLING CODE 7035-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 3, 1989, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

- (1) Recommendation that the Board Waive Recovery of Benefits Paid Under the Railroad Unemployment Insurance Act—Retroactive Implementation of Waiting Period
- (2) Proposed Changes in the RUIA Regulations (Status Report)

(3) Regulations Under the Railroad Unemployment Insurance Act; Part 344, Temporary Rule

(4) Proposed Board Regulations—Part 200 (General Administration) and Part 262 (Miscellaneous)

(5) Proposed Board Regulations—Parts 320 and 340

(6) Proposed Board Regulations—Part 222 (Family Relationships)

Portion Closed to the Public

(A) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Nancy M. Johnson

(B) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Claudette P. Johnson

(C) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Dolores Stroud

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: April 24, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-10248 Filed 4-25-89; 2:08 pm]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 1, 1989.

A closed meeting will be held on Tuesday, May 2, 1989, at 2:30 p.m. An open meeting will be held on Wednesday, May 3, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 2, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Wednesday, May 3, 1989, at 10:00 a.m., will be:

Consideration of whether to issue a Supplemental Memorandum Opinion and Order with respect to a post-effective amendment to an application-declaration filed by Eastern Utilities Associates ("EUA"), a registered holding company under the Public Utility Holding Company Act of 1935 ("Act"), and its wholly owned electric utility

subsidiary company, EUA Power Corporation ("EUA Power"). EUA and EUA Power propose that the Commission release jurisdiction, as set forth in the Commission's Memorandum No. 24641, and authorize EUA Power to issue 17½% Series C Secured Notes ("Series C Notes") on May 15, 1989 in the amount of \$26,107,102 and on November 15, 1989, in the amount of \$29,145,316, in lieu of the semi-annual cash interest payments due on those dates on EUA Power's outstanding 17½% Series B Secured Notes and Series C Notes. EUA Power further proposes to issue and sell, and EUA proposes to acquire, through May 14, 1990, up to an additional \$15.6 million of Class A 25% Cumulative Convertible Preferred Stock ("Preferred Stock") in order to fund EUA Power's share of costs associated with its joint ownership interest in the Seabrook Nuclear Power Project and to maintain EUA Power's debt/equity ratio. In connection therewith, EUA

proposes to finance its acquisition of EUA Power's Preferred Stock through the issuance, through December 31, 1989, of up to an additional \$15.6 million of short-term notes to banks under its existing lines of credit. For further information, please contact Robert Wason at (202) 272-7684.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272-2200.

Jonathan G. Katz,

Secretary.

April 24, 1989.

[FR Doc. 89-10293 Filed 4-25-89; 3:59 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 54, No. 80

Thursday, April 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

Correction

In notice document 89-9088 beginning on page 15241 in the issue of Monday, April 17, 1989, make the following corrections:

1. On page 15241, in the 3rd column, under **Definition of Income**, in the 16th line, "(90)" should read "(9)".
2. On page 15242, in the table, in the section pertaining to the 48 Contiguous United States, District of Columbia, Guam and Territories, in the fourth column, under "Month", the fourth entry should read "1,009".
3. On the same page, in the same table, in the section pertaining to Alaska, in the fourth column, under "Week", the eighth entry should read "488".
4. On the same page, in the same table, in the section pertaining to Hawaii, in the second column, under "Year", the last entry should read "+4,348".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 916]

Public Health Conference Support Grant Program; Availability of Funds for Fiscal Year 1989

Correction

In notice document 89-7747 beginning on page 13435 in the issue of Monday, April 3, 1989, make the following corrections:

1. On page 13435, in the second column, in the first paragraph, in the

fifth line "organizations" was misspelled.

2. On the same page, in the third column, in the third paragraph from the bottom, the next to last sentence should read "postmarks shall not be acceptable as proof".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 347 and 348

[Docket No. 78N-021A]

Skin Protectant Products for Over-the-Counter Human Use; Astringent Drug Products

Correction

In proposed rule document 89-7834 beginning on page 13490 in the issue of Monday, April 3, 1989, make the following corrections:

1. On page 13493, in the first column, in the last paragraph, in the sixth line "anorectal" should read "that".
2. On page 13499, in the third column, in the part heading, "Analgesic" was misspelled.
3. On the same page, in the same column, in the line preceding amendatory instruction 6, "348.8" should read "348.3".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0201]

Pediculicide Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 89-7833 beginning on page 13480 in the issue of Monday, April 3, 1989, make the following correction:

- On page 13480, in the second column, in the first line the last word should read "class".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0125]

Animal Drug Export; Virginiamycin

Correction

In notice document 89-8909 beginning on page 15016 in the issue of Friday, April 14, 1989, make the following corrections:

1. On page 15017, in the first column, in the ninth line, "89-192" should not have appeared.
2. On the same page, in the same column, in the last paragraph, in the second line insert an open parenthesis between "Act" and "section".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0097]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ifex®

Correction

In notice document 89-8602 beginning on page 14684 in the issue of Wednesday April 12, 1989, make the following corrections: On page 14684, in the second column, in the subject heading, in the second line; and in the third column, in the first complete paragraph in the second and third lines; and in the second complete paragraph, in the third line; and in designated paragraph 1, in the sixth line, "Ifex" should read "Ifex®".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-14636]

Realty Action; Exchange of Public and Private Lands, Inyo and Los Angeles Counties, CA

Correction

In notice document 89-5263, beginning on page 9902, in the issue of

Wednesday, March 8, 1989, make the following correction:

On page 9902, in the third column, under "T. 21S., R. 37E.," in the fifth line "E½N¼NE¼," should read "E½NW¼NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-11; CA 15906]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

Correction

In notice document 89-6833 appearing on page 12022 in the issue of Thursday, March 23, 1989, make the following correction:

In the first column, in the SUMMARY, in the land description, the third line should read "Sec. 2, E½SE¼NE¼, E½SE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-11; CA-15907]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

Correction

In notice document 89-6834 beginning on page 12022 in the issue of Thursday, March 23, 1989, make the following corrections:

1. On page 12022, in the third column, in the SUMMARY, in the land description, the fourth line should read "Sec. 14, E½NW¼NE¼, S½NE¼,".

2. On page 12023, in the first column, after the second complete paragraph, in designated paragraph 3, in the second line "Air" should read "Aid".

3. On the same page, in the same column, in designated paragraph 4, in the second line, "areas" should read "area".

4. On the same page, in the same column, in the second designated paragraph 1, in the second line "transmissionline" should read "transmission line".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 64

[Order No. 1326-89]

Judicial Administration; Designation of Officers and Employees of the United States for Coverage Under Section 1114 of Title 18 of the United States Code

Correction

In rule document 89-5044 beginning on page 9043 in the issue of Friday, March 3, 1989, make the following correction:

§ 64.2 [Corrected]

On page 9044, in the first column, in § 64.2(v), in the fourth line, "officers" should read "offices" each time it appears.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

Correction

In rule document 89-6287 beginning on page 11322 in the issue of Friday, March 17, 1989, make the following correction:

§ 541.67 [Corrected]

On page 11325, in the second column, in § 541.67(c), in the fourth line between "five" and "days" add "working".

BILLING CODE 1505-01-D

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

Correction

In rule document 89-4833 beginning on page 8725 in the issue of Thursday, March 2, 1989, make the following correction:

On page 8725, in the first column, in the authority citation, in the second line, "99-507" should read "99-570".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Generic Letters

Correction

In notice document 89-8993 appearing on page 15039 in the issue of Friday, April 14, 1989, make the following correction:

On page 15039, in the middle column, the fourth line should read "can now be purchased through a".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule

Correction

In the proposed rule document beginning on page 13196 in the issue of Friday, March 31, 1989, make the following corrections:

§ 531.203 [Corrected]

1. On page 13197, in the 2nd column, in paragraph (c)(2)(i), between the 16th and 17th lines insert "rate for the grade in which pay is being fixed, the maximum".

2. On page 13198, in the file line appearing at the end of the document, the document number should read "89-7636".

BILLING CODE 1505-01-D

Estimated Final Rule

Thursday
April 27, 1989

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program;
Reorganization and Minor Revisions; Final
Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program;
Reorganization and Minor Revisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking is a complete reorganization of 7 CFR Part 225, the rules governing the Summer Food Service Program (SFSP). This revision is intended to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 is more easily understood. This rulemaking includes one change mandated by the Hunger Prevention Act of 1988 (Pub. L. 100-435)—making public or private nonprofit colleges and universities participating in the National Youth Sports Program eligible to apply for Program sponsorship. In addition, this final rulemaking clarifies several of the discretionary changes to the regulations which were presented in the proposed rule. Finally, based on commenters' input, the Department has decided to withdraw, pending further study, its proposals to eliminate statistical sampling as a means of site monitoring and to eliminate reimbursement for weekend meals served by non-camp sponsors. The discretionary changes incorporated in this final rule have been made in order to clarify the intent of the Part 225 regulations and to improve program accountability and management.

