Water Act [33 U.S.C. 1319(g)(4)], public notice, comment period, and state coordination, shall not apply.

(ii) *Initiation*. The Chief of the Waterborne Commerce Statistics Center will prepare and process a proposed civil penalty order which shall state the amount of the penalty to be assessed, describe by reasonable specificity the nature of the violation, and indicate the applicable provisions of 33 CFR 326.

(iii) *Hearing Requests*. Recipients of a proposed civil penalty order may file a written request for a hearing or other proceeding. This request shall be as specified in 33 CFR 326 and shall be addressed to the Director of the Water Resources Support Center, Casey Building, Fort Belvoir, Virginia 22060-5586, who will provide the requesting person or entity with a reasonable opportunity to present evidence regarding the issuance, modification, or revocation of the proposed order. Thereafter, the Director of the Water Resources Center shall issue a final order.

(4) *Additional Remedies*. Appropriate cases may also be referred to the local U.S. Attorney for prosecution, penalty collection, injunctive, and other relief by the Chief of the Waterborne Commerce Statistics Center.

Dated: March 1, 1990.

Robert W. Page,

Assistant Secretary of the Army, (Civil Works).

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

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Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Child Nutrition and WIC Reauthorization Act Amendments; Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Child Nutrition and WIC Reauthorization Act Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking implements a number of changes to the Summer Food Service Program (SFSP) which was mandated by the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147). These changes: (1) Make eligible to serve as SFSP sites those meal providers which conduct a regularly scheduled food service primarily for homeless children; (2) allow private nonprofit organizations to serve as SFSP sponsors, subject to certain conditions; (3) require State agencies to conduct outreach efforts to potentially eligible private nonprofit organizations in Fiscal Years 1990 and 1991; (4) require State agencies to provide ongoing training and technical assistance to these oganizations to ensure their compliance with Program requirements; and (5) make college and university sponsors participating in the National Youth Sports Program's drug awareness activities during the academic year eligible to participate in the SFSP on a year-round basis. In addition, the Reauthorization Act authorizes the Secretary to reserve money from each fiscal year's appropriation to use in conducting additional training and monitoring of private nonprofit organization. Finally, this rulemaking corrects several errors which appeared in the text of the final 1989 SFSP regulations published on April 27, 1989 (54 FR 18200). These technical corrections are necessary to provide administering agencies and the public with a fully corrected version of 7 CFR part 225.

DATES: This interim rulemaking is effective April 10, 1990. To be assured of consideration, comments must be postmarked on or before October 31, 1990.

ADDRESSES: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5:00 p.m.

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, or geographic regions; 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 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, Betty Jo Nelsen, the 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.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the additional reporting burden included in this interim rulemaking at § 225.8(e) is not effective until it has been approved by the Office of Management and Budget (OMB). 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 29115, June 24, 1983).

This rule implements the provisions of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147, enacted November 10, 1989) related to the SFSP. The implementation of these provisions is detailed in section 102 of that statute. Section 102(b)(1) requires all SFSP provisions of Public Law 101–147 except those concerning the academic-year National Youth Sports Program (NYSP) to be implemented through regulations by February 1, 1990. Further, section 102(b)(1) specifically authorizes the Secretary to issue these regulations without providing for prior notice and comment. Section 102(b)(2) makes the NYSP provisions effective October 1, 1989, and requires the Secretary to issue regulations regarding the academic-year NYSP by February 1, 1990. The remaining provisions in this rule are technical corrections of errors which appeared in the text of the 1989 SFSP regulations (published April 27, 1989, 54 FR 18200).

In light of the statutory exemption with respect to the provisions implementing Public Law 101–147 (with the exception of the NYSP provisions), the need to meet the February 1, 1990 implementation deadlines, and the nature of the technical corrections, this rule is being published without providing for prior notice and comment. For these reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that prior notice and comment is impracticable, unnecessary and contrary to public interest and that good cause therefore exsits for publishing this rule without prior notice and public comment. For the same reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(d)(2), that good cause exists for making the rule effective without a 30-day post-publication waiting period.

Background

The Summer Food Service Program (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. The SFSP regulations were last issued in their entirety on April 27, 1989 (54 FR 18200) when 7 CFR part 225 was completely reorganized.

On November 10, 1989, the President signed into law Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989 (Reauthorization Act). That act reauthorized the SFSP through Fiscal Year 1994 and included several provisions designed to make Program benefits more widely available to children. For the first time since passage of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35), the Reauthorization Act allows private nonprofit organizations (other than private nonprofit residential camps, school food authorities, colleges and universities participating in the National Youth Sports Program (NYSP), and private nonprofit organizations in the 1989 demonstration project, all of which previously participated in the Program) to serve as SFSP sponsors, subject to certain conditions. Public Law 101–147 also mandated that State agencies conduct outreach efforts to potentially eligible private nonprofit organizations in Fiscal Years 1990 and 1991 and implement expanded training and technical assistance programs for private nonprofit organizations. In addition, the Reauthorization Act made the first change to site eligibility in the Program since the OBRA of 1981 by adding to the categories of eligible sites those meal providers which "conduct a regularly scheduled food service primarily for homeless children". Finally, the Reauthorization Act made Program benefits available on a year-round basis to college and university sponsors participating in the NYSP's drug awareness and education activities during the academic year. These provisions are discussed in detail in the following preamble.

Section 102(b) of the Reauthorization Act estabIsihed a February 1, 1990 deadline for publishing regulations to implement these mandatory changes in the 1990 SFSP and further allowed the Department to publish these regulations without public comment. Commenters should therefore be aware that these provisions are mandatory, that the Department has no discretion in the timing of the implementation, and that these provisions will have the force of law in the 1990 SFSP. However, the Department has requested public comments on these interim regulations by October 31, 1990. This will allow commenters the opportunity to base their observations on their first-year's experience in implementing these regulations. Based on the number and nature of any public comments received, the Department will consider the possibility of publishing a final rulemaking at a later date.

1. Eligibility of Sites Serving Homeless Children

Under current law, sponsors must document that the SFSP sites they administer are camps or serve "areas in which poor economic conditions exist". To qualify as serving an area in which poor economic conditions exist, the sponsor must document that at least 50 percent of the children living in the area are eligible for free or reduced price meals. This percentage may be documented through the use of census tract, school food service, or other data. In addition, Program regulations allow a sponsor to run an "enrolled site" by taking household applications and demonstrating that at least 50 percent of the enrolled children are eligible for free or reduced price meals. Section 102(a)(1)(A) of the Reauthorization Act amended section 13(a)(3)(C) of the National School Lunch Act (NSLA) by making meal providers which "conduct a regularly scheduled food service primarily for homeless children" eligible to be sites in the SFSP. This change to the NSLA makes such meal providers eligible to serve as SFSP sites without requiring them to be camps or to document that they will serve an "area in which poor economic conditions exist." Several aspects of these sites' participation in the SFSP are discussed in the lettered paragraphs which follow.

A. General Information on Homeless Feeding Sites' SFSP Participation

It is first important to note that the inclusion of meal providers to the homeless as SFSP sites during the normal months of Program operation (May through September) should *not* be confused with the demonstration project mandated by section 107(2) of the Reauthorization Act. That provision requires the Department to test the feasibility of providing year-round food service to homeless children under the age of six in emergency shelters. This demonstration project has no immediate effect on the operation of the SFSP.

It is also important to note that the provisions of the law did *not* establish a new type of eligible sponsor, for the definition of "service institution" (i.e., "sponsor") at section 13(a)(1)(B) of the NSLA has not been altered by this amendment. In other words, homeless meal providers themselves will not be eligible to sponsor the SFSP unless they: (1) Meet all of the conditions defining one of the currently-eligible categories of sponsor at § 225.2; or (2) meet all of the conditions (as discussed in section 2 of this preamble, below) defining the newly-eligible category of sponsors which are "private nonprofit organizations".