EFFECTIVE DATE: May 30, 1989.

ADDRESS: Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:**Classification**

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government

agencies; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to this review, Mr. G. Scott Dunn, the Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

No new reporting and recordkeeping requirements are included in this final rule, and Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3507) was therefore not required. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published at 48 FR 29114, June 24, 1983).

Background

The SFSP is authorized by section 13 of the National School Lunch Act (42 U.S.C. 1761). Section 13(g) of that Act requires the Department to issue regulations for the Program each fiscal year. On November 30, 1988, the Department published a proposed rule (53 FR 48369) setting forth the proposed SFSP regulations for 1989. That proposed rule included a complete reorganization of 7 CFR Part 225 which was intended to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 would be more easily understood. In addition, the Department proposed to change the definition of "sponsor" to conform to the terms of Pub. L. 100-435, the Hunger Prevention Act of 1988. Finally, the Department also proposed several discretionary clarifications of and changes to the Program regulations governing food service management companies, weekend meal service, letter of credit procedures, overclaims against sponsors, administrative funding reviews, and other aspects of the Program. These clarifications and changes were proposed in order to improve program accountability and management.

The Department received a total of 25 comments on the proposed regulations.

Commenters included State agencies, Program sponsors, advocacy groups, and other interested parties. All comments received were carefully considered and the issues raised by them are discussed in this preamble to the final rule.

Before analyzing these comments in detail, it is appropriate to mention that several commenters questioned the adequacy of the comment period for the proposed regulation. These commenters believed that the reorganization and the other changes to the regulations which were proposed required more than 30 days to review. One commenter, for example, believed that the changes contained in the proposed rule constituted a "major re-examination of SFSP regulations" and, as such, called for a 90-day comment period. Another commenter expressed concern that the regulations had not been published until the end of November and believed that final regulations would not be promulgated in time to be implemented in the 1989 Program.

While the Department understands commenters' desire to have additional time to consider and respond to the proposed regulations, it is important to note that section 13 of the National School Lunch Act mandates a deadline for publication of the final SFSP regulation which is only 60 days after the required date of publication for the proposed regulation. This very short period necessitates that a 30-day comment period be utilized except under the most extraordinary circumstances. The Department does not believe that the reorganization and the other changes and clarifications which were proposed constituted a "major re-examination" of the SFSP regulations. Almost all of the changes proposed were, in fact, clarifications of extant Program requirements.

Furthermore, the Department believes that this final regulation is being published early enough to allow for implementation during the current Program year. The Department realizes that the date of publication of this final regulation makes it impossible to implement the required changes to the State Management and Administration plans for the 1989 Program, and has therefore added regulatory language which delays implementation of these provisions until 1990. Had the Department allowed a longer period for comment, most of the other provisions in this final regulation could not have been implemented in this year's Program. For all of these reasons, a 30-day period was the maximum amount of time which could be allotted for comments.

I. Reorganization of Part 225

The Department received nine (9) comments on the proposed reorganization and related revisions, all of which were favorable. In order to assist users of these final regulations, a redesignation table has again been included at the end of this preamble which lists both the current and revised location of each paragraph in Part 225. This table should provide readers with a convenient overview of the reorganization and enable them to more easily locate specific parts of the old and new regulations. One commenter believed that § 225.4(k) in the old regulations was erroneously redesignated as § 225.5(f) in the proposed regulation. However, the Department did intend to redesignate former § 225.4(k) as § 225.5(f) in the proposed rule, not § 225.6(f) as the commenter believed.

Several commenters pointed out areas which they believed were changed inadvertently during the course of the Department's reorganization and stylistic revision of the regulations. These areas are discussed in detail in Part IV of this preamble, "Other Comments on Part 225." The Department believes that the real test of the new regulations' utility will come when they are used in next year's Program, and that users of the regulations may continue to find portions of the reorganized and revised Part 225 which they believe to be in error. The Department requests that users of the regulations submit to their state agency or regional office, as appropriate, any suggestions for additional organizational and stylistic improvements. These suggestions will be considered by the Department when it prepares future revisions and reissuances of the regulations.

Accordingly, this final rulemaking includes the reorganization of 7 CFR Part 225 as presented in the proposed rule. Stylistic revisions and technical corrections to the regulation language are discussed in Part IV of this preamble below.

II. Mandatory Change to Part 225

As explained in the preamble to the proposed rule, section 213 of the Hunger Prevention Act of 1988 (Pub. L. 100-435) mandated that public and private nonprofit colleges and universities be allowed to participate in the SFSP as sponsors provided that they are currently participating in the National Youth Sports Program (NYSP) and that they meet the other requirements for Program sponsorship. Public universities offering the NYSP were already allowed

to participate in the SFSP as governmental sponsors; private colleges offering the NYSP, however, were previously barred from SFSP sponsorship due to the general ban on most private nonprofit SFSP sponsors resulting from the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

The Department received six comments on its proposed implementation of this provision. Four commenters agreed with the Department's proposal, one disagreed, and another raised questions regarding these sponsors' participation which were not specifically addressed in the preamble to the proposed regulation. Although the implementation of this provision is non-discretionary, the Department nevertheless believes that the objection and question raised merit consideration in this preamble.

The commenter who disagreed with the Department's proposed implementation of this provision of the Hunger Prevention Act believed that the NYSP served wealthy children who did not need SFSP benefits. In fact, the NYSP, which is administered by the National Collegiate Athletic Association through grants provided by the Department of Health and Human Services, is designed to provide supervised sports training and competition for low-income children. As a program designed for low-income children, Congress apparently felt that the NYSP serves the same population which the SFSP is designed to serve, and that the ban on SFSP sponsorship by private nonprofit colleges and universities should be modified in this particular instance.

The questions raised about implementation of this new provision involved: (a) Whether public and private nonprofit colleges and universities currently participating in the NYSP would be permitted to sponsor the Program at non-NYSP sites; and (b) whether these same colleges and universities would be eligible to participate in the SFSP if they elected not to have their NYSP site(s) participate in the NYSP. Even before passage of the Hunger Prevention Act, public colleges and universities offering the NYSP were eligible to sponsor the SFSP as entities of State government. Thus, public colleges and universities are eligible to participate in the SFSP without reference to their participation in the NYSP and may offer the Program at non-NYSP sites.

Private nonprofit colleges and universities, on the other hand, can only participate as SFSP sponsors if they

currently participate in the NYSP. In addition, these private nonprofit colleges and universities may claim SFSP reimbursement only for meals served to NYSP participants.

Accordingly, as previously proposed, this final rule amends §§ 225.2 and 225.14(b) to allow public and private nonprofit colleges and universities participating in the NYSP to be SFSP sponsors.

Finally, as noted in the preamble to the proposed regulation, section 213 of Pub. L. 100-435 also mandated that the Department conduct a pilot project to assess the feasibility of again allowing other types of private nonprofit organizations to sponsor the SFSP. The Department received three comments specifically concerning this demonstration project and five other comments regarding the advisability of readmitting other types of private nonprofit organizations to SFSP sponsorship. Because the demonstration project is just beginning and has no bearing on the issues addressed in this final regulation, the Department will not respond to these comments in this preamble.

III. Substantive Changes to Part 225

A. Food Service Management Companies

The Department received 17 comments from nine different commenters on the proposed clarifications of the regulations pertaining to food service management companies (FSMCs). These clarifications addressed: the differences between "vended" and "self-preparation" sponsors, especially with respect to the added administrative reimbursement earned by self-preparation sponsors; the definition of an FSMC; the practical application of the regulatory prohibition on contracting out for the management responsibilities of the program; whether colleges and universities with year-round FSMC contracts are required to conduct new procurements for their SFSP meal service; whether colleges and universities acting as FSMCs are exempt from registration requirements; and the form of the bid and performance bonds required to be submitted by FSMCs.

1. *Self-Preparation Sponsors and Payment of the Higher Administrative Reimbursement.* The Department received five comments on its proposal to clarify when sponsors should be considered "self-preparation sponsors" and be entitled to receive a higher rate of administrative reimbursement. This clarification involved the proposed

amendment of the definitions of "self-preparation sponsor" and "food service management company" and the addition of a new definition ("vended sponsor") at § 225.2.

Although none of the commenters disagreed with the Department's premise—that there should be a clearer differentiation between vended and self-preparation sponsors in the regulations—four of the commenters believed that the distinction which the Department attempted to make in the proposed regulations was still confusing. A sponsor from a large metropolitan area, for example, stated that it still did not know whether it would be considered self-preparation or vended and asked whether the distinction between these two types of sponsors is simply whether the sponsor purchases meal components or an entire meal from an FSMC. Another commenter suggested that, in order to further clarify the distinction between vended and self-preparation sponsors, the Department replace the phrase "some or all of its unitized meals, with or without milk" in the definition of vended sponsor with the phrase "entire unitized meals, with or without milk, for some or all of the children served." Finally, another commenter pointed out that § 225.9(d)(7)(iii) allows for payment of the higher administrative reimbursement at self-preparation or rural sites, and believed that the proposed change would prevent a sponsor from collecting the additional reimbursement if it served even a single meal purchased from an FSMC at a single site.