Furthermore, it is also important to recognize that Congress did not amend the definition of "children" in section 13(a)(1)(D) of the law. Therefore, this provision does *not* contemplate the payment of SFSP reimbursement for meals served to homeless adults who happen to be participating in the same meal service as homeless children. The law recognizes, however, that the providers of meals to homeless children often serve a varied clientele which almost certainly includes homeless adults and may also include non-homeless adults and children. Thus, congressional use of the word "primarily" in the phrase "a regularly scheduled food service primarily for homeless children" denotes the particular type(s) of homeless feeding facilities to which Congress intended to extend SFSP site eligibility and in which Congress wished to make benefits to homeless children available.

For example, according to a recent study of the portion of the homeless population which uses meal or shelter services ("Feeding the Homeless", Urban Institute, 1988), homeless families to end to eat far more of their meals in shelters than in soup kitchens and other types of homeless feeding facilities. This fact, coupled with congressional use of the phrase "primarily for homeless children", convinces the Department that Congress intended to extend site eligibility only to those facilities whose primary purpose is to provide meals to homeless family units. Thus, this rulemaking defines a "homeless feeding site" (i.e., a site made eligible by the Reauthorization Act to participate in the Program without reference to area eligibility or to being a camp) as a facility "whose primary purpose is to provide shelter and one or more meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of 'school' § 210.2 of the National School Lunch Program regulations." This definition will extend site eligibility to those facilities most likely to serve meals to homeless children, and will prevent residential child care institutions (which house children who are technically "homeless" and which already receive year-round benefits under the Nationl School Lunch Program [NSLP] from switching into the SFSP to receive the SFSP's higher reimbursements during the summer months.

The Department believes that it is also important to address the issue of feeding non-homeless children at a homeless feeding site. According to the Urban Institute study of homeless feeding cited above, some homeless feeding facilities provide meals to non-homeless individuals and families. These organizations generally define their purpose in broad terms and attempt to provide meals to all persons in need. Given the purpose and nature of food service at homeless feeding sites, the Department believes that Congress intended such sites to be able to claim reimbursement for all meals served to children, regardless of whether every child served was actually homeless. The Department's definition of homeless feeding sites as those facilities "whose primary purpose is to provide shelter and one or more meal services per day to homeless families" will prevent meals served to non-homeless children from making up a significant proportion of the meals claimed by such sites. Consequently, the rulemaking makes clear at §§ 225.14(d)(5) and 225.16(b)(2) that, when a meal provider meets the definition of "homeless feeding site" set forth above, it may claim reimbursement for all meals served to children without attempting to differentiate between homeless and non-homeless children.

Finally, it must also be noted that this rulemaking exempts homeless feeding sites from several of the time restrictions on meal service set forth at § 225.16(c) of the regulations. Specifically, the Department does not believe that it would be feasible to require homeless feeding sites to observe the same rules governing the time between meal services or the duration of meal services (set forth at §§ 225.16(c) (1) and (2), respectively) which other types of sites are required to follow. The day-to-day variation in a homeless feeding site's clientele and the unpredictability of the times at which those clients would need meals would make such limits unworkable at homeless feeding sites. In addition, although this rule retains the requirement in § 225.6(c)(2)(i)(B) that, like any other type of site, homeless feeding sites specify a period of meal service (so that reviewers would know when the site should be monitored), it waives the prohibition set forth at § 225.16(c)(3) on claiming meals served outside of this period for homeless feeding sites.

Accordingly, this rulemaking amends § 225.2 by adding the new definition of "homeless feeding site" described above. In addition, § 225.6(c)(2)(ii), new § 225.6(c)(2)(iv), §§ 225.6(d)(1)(i), 225.14(c)(3), 225.14(d)(1), 225.14(d)(5), and new § 225.16(b)(2) have also been amended or added to make reference to homeless feeding sites, where appropriate; to differentiate these sites from existing types of sites (camps and area eligible sites) where necessary; to specify the requirements for determining site eligibility and the number of reimbursable meals served at each meal service; and to exempt homeless feeding sites from several of the time restrictions on meal service. The Department solicits commenters' input on other areas of the regulations which might also require clarification or references to the new sites as a result of this legislative change.