The Department's intent was to differentiate between sponsors which purchase from a FSMC entire unitized meals, with or without milk, and sponsors which purchase a portion of a meal (for example, a pre-made sandwich) from a food vendor who happens to be registered as a FSMC. The Department also intended to clarify that a sponsor could not be considered "self-preparation" if it purchased food management services from a FSMC, regardless of whether or not it purchased unitized meals from that management company.

The Department did not, however, intend to impose an undue burden on sponsors with some self-preparation and some vended sites, nor did it intend to discourage sponsors with mostly self-preparation sites from administering one or more vended sites. The Department believes that, consistent with the language at § 225.9(d)(7)(iii), State agencies already possess the authority to approve sponsors' claims for the higher administrative reimbursement at

self-preparation sites, in the rare event that the sponsor administers both self-preparation and vended sites. The Department would, however, caution State agencies to use extra care in ensuring that sponsors whose claims include both types of sites are not improperly claiming the self-preparation rate for sites receiving vended meals.

Furthermore, the Department agrees with the comment that the "some or all" language in the definition of vended sponsor could still leave open to question the very issue that the proposed regulation was intended to settle—that sponsors which purchase a portion of their meal from a vendor registered as a FSMC may still be considered self-preparation sponsors. The definition of "vended sponsor" has therefore been amended in this final regulation to read as follows:

"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.

Accordingly, the definitions of "food service management company" and "self-preparation sponsor" which were presented in the proposed rule are contained in this final rule at § 225.2. In addition, the revised definition of "vended sponsor" set forth above is included in this final rule at § 225.2.

2. *Prohibition on Contracting Out Management Responsibilities.* The Department received four comments on its proposal to clarify that sponsors which contract with FSMCs must retain full responsibility for the performance of all of their duties as sponsors except for the management of their food service operations. Previously, the definition of "food service management company" seemed to contradict the regulations' prohibition on a sponsor contracting with an FSMC "for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications". All of the commenters agreed with the ways in which the Department proposed to clarify this issue in the proposed regulation: to change the words "food service program" to "food service operations" in the definition of FSMC at § 225.2; and to list more fully the management responsibilities which FSMCs may not perform at § 225.15.

Accordingly, this final regulation includes the revised definition of "food service management company" as set forth in the proposed regulation at § 225.2 and the list of management

functions which sponsors may not delegate to FSMCs at § 225.15.

3. *Food Service Management Company Procurements.* The Department received 7 comments on its proposals to clarify two aspects of the regulations pertaining to colleges and universities participating in the SFSP: (1) Whether these colleges and universities, when they are sponsors with year-round FSMC contracts, are required to conduct a separate procurement for their SFSP meal service; and (2) whether these colleges and universities, when they act as FSMCs for SFSP sponsors, are required to go through the registration process prescribed for most other FSMCs at § 225.6(g)(9).

In the proposed regulations, the Department clarified that when colleges and universities act as FSMCs, they are not required to comply with the registration requirements set forth at § 225.6(g)(9). The Department received two comments on this clarification, both of which were favorable. The proposed clarification of the bidding requirements for colleges and universities acting as sponsors also received generally favorable comment, with four commenters in support and one in opposition to the proposed changes. The commenter who disagreed objected to the wording of § 225.15(g)(5), which states that, "Sponsors which are schools or school food authorities which have an exclusive contract with food service management companies for year-round service * * * shall not be required to comply with these [bid] procedures." This commenter believed that the exclusion from following the specific bid procedures mandated in § 225.15(g)(5) should apply to all sponsors with year-round FSMC contracts.

The Department does not believe, however, that such a broad exclusion from these bidding requirements would be warranted. Local schools and colleges and universities can logically be expected to have contracted for year-round FSMCs since the bulk of their food operations occur at times of the year when the SFSP is not in operation. The same cannot be said of other types of sponsors—entities of government and residential camps—which primarily operate large-scale feeding programs during the summer months.

It has come to the Department's attention that there was a minor omission in the discussion of the procurement requirements pertaining to college and university sponsors in the preamble to the proposed rule. As set forth in the preamble, the Department intended to exclude *all* college and universities acting as SFSP sponsors

from conducting a separate procurement for their SFSP feeding operations. However, as set forth in the revised definition of "school food authority," the exclusion would only apply to public colleges and universities acting as governmental sponsors and public and private nonprofit colleges and universities participating in the NYSP and the SFSP. This leaves uncertain the status of certain colleges and universities which sponsor the SFSP as residential camps via the Upward Bound Program. The preamble language implies that college sponsors of Upward Bound would not have to conduct a separate SFSP procurement, whereas the language of the revised definition of "school food authority" would seem to require that such sponsors conduct a separate SFSP procurement.

It was not the Department's intent to place colleges and universities participating in the Upward Bound Program into a different category and require them to conduct separate procurements for their SFSP food operations. Upward Bound "camp" programs are generally held on-campus, with students residing in the college's dormitories and eating in the school cafeteria. Therefore, it would make no more sense for these colleges and universities to conduct a separate procurement for the SFSP than it would for other types of college and university participants in the SFSP. With this in mind, the Department has amended the proposed definition of "School Food Authority" at § 225.2 to clarify that all colleges and universities in the SFSP—regardless of whether they participate as government sponsors, camp sponsors, or NYSP sponsors—are permitted to use their exclusive year-round FSMC contracts for their SFSP feeding operations.

Accordingly, with the minor change mentioned above, the Department has included in this final regulation the amended definition of "School Food Authority" which was set forth in § 225.2 of the proposed regulation. This revised definition will have the effect of allowing colleges and universities to be exempt from conducting a separate FSMC procurement for the SFSP if they already have a competitively procured year-round contract with an FSMC. This change will also exempt colleges or universities acting as food service management companies from the registration requirements at § 225.6(g)(9).

4. *Performance and Bid Bonds.* The Department received one favorable comment on its proposal to clarify that "alternative" forms of the bid and

performance bonds required by § 225.15(g)(8) (e.g., certified checks, cash, escrow accounts, or letters of credit) are not acceptable under the SFSP regulations. Accordingly, this final regulation includes the clarifying language in § 225.15(g)(8) as it appeared in the proposed regulation.

B. Weekend Meals

The Department received 13 comments on its proposal to clarify that reimbursement is not allowed for Program meals served on weekend days except in residential camps. Three commenters favored the proposal while 10 either opposed it outright or urged that it be modified.

The responses were wide in variety and ranged from questions of Congressional intent to suggestions that other types of sponsors be permitted to receive reimbursement for weekend meals.

The numerous proposals received on this issue have demonstrated the need for further study on this issue. Consequently, the Department will not, at this time, make final the amendatory language set forth in the proposed rule, and State agencies should follow their current practices in regard to weekend meals.

C. Overclaims for Inadequate Recordkeeping

Seven commenters responded to the Department's clarification that a sponsor's failure to keep records documenting the basis of its claim for reimbursement constitutes adequate cause for the assessment of an overclaim against the sponsor. Six commenters agreed with the proposal and one disagreed, although one of the commenters in agreement raised concerns over potential implementation difficulties. These concerns involved the possibility that the proposed regulation language had "the potential to be misapplied or abused by overzealous or misguided State agency personnel." This commenter felt that it would be easy for a sponsor to misfile or misplace one site's records when the sponsor was administering dozens of sites, or that records which already had been checked as part of a State review could be misplaced or inadvertently destroyed during the required three-year recordkeeping period. Due to these concerns, the commenter recommended that overclaims should only be permitted when there is a "pattern" of fraud or inadequate recordkeeping. Finally, this commenter also suggested that the revised wording of § 225.12(a) be as specific as that of §§ 225.15(c)(1) and 225.9(d)(4) and state that the

records which the sponsor must keep are those "which justify all costs and meals claimed."

The Department agrees that the revised language of § 225.12(a) should fully conform to the language of the other Sections cited and will make the suggested modification to the wording of § 225.12(a). However, the Department does not share the commenter's apparent concern that State agencies will misapply this rule. Changing the proposed regulatory language to require that a "pattern" of fraud or abuse exist before initiation of an overclaim would not clarify what constitutes a "pattern" and would not eliminate the possibility of misapplication of the rule. However, in the rare event that unwarranted overclaims are lodged against the sponsor, the Department believes that the sponsor is adequately protected by its appeal rights under § 225.13(a).

The commenter who disagreed with the proposal in principle believed that, when a sponsor lacked records to document a claim, this lack of records was more likely to be the result of a State agency's failure to properly train the sponsor than *prima facie* evidence of fraud, waste, or abuse on the sponsor's part. This commenter further believed that "alternative documentation, including affidavits from parents or some other record", should constitute acceptable proof that the sponsor actually provided the number of meals claimed.