B. Financial Management Issues Relating to Homeless Feeding Sites

Several issues arise from the fact that the meal providers which "conduct a regularly scheduled food service primarily for homeless children" sometimes receive cash assistance or donated food under other Federal programs. The Department recognizes that, in this sense, homeless feeding sites will be unlike most other food service sites currently participating in the Program and that it may be more difficult for their largely volunteer staffs to meet some of the requirements imposed by the Program. However, in order to participate in the SFSP under its current legislative and regulatory mandates, it will be necessary for homeless meal providers to follow the requirements which currently exist with regard to recordkeeping and financial accountability. This is especially critical when homeless meal providers receive assistance under several Federal programs, thus increasing the possibility of inadvertent or intentional "double-claiming" of meals (i.e., claiming the same meal, or the same portion of the same meal, for reimbursement or other assistance under more than one Federal grant).

According to the homeless feeding study discussed previously ("Feeding the Homeless", Urban Institute, 1988), fully two-thirds of all meal providers to the homeless receive food donations under the Department's Food Distribution to Charitable Institutions Program (FDCIP). Under the regulations governing the FDCIP (7 CFR part 250, § 250.3), "charitable institutions" may not participate in both the FDCIP and any of the Child Nutrition Programs, including the SFSP. This prohibition is designed to prevent an SFSP sponsor from "double-claiming" meals as described above. However, this prohibition is not intended to categorically bar an organization from providing meal service under both the FDCIP and a Child Nutrition Program when the benefits of each Program are received by different sets of people. In other words, a homeless feeding site could continue to receive and use FDCIP commodities for the meals which it provided to adults while also receiving reimbursement and commodities under the SFSP for meals served to children, provided that the site's records were sufficient to establish that the site's allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served.

Another related issue arises in regard to the SFSP participation of homeless meal providers receiving grant assistance from the Federal Emergency Management Administration (FEMA) or other Federal agencies for the purchase of food or other purposes. Current SFSP regulations at § 225.15(a)(2) provide that SFSP sponsors "shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter, *or any other Federally-funded program,* for Program meals. * * *" (emphasis added). In addition, the regulations at §§ 225.2 (definition of "income accruing to the program") and 225.9(d) require that income accruing to the Program (i.e., funds used by a Program sponsor in support of its food service) must be deducted from combined operating and administrative costs. The import of these restrictions for homeless feeding sites participating in the SFSP merits further discussion in this preamble.

The provision at § 225.15(a)(2) is intended to categorically prohibit the claiming of a Program meal under more than one Federal program. This provision would not, however, preclude an SFSP sponsor from supplementing the SFSP meal reimbursement with monies from other non-Child Nutrition Programs for the same meal. This is because the Child Nutrition Programs (CNPs) provide reimbursement for meals served, whereas other Federal grants are generally less restrictive and provide assistance which could be used for food or for other purposes. In fact, sponsors of homeless feeding sites which receive funds from FEMA or other non-CNP Federal programs may continue to use these other Federal funds to purchase food, even for meals for which they claim reimbursement under the SFSP, and can operate more than one Federal program independently at the same site.

The only limitation on the use of such funds for SFSP costs is that which is set forth in the definition of "income accruing to the program" at § 225.2 and in the introductory paragraph of § 225.9(d). These provisions require SFSP sponsors to deduct Program income (all non-SFSP funds which support the food service) from combined operating and administrative costs to determine net costs. Net costs are then compared to meals times reimbursement rates for the purpose of calculating a sponsor's reimbursement. However, given that other Federal programs' grant funds are not likely to be restricted by law (as are SFSP operating costs) to the reimbursement of food costs, this restriction should not prove to be burdensome to homeless meal providers. In most cases, meal providers will be able to shift their non-FNS grant funds to the support of other functions which are not reimbursable under the SFSP, such as the service of adult meals.