The Department agrees that inadequate recordkeeping may be unintentional and does not necessarily indicate that the sponsor intended to defraud the government or waste federal resources. Nevertheless, it is not logical to assume that every sponsor who fails to keep records is the victim of poor State agency training, unless there is a pattern of sponsor recordkeeping problems within that State. Furthermore, the Department does not believe that "alternative documentation" is a practical substitute for adequate Program recordkeeping, since collecting and determining the accuracy of such "alternative documentation" would be extremely time-consuming and costly to State agencies.

Accordingly, with the exception of the minor change to § 225.12(a) discussed above, this final regulation includes the proposed regulation's language in §§ 225.15(c)(1), 225.9(d)(4) and 225.12(a) which clarifies that, if a sponsor fails to keep records which adequately document the basis of all costs and meals claimed, the State agency may lodge an overclaim against the sponsor.

D. Letter of Credit (LOC) for Program Payments

The Department received two comments on its proposal to provide FNS with additional time for providing the 65 percent level of LOC funding when a State agency submits its required management and administration plan (MAP) after the February 15 deadline. Both of these comments were favorable. Accordingly, the Department is amending § 225.5(d)(2) as set forth in the proposed regulation.

One statement made in this section of the preamble to the proposed regulation requires additional clarification. In the proposed regulation, a typographical error resulted in a statement which could be misconstrued. The sentence which stated that, "FNS should have 90 days to review, ask for modifications of, and approve the MAP between the time the MAP is submitted and the time by which the State agency must have 65 percent of its estimated Program payment needs in the LOC" incorrectly implied that there is a 90-day period for FNS to review and approve a MAP. Section 225.4(b) clearly requires FNS to review a MAP within 30 days of submission. The statement should have referred to the 90-day period between the deadline for a State agency's submission of the MAP and the deadline by which FNS must, based on the MAP, adjust the LOC to ensure that the State agency has received 65 percent of its estimated administrative and operating funding for the current year.

E. MAP Requirements

Four commenters responded to the Department's proposal to require State agencies to include in their MAPs their plans for carrying out the special monitoring responsibilities in § 225.15 pertaining to food service management company (FSMC) procurements over \$100,000 in value. One commenter agreed with this proposal while three disagreed. Of those disagreeing, one commenter seemed to believe that the performance of these monitoring responsibilities was a new requirement (in fact, these requirements previously appeared at former § 225.16(d)(7) and (g)), while another commenter believed that the requirement to discuss monitoring actions in the MAP would be meaningless since State agencies would not know which sponsors would have large FSMC procurements at the time of their MAP submissions.

The Department understands that, at the time of the State agency's MAP submission, it cannot know which sponsors and how many sponsors will have FSMC contracts exceeding

\$100,000 in value. The requirement to address these monitoring responsibilities in the MAP will necessarily be based on the prior year's Program and will not reflect the actual number and location of procurements requiring special monitoring in the current year. Nevertheless, the Department is aware of instances where some State agencies have failed to perform these functions, resulting in bid protests and irregularities. Therefore, the Department continues to believe that the Program will benefit from the requirement to have State agencies budget staff time and resources for these monitoring functions in their annual MAPs.

Accordingly, this final regulation amends § 225.4(d) by adding a requirement that the State agency's MAP include its plans for performing the special FSMC procurement monitoring functions specified at §§ 225.15(g)(5)(xiii) and 225.6(h)(4), respectively. However, due to this final regulation's publication date, regulatory language has been added to specify that this information will not be a required element of a State agency's MAP until 1990.

F. Health Inspection Funds

The Department received six comments on its proposal to require State agencies to document in their MAPs the need for funding to carry out health inspections and related functions prior to FNS's placement of these funds in the State's letter of credit (LOC). Four commenters disagreed with this proposal and two commenters agreed.

One commenter who disagreed with the proposal believed that it represented an attempt to evade section 13(k)(3) of the National School Lunch Act, which requires the Department to "make available" health inspection and meal quality testing monies to the States. The preamble to the proposed regulation attempted to make clear that this was not the Department's intent. Rather, the Department's proposal was designed to rationalize an inefficient administrative procedure whereby health inspection monies are put into a State's LOC, then later withdrawn, even when the State did not anticipate a need for health inspection funding during the current fiscal year. Thus, the Department proposed to "make available" the funding by placing it in the LOC only when the State's MAP documented a later need for the funding. Although it was not explicitly stated in the preamble to the proposed regulation, the Department would of course also make such funds available to State agencies which discovered, after the submission

of their MAPs, that they would, in fact, require such funding.

The other three commenters who disagreed with the proposal believed that the Department needed to clarify whether it now intended to require State agencies to seek free health inspection services or to prove the need for paid health inspections. The Department assumes that State agencies would seek free services from State and local health departments whenever possible, but did not intend to "require" States to do so or to "prove" that they had done so. The Department agrees with the commenter who suggested that the Department clarify its intent in this regard by changing the regulatory language which was proposed. Rather than requiring States to "document" the need for these monies, this commenter believed that the States should be required to "estimate" their need for the monies in the MAP. Since the MAP is a planning document in which one can only make estimates of funding needs, the Department concurs and has changed the wording of §§ 225.4(d)(14) and 225.5(f) to conform with this suggestion.

Accordingly, this final rule incorporates in §§ 225.4(d)(14) and 225.5(f) the requirement that States include in their MAPs an estimate of the amount of funding they will need in the current year to perform health inspections and meal quality tests. As noted above, the wording of this requirement in these two Sections has been modified slightly in order to convey more accurately the Department's intent in initiating this requirement. In addition, due to this final regulation's publication date, regulatory language has been added to specify that this information will not be a required element of a State agency's MAP until 1990.

G. Administrative Funding Reviews

The proposed rulemaking included several clarifications of the requirements pertaining to the conduct of administrative funding reviews. The Department received three comments on these changes, all of which were favorable. Accordingly, the clarifications of the procedures governing these reviews which were included in the proposed rule are adopted without change at § 225.5 of this final regulation.

H. Definition of "Special Account"

The Department received one favorable comment on its proposal to change the definition of a "special account" at § 225.2 of the regulations. Accordingly, this final regulation

includes the definition of a "special account" at § 225.2 as set forth in the proposed rulemaking.

I. Deletion of Statistical Monitoring for Site Reviews

The Department received four comments on its proposed deletion of former § 225.9(e)(8) of the regulations which permitted State agencies to use "statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section * * *." Two of the commenters agreed with this proposed change to the regulations while two commenters disagreed.

Although the Department had assumed that statistical monitoring procedures were not being used by the States, one State agency commenter stated that it had used such procedures successfully for ten years and that overclaims based on these techniques had not been challenged or overturned. The second commenter who disagreed with the Department stated that it would use statistical monitoring techniques if the Department would issue updated guidance on them.

The Department is still not convinced that it is appropriate to commit the resources necessary to reissue this guidance simply because one State agency is using these techniques and another is considering the possibility of doing so. Neither, however, does it seem appropriate to eliminate statistical monitoring as a possible alternative without further consideration if it is being used successfully. Therefore, the Department has in this final regulation re-inserted language which offers State agencies the option of utilizing statistical monitoring techniques. The Department will continue to study statistical monitoring's feasibility as a means of fulfilling a State agency's monitoring responsibilities and will address the subject again, if necessary, in a future reissuance of the regulations.

Accordingly, this final regulation restores at § 225.7(d)(8) language which permits State agencies to use statistical monitoring techniques in lieu of the site monitoring requirements set forth at § 225.7(d)(2). The reinsertion of this paragraph means that the paragraph redesignated as § 225.7(d)(8) ("Corrective Actions") in the proposed regulation now becomes § 225.7(d)(9) in this final regulation.

J. Media Release for Camps and other Enrolled Sites

The Department received five comments, all of which were favorable, on its proposal to require the media

release issued by camps and other enrolled sites to list only the family size and income standards for reduced price meals. Accordingly, this final regulation amends § 225.15(e) by requiring that the media release issued by camps and other enrolled sites list only the Secretary's guidelines for reduced price eligibility and that these guidelines be labelled "Summer Food Service Program Eligibility Standards."

In addition, the proposed rule would also change the definition of "documentation" at § 225.2 to conform to the change in the media release by removing the phrase "free and reduced price application" and substituting in its place the words "free meal application." Several commenters found other parts of the regulatory language containing wording which required revision in light of the changes being made to the media release and the definition of documentation. These include § 225.6(c)(3)(ii)(A) and the definition of "income standards" at § 225.2.

Accordingly, the wording of the definitions of "documentation" and "income standards" at § 225.2 and the regulatory language at § 225.6(c)(3)(ii)(A) are modified in this final regulation to eliminate references to free meal income standards and to conform to the usage in the media release as set forth in the proposed rule.

K. Record Retention by Food Service Management Companies

The Department received three comments on its proposal to require food service management companies to retain their Program records for the same amount of time as State agencies and sponsors. All of these commenters favored the proposed change.

Accordingly, this final rulemaking amends § 225.6(h)(2)(vii) to clarify that food service management companies are also required to retain their Program records for more than three years when there are unresolved audit or investigative findings pertaining to the company or to a sponsor with which the company contracted.

IV. Other Comments on Part 225

Because the proposed rulemaking represented the first comprehensive reissuance of Part 225 since 1982, a number of commenters took the opportunity to offer input to the Department on topics other than those which were addressed in the preamble to the proposed rule. These additional comments are addressed below under four separate headings: (1) Comments on Provisions Mandated by Law; (2) Comments on Recently-Revised Provisions; (3) Stylistic and Technical

Corrections; and (4) Miscellaneous Comments.

A. Comments on Provisions Mandated by Law

Commenters submitted suggested changes to the regulations governing the definition of area eligibility at § 225.2; the mandatory submission by State agencies of a management and administrative plan at § 225.4; the adequacy of the State administrative funding formula at § 225.5(a); the use of Program funds to support nonprofit nutrition programs for the elderly; and the time restrictions on meal service set forth at § 225.16(c)(2). The first four of these are directly mandated by sections 13(a)(1)(C), 13(n), 13(k)(1), and 12(i) of the National School Lunch Act, respectively; the last of these requirements is derived from the language of section 13(b)(2) of that Act, which limits the types and number of reimbursable meals which different types of sponsors may offer. As legislative requirements, these provisions may not be altered by the Department unless Congress amends the National School Lunch Act, and the Department cannot meaningfully comment on them in this preamble.

B. Comments on Recently-Revised Provisions

Four commenters submitted suggestions for changing regulatory provisions which have been amended in the past several years—the limitation on the number of "second" meals which may be claimed for reimbursement by sponsors and the clarification of the application requirements for households which are not categorically eligible for Program benefits.

As stated in the preamble to the final regulation (51 FR 3321) which promulgated the two percent limitation on "seconds", the intent of the National School Lunch Act is to provide one meal to each participating child and that, even given some of the unique characteristics of SFSP feeding sites, the Department bears the responsibility for ensuring that second meals are curtailed to the maximum extent practicable. In the three years since this rule's publication, the Department has received several comments to the effect that the two percent tolerance is too low and that it needs to be adjusted upward to anywhere from five to twenty percent. The Department has no firm evidence that the rule has imposed an unwarranted burden on sponsors or that it has necessitated the denial of meals to children. Therefore, the Department is satisfied that the two percent tolerance

strikes a balance between the important goals of providing meals to eligible children and ensuring that the Federal funding which supports the SFSP is utilized effectively and efficiently.

In regard to the application requirements for non-categorically eligible households, the commenter apparently believed that the Department's final rulemaking in 1988 (53 FR 4827) represented a departure from past application practices. Specifically, this commenter believed that the Department's requirement that applicant households list the income of each household member by source of income was burdensome and unnecessary. In fact, the regulatory language added at that time was merely intended to clarify the elements of a complete application in the Part 225 regulations and to bring the SFSP application requirements into full conformance with the application requirements set forth for all Child Nutrition Programs at section 9 of the National School Lunch Act. Commenters who provided the input on which the 1988 final regulation was based were generally aware that these requirements had existed prior to the issuance of the final rule and favored making these requirements explicit in the regulations.

C. Stylistic Comments and Technical Corrections

In the course of reorganizing and making stylistic and other revisions in the proposed rulemaking, the Department in several cases inadvertently changed the meaning of the regulatory text. The Department wishes to thank those commenters who brought these cases to its attention and urges users of the regulation during the coming Program year to notify the Department immediately if other apparent errors are discovered. Each of these errors, and the corrective action taken in this final rulemaking, is discussed below.

In addition, in several cases, commenters brought to the Department's attention passages in the old regulations which were transferred verbatim into the new regulation but which should have been revised in the proposed regulation. The Department believes that, because these are minor and non-controversial changes, they may be made in the final rulemaking without having been set forth in the text to the proposed regulation. These changes are also discussed in detail below.

1. *Section 225.7(d)(2)(i)*. In revising the wording of this paragraph, which was formerly § 225.9(e)(2)(i), the Department inadvertently deleted wording which indicated that State agencies are

required to conduct both a sponsor review and a review of an average of 15 percent of the sites for the types of sponsors specified at § 225.7(d)(2)(i) (A) and (B).

Accordingly, the words "conduct both a review of sponsor operations and" are reinserted at § 225.7(d)(2)(i) of this final rulemaking.

2. *Section 225.16(f)(2)*. Redesignated § 225.16(f)(2) is based on two paragraphs from the old regulations §§ 225.20 (d) and (e), both of which detailed requirements pertaining to meal service to children under six years of age. Section 225.20(e), however, dealt only with meal service to children under one year of age, and required that sponsors wishing to serve such children receive approval from the State agency to do so. This requirement was inadvertently omitted from the regulatory text when the two paragraphs were combined.

Accordingly, the requirement for State agencies to approve meal service to children under one year of age is restored in this final rulemaking by making it the second sentence of § 225.16(f)(2) and modifying the last sentence of the paragraph to read, "In both cases, the sponsor shall follow * * *".

3. *Section 225.16(c)(7)*. Section 225.16(c)(7) in the proposed rulemaking was identical to § 225.20(a)(6), which stated that, "The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency." Several commenters correctly noted that sponsors may serve any meals they wish, but may claim for reimbursement only those meals for which it is approved by the State agency.

Accordingly, § 225.16(c)(7) is amended in this final rulemaking to clarify that sponsors may only claim for reimbursement those meals for which it is approved in its agreement with the State agency.

4. *Section 225.6(c)(3)(ii)*. This section of the regulations was taken verbatim from former § 225.21(b), except that the specific hearing procedures mandated by the regulations (formerly § 225.21(b)(4) (i)-(xii)) were moved to a separate, new paragraph which was redesignated § 225.6(c)(4). The new § 225.6(c)(3)(ii) set forth six elements required in policy statements submitted by camps and "enrollment programs". However, these six elements are irrelevant to enrollment programs because, after determining the eligibility of the enrolled site, all children at that site receive a free meal. Thus, it is pointless for enrolled sites to discuss in their policy statements their methods of collecting payments or of preventing

overt identification of children receiving free meals.

Accordingly, this final regulation amends the wording of the introductory paragraph of § 225.6(c)(3)(ii) to clarify that the six required elements of a policy statement specified at § 225.6(c)(3)(ii) (A)-(F) apply to camps only and not to enrollment programs.

5. *Section 225.6(c)(4)*. In revising this paragraph, which is based on former § 225.21(b)(4), the Department inadvertently extended to all sponsors a requirement that, in former § 225.21(b)(4), applied only to residential camps and enrollment programs. As discussed in number 4 above, however, this requirement, too, should not have pertained to enrollment programs. It makes little sense to require such programs to submit copies of their hearing procedures, since household applications are taken at enrolled sites only to establish the site's eligibility to serve meals free of charge.

Accordingly, this final rulemaking amends the introductory paragraph to § 225.6(c)(4) to clarify that only residential camps are required to submit copies of their hearing procedures with their Program applications.

6. *Section 225.9(c)*. The introductory paragraph in § 225.9(c) in the proposed rulemaking was identical to the introductory paragraph in former Section 225.11(b). This portion of the regulations sets forth the general procedures for granting advance payments to sponsors. However, unlike the sections which describe start-up payments (§ 225.9(a)) and reimbursements for operating and administrative costs (§ 225.9(d)), the section dealing with advance payments inadvertently fails to state, as do the sections dealing with start-up payments and reimbursements, that sponsors may not receive advance payments unless they have executed an agreement with the State agency.

Accordingly, § 225.9(c) is amended in this final rulemaking to include a sentence specifying that sponsors may not receive advance payments unless they have executed an agreement with the State agency to administer the Program.

D. Miscellaneous Comments

Commenters also provided their input on numerous other areas of the Program regulations which were not modified in the proposed rulemaking but which were set forth as part of the overall reissuance of the Part 225 regulations. The number of regulatory provisions commented upon in this fashion was too numerous for the Department to respond

to each in great detail. Nevertheless, the following provides (in a "Suggestion/Response" format) a brief response to each of the commenters' suggestions.

1. Audit Requirement in MAP (Section 225.4(d)(11)).—*Suggestion:* Remove from this section the words "by auditing", since there is no longer an audit requirement for sponsors with reimbursements under \$25,000.

Response: The Department agrees. The language in the regulation is out of date. Accordingly, this final regulation amends § 225.4(d)(11) to require that State agencies include in their MAPs their plans for ensuring sponsors' fiscal integrity. The means of accomplishing this (audit, financial review, etc.) will be left to the State agency's discretion.

2. Availability of Funds to State Agencies (Section 225.5(b)(1)).—*Suggestion:* The regulations state that Program funds will be made available to State agencies at the beginning of the fiscal year, but they are often not made available until six or more weeks into the fiscal year. Funds should be made available at the beginning of the fiscal year.

Response: These funds are made available to State agencies as early as is legally possible. In past years, Program monies have often not been appropriated until several weeks or months into the fiscal year. State Administrative Expense (SAE) carryover should provide ample funds for States to operate the Program at the beginning of the fiscal year until the Department receives its appropriation.