The Department believes that it is important to emphasize the intent of last year's amendment of § 225.15(a)(2). The previous version of this provision (then found at § 225.19(j)) did not contain the proviso that NYSP funds may be used to supplement SFSP meal reimbursement. This amendment was interpreted by some to mean that NYSP funds were the *only* type of non-FNS Federal funds which could ever supplement FNS funding under the SFSP. However, that amendment was merely intended to underscore the fact that NYSP funds could be used to supplement SFSP funding at NYSP feeding sites, subject to the limitations discussed above with regard to "income accruing to the Program."

Accordingly, this rulemaking revises § 225.15(a)(2): To clarify that homeless feeding sites may participate in both the SFSP and the Food Distribution Program to Charitable Institutions, provided that their records establish that the site's allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served; to emphasize the prohibition on the claiming of reimbursement for meals under more than one Child Nutrition Program; and to reflect the preceding discussion regarding the limits on the use of Federal funds to supplement SFSP meal reimbursements.

Because of the unique financial circumstances of many homeless meal providers, the Department believes that it is also appropriate to discuss here two further issues which could potentially cause confusion for State administering agencies or the sponsors of homeless feeding sites. First, according to the Urban Institute study cited above, approximately one-fifth of homeless meal providers depend entirely on donated food—from the FDCIP, food banks, individuals, corporations, and private charitable groups—for their current meal service. It must be emphasized that, while these organizations would be eligible to participate in the SFSP as feeding sites, sponsors would not be allowed to claim the value of these or other donated foods when calculating their operating costs unless they also deducted the value of donated foods used in children's meals from combined operating and administrative costs to determine net costs. It must also be emphasized that no portion of the SFSP funds paid to reimburse the provider for its meal service may be diverted to other uses such as the purchase of items not related to the food service.

Second, the Urban Institute study states that, in a few cases, homeless feeding sites collect cash payments, or are authorized to accept food stamps, from some of their meal recipients. Because section 13(f) of the NSLA requires that all sites except camps provide meals without charge to all children, homeless feeding sites may not collect cash payments or food stamps or receive any in-kind service for any meals served to Program participants. Therefore, the Department believes that, as part of the application process, it is necessary to require sponsors to submit, along with their site information sheets, a description of the method(s) used by the site to ensure that no cash payments, food stamps, or in-kind services are received for any Program meal served to children.

Accordingly, this rulemaking further amends new § 225.6(c)(2)(iv) to require that sponsors describe—for any site at which cash, food stamps, or services are received from any meal recipient—the method(s) used to ensure that no such payments or services are received for any Program meal served to children.

2. Readmission of Some Private Nonprofit Organizations to SFSP Sponsorship

Since the passage of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), private nonprofit organizations have not been allowed to be SFSP sponsors unless they were residential camps, colleges or universities participating in the NYSP, or school food authorities (SFAs). Section 213(b) of the Hunger Prevention Act of 1988 (Pub. L. 100–435) mandated the conduct of a demonstration project to determine the feasibility of again allowing other types of private nonprofit organizations to participate in the SFSP. These organizations' participation was limited by certain conditions which were designed to ensure only well-managed and fully capable private nonprofit organizations would participate in the demonstration.

Section 102(a)(1)(C) of the Child Nutrition and WIC Reauthorization Act amended section 13(a)(7) of the NSLA to allow private nonprofit organizations other than camps, SFAs, and NYSP participants to again be SFSP sponsors, subject to certain conditions. These conditions require the private nonprofit organization to: (1) Serve a total of no more than 2,500 children per day at no more than five urban or twenty rural sites; (2) Serve no more than 300 children at any approved meal service at any one site, unless granted a waiver by the State agency to serve up to 500 children at an approved meal service at a particular site; (3) Either be a self-preparation sponsor or purchase meals from a public facility (e.g., SFA, public hospital, state university) or a school participating in the National School Lunch Program; (4) Operate only in areas where an SFA or a governmental entity has not indicated by March 1 that it intends to operate the SFSP; (5) Exercise full control over the operation of the SFSP at all sites; (6) Provide ongoing year-round activities for children or families; (7) Demonstrate that it possesses adequate management and fiscal capacity to operate the SFSP; and (8) Meet applicable local and State health, sanitation, and safety standards.