3. Site Information Requirements (Section 225.6(c)(2)(iii)).—*Comment:* The commenter did not approve of the "change" to this Section. According to the commenter, previous regulations only required camp sponsors to document the number of eligible campers on the first day of each session; the new regulations require earlier submission which, according to the commenter, will result in the submission of inaccurate information.

Response: There is no inconsistency between the new wording—which requires the camp to provide the information "as soon as possible" after submission of its application for sponsorship, but "in no case later than the filing of the camp's claim for reimbursement for each session"—and the old wording, which required submission "prior to filing their claims for reimbursement for each session". If the camp is capable of submitting the information earlier than the first day of the session, it is required to do so; if this is not practical, then the information must be submitted to the State agency

no later than the date on which the claim for that session is submitted.

4. Site Caps (Section 225.6(d)(2)).—*Suggestion:* Eliminate site caps or require State agencies to grant any requests from sponsors for an upward adjustment of their site caps.

Response: The Department believes that the requirement for State agency approval of requests for upward adjustments is a prudent administrative procedure which helps to prevent the type of abuse which previously plagued the SFSP. The Department further believes that the site caps serve an important purpose in encouraging the sponsor and the State agency to work together closely to develop reasonable estimates of anticipated site attendance.

5. Off-Site Meal Consumption (Sections 225.6(e)(14), 225.11(c)(4)(vii)).—*Suggestion:* End the prohibition on off-site meal consumption.

Response: The Department strongly believes that the prohibition on off-site meal consumption plays an important role in ensuring that Program benefits are delivered to the children for whom they are intended.

6. FSMC Registration Requirements (Section 225.6(g)(1)).—*Suggestion:* If a State agency registers an FSMC which does not have production facilities in that State, that FSMC should not be permitted to bid on contracts within that State unless the sponsor has meal preparation facilities which the FSMC could utilize.

Response: The Department assumes that, under current procurement procedures, a company without production facilities would not be awarded a contract if it could not fulfill the meal production requirements of that contract. No regulatory change is needed.

7. Procedures for Estimating Advances (Section 225.9(c)(3)).—*Comment:* The commenter stated that he was in agreement with the "change" made by the Department in the procedures for estimating advances.

Response: No change was made. § 225.9(c)(3) is a verbatim restatement of former § 225.11(b)(3).

8. Income Accruing to the Program (Section 225.9(d)).—*Suggestion:* The Department received several suggestions on this topic:

(1) That the regulations should include more specific instructions on how sponsors are to deduct income accruing to the Program from combined operating and administrative expenses; and (2) that income from federally-supported programs other than the National Youth Sports Program should be exempted from this requirement.

Response: (1) The Department's intention in the regulations is to provide sponsors with flexibility in making such deductions by not specifying precisely how the deduction would be apportioned among operating and administrative costs; and (2) Income from other federally-supported programs must be deducted only if it is used in support of the food program. If the Department were to categorically exempt other federal funds from being deducted from combined operating and administrative costs, the federal government would be paying twice for the same meal.

9. Sponsor Administrative Funds (Section 225.9(d)(7)).—*Suggestion:* Increase the amount of reimbursement to sponsors for administrative expenses.

Response: The Department currently has no evidence to suggest that an increase in administrative reimbursement to sponsors is warranted.

10. Site Records (Section 225.11(c)(4)(ii)).—*Suggestion:* Amend this section to allow playground sites to keep their records at the sponsor's office, rather than at the playground site.

Response: The currently regulatory language states only that "adequate records" must be kept at the site. The Department agrees with this commenter that, while it is appropriate to expect that some records (e.g., the current day's meal count and attendance records) will be at the site, other types of records might be kept in the sponsor's office, depending on such factors as the availability of secure storage space at the site. We do not believe, however, that these distinctions need to be made explicit in the regulations. It is not realistic to be concerned that State agencies will attempt to terminate sponsors because all of a site's records are not maintained at that site; this section is intended only to require that records are made available to site reviewers in a reasonable manner.

11. Household Application Procedures (Section 225.12(f)(1)).—*Suggestion:* Allow enrollment programs to use household applications from the National School Lunch or School Breakfast Programs as opposed to requiring households to fill out a separate SFSP application.

Response: The Program regulations are derived from the language of section 13(a)(1)(C) of the National School Lunch Act, which allows an enrollment program to document its eligibility from "statements of eligibility based upon income for children enrolled in the program". This language presumes that the determination of eligibility will be based on a household's current

economic circumstances, not on applications completed nine to twelve months earlier for one of the School Programs

12. *FSMC Procurement Requirements (Section 225.15(g)(5))*—*Comment:* The commenter approved of the "change" which requires that competitive procurement procedures be followed in contracting with food service management companies.

Response: No change has been made to this section. Section 225.15(g)(5) is a clearer rewording of the former § 225.16(d), but did not change the substantive intent of the latter section. The old § 225.16(d) also stated that the "exceptions" described in that paragraph "do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company."

13. *Age-Adjusted Meal Pattern (Section 225.16(d))*—*Suggestion:* Adjust the SFSP meal pattern to allow the service of different quantities of food to older and younger children.

Response: Given the less structured nature of food service at open playground sites compared, for instance, to food service in schools or child care settings, the Department has deemed it impractical for sponsors to try to serve substantially different meals to children of different ages and has established a single meal pattern for the SFSP. This meal pattern matches the age-adjusted meal pattern for children ages 6–12 in the Child Care Food Program and establishes minimum requirements for meal service to children participating in the Program. Consistent with § 225.16(f)(2), State agencies may authorize sponsors to serve smaller portions to children under the age of 6 if they are convinced that the sponsor can ensure that the variations in portion sizes are appropriate to the age levels of the children being served. Similarly, if sponsors are capable of serving larger meals to older children, the Department would encourage them to do so, provided that every child receives a meal which meets or exceeds the meal pattern requirements. Thus, in this sense, it is already possible for sponsors to have an "age-adjusted meal pattern" for all children.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, and Children.

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Accordingly, 7 CFR Part 225 is revised to read as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.

- 225.1 General purpose and scope.
- 225.2 Definitions.
- 225.3 Administration.

Subpart B—State Agency Provisions

- Sec.
 225.4 Program management and administration plan.
 225.5 Payments to State agencies and use of Program funds.
 225.6 State agency responsibilities.
 225.7 Program monitoring and assistance.
 225.8 Records and reports.
 225.9 Program assistance to sponsors.
 225.10 Audits and management evaluations.
 225.11 Corrective action procedures.
 225.12 Claims against sponsors.
 225.13 Appeal procedures.

Subpart C—Sponsor and Site Provisions

- Sec.
 225.14 Requirements for sponsor participation.
 225.15 Management responsibilities of sponsors.
 225.16 Meal service requirements.

Subpart D—General Administrative Provisions

- Sec.
 225.17 Procurement standards.
 225.18 Miscellaneous administrative provisions.
 225.19 Regional office addresses.
 225.20 Information collection/recordkeeping—OMB assigned control numbers.
 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, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

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.

"AFDC assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under the National School Lunch Program (7 CFR Part 245).

"Areas in which poor economic conditions exist" means (a) the local areas from which a site draws its 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, 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) An enrollment program in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals as determined by approval of applications in accordance with Section 225.15(f) of this Part.

"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 nonprofit private school program established for the mentally or physically handicapped.

"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.

"Department" means the U.S. Department of Agriculture.

"Documentation" means (a) the completion of the following information on a free meal application: (1) Names of all household members; (2) social security number of each adult household member or an indication that an adult household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (4) the signature of an adult member of the household; or,

(b) For a child who is a member of a food stamp household or an AFDC assistance unit, "documentation" means completion of only the following information on a free meal application: (1) The name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and (2) the signature of an adult member of the household.

"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.

"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 Section 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.

"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.

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

"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.

"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.

"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 vended 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, or a public or private nonprofit college or university currently participating in the National Youth Sports Program, which develops a special summer or other school vacation

program providing food service which meets the same meal requirements as meals served 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.

"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.

§ 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 shall notify the Department by November 1 of the fiscal year as to whether or not it intends 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 nondiscrimination 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.

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 shall include, at a minimum, the following information:

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

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing sponsors of the availability of the Program;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of meals to be served, the number of children who will participate, and a description of the estimating methods used by the State;

(4) The State's schedule for application by sponsors;

(5) The actions to be taken to maximize the use of meals prepared by sponsors and to maximize the use of school food service facilities;

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

(7) 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;

(8) The State's plan and schedule for registering food service management companies;

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

(10) The State's plan for determining the amounts of Program payments to sponsors and for disbursing such payments;

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

(12) The State's procedure for granting a hearing and prompt determination to any sponsors wishing to appeal a State ruling, as specified in § 225.13;

(13) Beginning January 1, 1990, the State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(h); and

(14) Beginning January 1, 1990, 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.

§ 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 information 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 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 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 quality 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 compile a list of potential sponsors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and shall 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. The State agency shall encourage potential sponsors to use, to the maximum extent feasible, their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(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.

(b) *Approval of sponsor applications.*

(1) Each State agency shall 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 shall 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 date for the Program application submission.

(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 applicant 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 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: (i) It is a residential camp; (ii) it proposes to provide a food service for the children of migrant workers; (iii) a failure to do so would deny the Program to an area in which poor economic conditions exist; or (iv) a significant number of needy children will not otherwise have reasonable access to the Program.

(5) The State agency shall use the following order of priority in approving applicants to operate sites which propose to serve the same area or the same enrolled children:

(i) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(ii) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(iii) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(iv) Other applicants which have demonstrated ability for successful Program operations; and

(v) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs.

(6) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless the applicant can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(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 review 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) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. 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) At a minimum, the application shall include:

(i) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall 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) The geographic area to be served by the site;

(G) The percentage of children in the area to be served by the site who meet the Program's income standards; and

(H) 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.

(ii) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(A) For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization which supports the eligibility of those children as a group.

(B) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites, applicants shall only be required to obtain new documentation every other year.

(iii) Along with its site information sheet for a site which is a camp, documentation showing the number of children enrolled in each session who meet the Program's income standards. If such documentation 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.

(iv) 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 Section 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.

(v) 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.

(vi) A plan for and a synopsis of its invitation to bid for food service, if an invitation to bid is required under § 225.15(g).

(vii) A free meal policy statement, as described in paragraph (c)(3) of this section.

(viii) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(4).

(3) Each applicant shall submit a statement of its policy for serving free meals at all sites under its jurisdiction.

(i) The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(ii) In addition, the policy statement for camps that charge separately for meals shall 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 applications from families for Program meals. Such methods shall ensure that households are permitted to apply on behalf of children who are members of food stamp households or AFDC assistance units 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)(4) 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.

(4) 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;

(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 as 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; and

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

(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 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.* Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at other times for children under a continuous school calendar system;

(2) 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;

(3) 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;

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

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

(6) 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;

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

(8) 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;

(9) 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;

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

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

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

(13) 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;

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

(15) 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 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.* (1) With the exception of the exemption described in paragraph (g)(9) of this section, each food service management company shall register with the State by March 15 of each fiscal year. A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year only if the State agency determines and documents that failing to consider the company's application could potentially result in a significant number of needy children not having reasonable access to the Program.

(2) By February 1, each State agency shall notify each food service management company which participated in the State's Program during the previous two years that it must register with the State agency. This notification shall include, at a minimum:

- (i) A statement that registration with the State agency is a prerequisite to participation in the Program;
- (ii) A list of the items which must be submitted with the application for registration as set forth in paragraph (g)(4) of this section;
- (iii) A complete description of the criteria developed by the State agency for determining registrant eligibility; and
- (iv) Any other information necessary to apply for registration.

In addition, each State agency shall by February 1 issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(3) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted 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.

(4) At a minimum registration shall require:

- (i) Submission of the food service management company's name and mailing address and any other names under which the company has operated during the past two years;
- (ii) A certification that the food service management company meets applicable State and local health, safety, and sanitation standards;
- (iii) Disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program;

(iv) Records of contract terminations, disallowances, and health, safety, and sanitation code violations related to Program participation during the past two years;

(v) Records of any other contract terminations and health, safety, and sanitation code violations during the past two years;

(vi) The address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the name of the local official responsible for the operation of these facilities;

(vii) The number of Program meals which can be prepared in each preparation facility during a twenty-four hour period;

(viii) A certification that the food service management company will operate in accordance with current Program regulations;

(ix) A statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or for meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company;

(x) Submission of a Certified Public Accountant's audit report if an audit was performed during the prior year; and

(xi) A statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business in which:

(A) The management and daily operations of the business are controlled by a member or members of a minority group (minority groups are Blacks, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts); and

(B) At least 51 percent of which is owned by a member or members of a minority group. If the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group.

(5) Prior to approving a food service management company's request for registration, the State agency shall provide for inspection of all food preparation facilities listed on the application for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to

registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of Program meals. The State agency may waive this inspection requirement if a facility was registered during the previous summer and operated in accordance with Program requirements.

(6) No food service management company shall be registered if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements, or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which did not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with the prior Program operation.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination within 30 calendar days of receiving the complete application. If the application for registration is denied, the official making the determination must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.8(d).

(9) The following types of food service management companies are exempt from the requirement for registration: (i) A school or school food authority acting as a food service management company; and (ii) a food service management company which has an exclusive contract with a school or school food authority for year-round service and has

no contracts with other Program sponsors.

(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(g) 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 approved 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 shall have State or local health

certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. The results of the inspections shall 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(g) (6)-(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.

(7) Failure by a sponsor to comply with the provisions of this paragraph or § 225.15(m) 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.

§ 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.

(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 sponsors 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;

(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 proposed nonschool sites with an expected average daily attendance of 300 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR Part 15) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of any previous reviews of the sponsor and sites. Reviews shall be conducted as follows:

(i) State agencies shall conduct both a review of sponsor operations and review an average of 15 percent of the following sponsors' sites during their first four weeks of operation:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year; and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) In addition, the State agency shall conduct the following reviews at least once during the Program:

(A) For all remaining sponsors with 10 or more sites, an average of at least 15 percent of their sites; and

(B) For 70 percent of sponsors with fewer than 10 sites, an average of at least 10 percent of their sites.

(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) 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 the Department's Uniform Financial Assistance Regulations (7 CFR Part 3015) 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.

§ 225.6 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 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) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. This information shall be made available to State agencies upon request in order to ensure that only qualified food service management companies contract for services in all States. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 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 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. To be eligible for the second advance payment, the sponsor must have conducted training sessions covering Program duties and responsibilities for its own personnel 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 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) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 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.

(6) Payments to a sponsor for operating costs shall 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)(8) of this section.

(7) Payments to a sponsor for administrative costs shall 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)(8) of this section. Sponsors shall be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement shall be adjusted in accordance with paragraph (d)(8) of this section.

(8) Each January 1, FNS shall publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (d) (8)(ii) and (7)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented.

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

(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)(4) 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).

§ 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. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request from OIG. 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.

§ 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:

(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.

(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.

§ 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; and

(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; or the revocation of a food service management company's registration. 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;

(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 administrative 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.

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).

(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; and

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

(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;

(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 not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2.

(2) If the sponsor is a camp, it shall certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(3) If the sponsor administers the Program at sites at which summer school is in session, it shall ensure that such sites are open both to children enrolled in summer school and to all children residing in the area served by the site.

(4) Sponsors which are units of local, municipal, county or State government shall be approved to administer the Program only at sites over which they have direct operational control. Such operational control means that the sponsor shall be responsible for: (i) Managing site staff, including such areas as 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.

§ 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, or any other Federally-funded program, for Program meals; *provided, however*, that funds provided under the National Youth Sports Program may be used to supplement reimbursement for Program meals. 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 (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. 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 food stamp households or AFDC assistance units 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) For the purpose of determining eligibility for free Program meals, camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only 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. Such forms and descriptive material may not contain the income standards for free meals in the National School Lunch or School Breakfast Programs. In addition, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free program meal benefits, subject to completion of the application as described in paragraph (f)(3) of this section.

(2) Except as provided in paragraph (f)(3) of this section, the application shall contain a request for 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 all adult household members or an indication that an adult household member does not possess one; (iv) the total current household income and the 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 received or withdrawn from any other source, including savings, investments, trust

accounts, and other resources); (v) a statement to the effect that, "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"; (vi) a statement which includes substantially the following information: "Section 9(d) of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income; contacting a food stamp or welfare office to determine current certification for receipt of food stamp or AFDC benefits; contacting the State employment security office to determine the amount of benefits received; and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and (vii) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(3) If they so desire, households applying on behalf of children who are members of food stamp households or

AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(i) The name(s) and food stamp or AFDC case number(s) of the child(ren) for whom automatic free meal eligibility is claimed; and

(ii) The signature of an adult member of the household below the statement described in paragraph (f)(2)(vii) of this section.

In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section.

(g) *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) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, unless the food service management company is not required to register in accordance with § 225.6(g)(9).

(3) 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).

(4) 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.

(5) 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) A copy of the food service management company registration determination issued by the State agency is submitted by the food service management company with its bid;

(xi) 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;

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

(xiii) 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.

(6) 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.

(7) 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.

(8) 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 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.

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

§ 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 supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day.

A sponsor shall 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) A camp may serve up to four meals each day;

(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) *Sites other than camps and those serving migrant children.* Food service sites other than camps 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. Food service sites other than camps and those which primarily serve migrant children may serve either:

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

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

(3) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. 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 shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and

supper when no supplement 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 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.

Breakfast

(1) Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section. 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 Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	$\frac{1}{2}$ cup. ¹ $\frac{1}{2}$ cup (4 fl. oz.)
Bread and Bread Alternates²	
Bread.....	1 slice.