Accordingly, this rulemaking amends the definition of "sponsor" at § 225.2 to include private nonprofit organizations; adds a definition of "private nonprofit organization" at § 225.2; revises § 225.15(g)(3) to incorporate the prohibition on private nonprofit organizations contracting with food service management companies; and adds new § 224.14(d)(7) to specify the conditions limiting private nonprofit organizations' participation as Program sponsors.

Readers of this preamble should note that, as a result of preliminary findings from the demonstration project which indicated that all of the requirements of the SFSP were not fully met by a number of private nonprofit organizations, Congress made some of the above conditions more restrictive than those imposed during the demonstration. In addition, the Reauthorization Act included additional language intended to limit the displacement of existing public sponsors (SFAs and governmental entities) by private nonprofit organizations and to establish special monitoring, application, and training requirements for these organizations. These new conditions and special requirements require further discussion in this preamble, as do some other aspects of private nonprofit organizations' participation in the Program. These issues are addressed in the lettered paragraphs below.

A. March 1 Date for "Indication of Interest"; One-Year Waiting Period for Administration of Sites Previously Sponsored by School Food Authorities or Governmental Entities; Outreach to Newly-Eligible Sponsors

The first of these issues involves the stipulation at section 13(a)(7)(B)(iii) of the NSLA that private nonprofit organizations may only operate in areas where an SFA or governmental entity has not "indicated" by March 1 that they intend to sponsor the SFSP. Since current regulations at § 225.6(b)(1) give sponsors until June 15 to submit their applications (unless an earlier deadline is established by the State agency), such "indication" could not reasonably be expected to be a part of the SFA's or governmental entity's formal application for Program sponsorship. Rather, the law's language regarding an "indication of interest" necessitates that the State receive these potential sponsors' indication of interest far in advance of the deadline for receipt of Program applications.

In order to facilitate this process, the Department believes that it is necessary to require State agencies to formally solicit interest in participation from previous SFA and governmental sponsors of the Program. Under current regulations at § 225.6(a)(2), State agencies are required by February 1 to announce the Program's availability throughout the State; to compile a list of and contact potential sponsors who have not previously participated in the Program; and to actively seek eligible sponsors to serve rural and other specified areas. The Department believes that the law's provision regarding an "indication" of interest can best be implemented by requiring State agencies to contact the previous year's SFA and governmental sponsors no later than February 1 and to ask these potential sponsors to indicate in writing, no later than March 1: Their interest in again participating in the SFSP; their intention to serve the same sites they served in the prior year and a list of any sites which will be dropped; their interest in serving any new areas which they did not serve in the prior year's Program; and, for these areas, their geographical boundaries and, when possible, the location and estimated dates of operation and daily attendance of each proposed new site.

As a part of their solicitation of interest from these sponsors, the State agency is also required to determine the reasons for any SFA or governmental sponsor's intention *not* to serve an area which it had served in the prior year. This determination is necessary for compliance with section 102(a)(1)(C)(iii) of the Reauthorization Act. Section 102(a)(1)(C)(iii) amended section 13(a)(7)(C) of the NSLA to forbid private nonprofit organizations from sponsoring the Program in an area "where a school food authority or a local, municipal, or county government participated in the program before such organization applied to participate until the expiration of the 1-year period beginning on the date that such school food authority or local, municipal, or county government terminated its participation in the program." This prohibition was designed to minimize the potential displacement of experienced sponsors by private nonprofit organizations, and underscored the law's intent to readmit private nonprofit organizations to Program sponsorship in order to provide food service in previously *unserved* areas. This provision means that no private nonprofit organization may serve an area which was previously served by an SFA or governmental sponsor during the 12-month period starting on the last day of Program meal service at the site or in the area previously administered by the SFA or governmental sponsor.

Section 102(a)(1)(C)(iii) also amended section 13(a)(7)(C) of the NSLA to permit the State agency to waive this one-year restriction *only* if the State agency is convinced that the SFA or governmental entity "would have discontinued its participation in the program (in an area) regardless of whether a private nonprofit organization was available to participate in the program in such area." This provision limits State agencies to granting waivers of the one-year prohibition *only* when the State agency determines that the experienced sponsor is not discontinuing service to an area for mere convenience with the expectation that a new private nonprofit organization would serve that area.

After receiving responses from SFA and governmental sponsors, the State agency will then be required to target specific areas for outreach to private nonprofit organizations. It should be emphasized that the State agency should *not* have made its primary outreach efforts to private nonprofit organizations prior to this time. Although current regulations at § 225.6(a)(2) require State agencies to contract by February 1 "potential sponsors which have not previously participated in the Program", the Department believes that, consistent with the Reauthorization Act's language regarding an "indication of interest" from SFA and governmental sponsors and its clear intent to have private nonprofit organizations provide Program meal service in *previously unserved* areas, private nonprofit organizations may not be considered "potential sponsors" until after the State agency has received and analyzed the previous year's SFA and governmental sponsors' responses.

After the State agency has completed this analysis, it is expected that it will identify private nonprofit organizations which are potential sponsors in several ways—through responses to notices of the Program's availability placed by the State agency in major newspapers throughout the State and through contacts with public and private social service organizations operating at the State and county levels. Once these organizations are identified, State agencies will be required to formally solicit their interest in serving particular areas, just as had been previously done with the prior year's governmental and SFA sponsors. The Department believes that this process of formally contacting private nonprofit organizations to elicit their interest in serving as Program sponsors in unserved areas satisfies the outreach provisions mandated in section 102(a)(5) of the Reauthorization Act (which added a new subsection (p) to section 13 of the NSLA). Private nonprofit organizations interested in sponsoring the Program will be requested to provide in writing to the State agency, not later than April 25: Their interest in participating in the SFSP; the geographical area they propose to serve the approximate number of sites which they propose to serve; and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site.

After receiving the SFA, government, and private nonprofit organizations' indications of interest in serving particular areas, State agencies are then required to apply the "priority system" described in section 13(a)(4) of the NSLA and § 225.6(b)(5) of the regulations. That system is used to determine which sponsor will be permitted to serve a particular area when two or more sponsors wish to provide Program meal service in the same area. It must be noted that the priority system was amended by section 102(a)(1)(B) of the Reauthorization Act, and that this section of the Act placed the newly-eligible private nonprofit organizations *last* in the priority system, after all other types of eligible sponsors.

After applying the priority system and determining the reasons for any SFA or government sponsor's discontinuation of Program service to an area, the State agency is then required no later than May 1 to notify all private nonprofit organizations which responded to the State's outreach efforts of any area which they had proposed to serve but would not be allowed to include in their application for sponsorship. It should be stressed that this notification should *not* be construed as an approval of any particular feeding site for Program participation. Rather, it serves only to inform private nonprofit organizations interested in sponsoring the Program of the service areas which they are *not* allowed to include in their application. Formal approval of sites only occurs when the State agency approves the sponsor's application for Program participation.

Accordingly, this rulemaking amends current § 225.6(a)(2) and adds a new paragraph, § 225.6(a)(3), to require that State agencies: (a) By February 1, compile a list of and formally contact potential sponsors (other than private nonprofit organizations), requesting SFA and governmetnal sponsors to indicate their interest in sponsoring the SFSP and in serving particular areas; and (b) after receiving the SFA and governmental sponsors' responses, contact private nonprofit organizations which may be eligible to become Program sponsors as a result of the passage of the Child Nutrition and WIC Reauthorization Act to inform them of their potential eligibility and to solicit their interest in serving particular areas which the State believes may be unserved during the current year's Program. New § 225.65(a)(3) also: Specificies the conditions under which State agencies may waive the one-year prohibition on private nonprofit organizations' serving a site or an area which was served by a school food authority or governmental sponsor at any time during the 12 months following the last day on which the previous sponsor provided Program meal service in that area; and requires that, no later than May 1, State agencies notify private nonprofit organizations of any service areas which they will not be allowed to include in their application for participation. Finally, this rulemaking amends the priority system set forth at § 225.6(b)(5) of the regulations to reflect the addition of private nonprofit organizations at the end of this priority listing under section 13(a)(4)(F) of the NSLA as amended by section 102(a)(1)(B) of the Reauthorization Act.