Food components	Minimum amount
or Cornbread, biscuits, rolls, muffins, etc.	1 serving. ³
or Cold dry cereal.....	$\frac{1}{2}$ cup. ⁴
or Cooked cereal or cereal grains...	$\frac{1}{2}$ cup.
or Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	$\frac{1}{2}$ cup.

Milk⁵	
Milk, fluid.....	1 cup ($\frac{1}{2}$ pint, 8 fl. oz.)

Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish.....	1 oz.
or Cheese.....	1 oz.
or Eggs.....	1 large egg.
or Cooked dry beans or peas.....	$\frac{1}{2}$ cup.
or Peanut butter or an equivalent quantity of any combination of meat/meat alternate..	2 tbsp.

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 (oz.), whichever is less.

⁵ Milk shall be served as a beverage or on cereal, or used in part for each purpose.

Lunch or Supper

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

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish.....	2 oz.
or Cheese.....	2 oz.
or Eggs.....	1 large egg
or Cooked dry beans or peas.....	$\frac{1}{2}$ cup. ¹
or Peanut butter or soynut butter or other nut or seed butters.	4 tbsp.
or Peanuts or soynuts or tree nuts or seed ² .	1 oz. = 50% ³
or An equivalent quantity of any combination of the above meat/meat alternates.	

Vegetables and Fruit	
Vegetable(s) and/or fruit(s).....	$\frac{1}{2}$ cup total

Bread and Bread Alternates⁴	
Bread.....	1 slice
or Cornbread, biscuits, rolls, muffins, etc.	1 serving. ⁵
or Cooked pasta or noodle products.	$\frac{1}{2}$ cup

Food components	Minimum amount
or Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	$\frac{1}{2}$ cup
Milk	
Milk, fluid, served as a beverage.	1 cup ($\frac{1}{2}$ pint, 8 fl. oz.)

¹ For purposes of the requirements outlined in the table, a cup means a standard measuring cup.

² Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

³ 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 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.

⁴ Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

⁵ 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 or enriched or fortified.

⁶ Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food 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.....	1 oz.
or Cheese.....	1 oz.
or Eggs.....	1 large egg.
or Cooked dry beans or peas.....	$\frac{1}{2}$ cup. ¹
or Peanut butter or soynut butter or other nut or seed butters.	2 tbsp.
or Peanuts or soynuts or tree nuts or seeds. ²	1 oz.
or An equivalent quantity of any combination of the above meat/meat alternates.	
Vegetables and Fruits	
Vegetable(s) and/or fruit(s).....	$\frac{1}{2}$ cup.
or Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	$\frac{1}{2}$ cup (6 fl. oz.)

Bread and Bread Alternates³	
Bread.....	1 slice.
or Cornbread, biscuits, rolls, muffins, etc.	1 serving. ⁴
or Cold dry cereal.....	$\frac{1}{2}$ cup or 1 oz. ⁵
or Cooked cereal.....	$\frac{1}{2}$ cup.

Food components	Minimum amount
or Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk ^a	
Milk, fluid.....	1 cup (½ pint, 8 fl. oz.)

¹ For purposes of the requirements outlined in this table, a cup means a standard measuring cup.

² Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

³ 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 or enriched or fortified.

⁴ Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

⁵ Either volume (cup) or weight (oz.), whichever is less.

⁶ 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) Textured vegetable protein products, cheese alternate products, and 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 section, 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 prepared in schools.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

(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 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 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 from 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 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.

Subpart D—General Administrative Provisions

§ 225.17 Procurement standards.

(a) State agencies and sponsors shall comply with the standards prescribed in the Department's Uniform Federal Assistance Regulations at 7 CFR Part 3015, Subpart S, in the procurement of food, supplies, goods, and other services with Program payments.

(b) The State agency shall make available to sponsors information on 7 CFR Part 3015.

(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 all sponsors are aware of the following practices specified in 7 CFR Part 3015, 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.

§ 225.18 Miscellaneous administrative provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), Subpart N.

(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, law 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.

(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, 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.

§ 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 State of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, 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, Corporate Boulevard CN-02150, Trenton, NJ 08650.

(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, 1100 Spring Street, NW., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(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.

(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.

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

§ 225.20 Information collection/recordkeeping—OMB assigned control numbers.

Section where requirements are described		Current OMB control number
1988 regulations	1989 regulations	
225.3(b)	225.3(b)	0584-0057
225.5(b)	225.9(b)(2)	0584-0057
225.6(a)	225.4(a)	0584-0057
225.7(k)	225.6(b)(2)	0584-0057
225.8(a)	225.6(c)(1)	0584-0017

Section where requirements are described		Current OMB control number
1988 regulations	1989 regulations	
225.8(b).....	225.6(e).....	0584-0057
225.9 (a), (d), (f), (g).....	225.6(a)(2), 225.7 (c), (e), (f).....	0584-0057
225.9(e).....	225.7(d).....	0584-0023
225.10(a).....	225.8(a).....	0584-0280
225.10(b).....	225.8(b).....	0584-0057
225.11(c).....	225.9(d).....	0584-0041
225.12(a).....	225.10(a).....	0584-0057
225.14(a).....	225.12(a).....	0584-0057
225.15(a).....	225.13(a).....	0584-0057
225.16 (a), (c), (e), (i).....	225.6(g), 225.6(h) (2), (3), (5).....	0584-0057
225.16(c)(6).....	225.6(g)(3).....	0584-0061
225.17.....	225.17.....	0584-0057
225.18(f).....	225.16(b).....	0584-0280
225.19(f).....	225.15(c)(1).....	0584-0280
225.21(a)(b).....	225.6(c).....	0584-0057
225.21(b)(4).....	225.6(c).....	0584-0280
225.22(b)(2).....	225.18(b)(2).....	0584-0057

Appendix A to Part 225—Alternate Foods for Meals

Vegetable Protein Products

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in § 210.10, § 225.16 or § 226.20 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble, as well as substitute in part for, one of these major protein foods. "Substitute" refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall 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) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternative requirement when combined with meat, poultry or seafood and when it meets the

other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.16 or § 226.20.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in § 210.10, § 225.16, and § 226.20 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood, and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate food authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble, and substitute in part for, meat, poultry or seafood, as specified in paragraph 1, must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a "_____ flour", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a "_____ protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a "_____ protein isolate" or "isolated protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut".

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2), and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (14th edition, 1984).

(d) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall be labeled in conformance with the following:

(1) The common or usual names for a vegetable protein product used to resemble, and substitute in part for, meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term such as "granules" when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable"; and

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (e.g., flour, concentrate, isolate) in the ingredient state of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product (e.g., "granules") when such term is appropriate.

(e) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall meet the following nutritional specifications:

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, such percentage to be determined by performing a Protein Efficiency Ratio (PER) assay unless FNS grants an exception to the PER by approving an alternate test;

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood);

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU).....	13
Thiamine (milligrams).....	0.02
Riboflavin (milligrams).....	.01
Niacin (milligrams).....	.3
Pantothenic acid (milligrams).....	.04
Vitamin B6 (milligrams).....	.02
Vitamin B12 (micrograms).....	.1
Iron (milligrams).....	.15
Magnesium (milligrams).....	1.15
Zinc (milligrams).....	.5
Copper (micrograms).....	24
Potassium (milligrams).....	17

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble, and substitute in part for, meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA-FNS requirements for use in meeting"

portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that, for vegetable protein products to be used to resemble, and substitute in part for, meat, poultry or seafood and labeled as specified in paragraph 2(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.16 or § 226.20 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs" (outlined in paragraph 2 of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 of this appendix. The presence of this label does not ensure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

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.

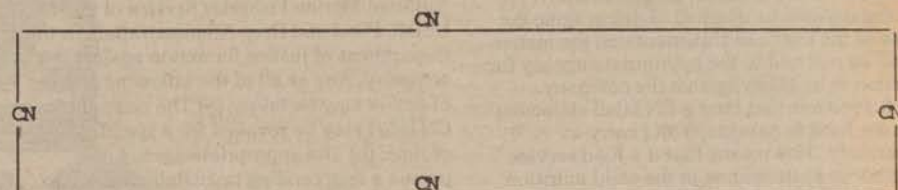
(b) Juice drinks and juice drink products

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);

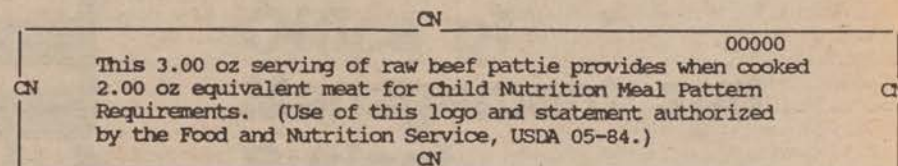
(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or

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:



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

(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:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(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.

G. Scott Dunn,
Acting Administrator.

Date: April 20, 1989.

[FR Doc. 89-0956 Filed 4-26-89; 8:45 am]

BILLING CODE 3410-30-M