B. Management and Administration Plan (MAP) Requirements

The Department notes that it is aware of the requirements at section 13(n)(3) of the NSLA and at § 225.4(d)(3) of the regulations that State agencies must submit by February 15 of each year a management and administration plan (MAP) which includes the State's "best estimate" of the number and type of sponsors which will participate in the Program. The Department recognizes that this MAP deadline occurs prior to the deadlines for receiving an indication of potential sponsors' interest in participating in the Program and in serving particular areas, as discussed in section 2(A) of the preamble above. Thus, during the first year in which private nonprofit organizations are again allowed to sponsor the Program, it will be almost impossible for State agencies to provide accurate estimates of these organizations' potential Program participation. Therefore, the Department will not require State agencies to include in their 1990 MAPs estimates of private nonprofit organizations' participation in the Program.

Accordingly, this rulemaking amends § 225.4(d)(3) to clarify that, until fiscal Year 1991, State agencies are not required to estimate the impact of private nonprofit organizations' readmission to Program sponsorship in their MAP estimates of the number of sponsors, sites and children which will participate and the number of meals which will be served in the SFSP.

The Department believes that, in order to monitor the outreach to private nonprofit organizations, State agencies should be required to include in their MAPs a description of the efforts they have made to notify these organizations of their possible eligibility for Program sponsorship. The Department realizes, however, that the delay in passage of the Reauthorization Act and publication of these regulations makes it impossible for State agencies to comply with this requirement in their Fiscal Year 1990 MAPs. However, they are still required to conduct the outreach necessary to comply with the new requirements specified in § 225.6(a)(3) of these regulations for contacting private nonprofit organizations in order to satisfy the Reauthorizations Act's outreach mandate. Therefore, the requirement to include in its MAP specific information on a State agency's outreach efforts to private nonprofit organizations does not take effect until October 1, 1990.

Accordingly, this rulemaking amends § 225.4(d)(2) to add a requirement that, beginning in Fiscal Year 1991, State agencies include in their MAPs a description of their plans to inform private nonprofit organizations of their eligibility for Program sponsorship.

C. Private Nonprofit Organizations Which Sponsor Both Rural and Urban Sites

Another issue arising from the conditions imposed on private nonprofit organizations' participation involves the maximum number of sites and children which these organizations may serve. Section 102(a)(1)(C)(ii) of the Reauthorization Act amended section 13(a)(7)(B) of the NSLA to allow for the service of not more than 2,500 children per day, at not more than 5 urban or 20 rural sites, and the service of no more than 300 children at any approved meal service at any one site. The site limit of 300 may be waived and raised as high as 500 if a waiver is granted by the State agency "under standards developed by the Secretary".

Senator Leahy's comments in the *Congressional Record* (S 14016, October 24, 1989) which accompanied the final Senate version of the Reauthorization Act clarify that, in cases where a private nonprofit organization administers both rural and urban sites, the overall limit of 2,500 children per day still applies. However, these comments did not address the question of the total number of *sites* which a sponsor may serve when it operates in both rural and urban areas. The Department believes that it would be contrary to congressional intent to permit a private nonprofit organization which sponsors both rural and urban sites to operate more sites than it would if it were operating solely urban or rural sites. Therefore, this rule permits a private nonprofit organization to administer a maximum of 20 sites, of which no more than 5 may be urban. It should be noted here that a statement adopted by key members of the House and Senate concerning the final version of the Reauthorization Act supported use of the current definition of "rural" at § 225.2 to differentiate between rural and urban sites (*Congressional Record*, H 6860, October 10, 1989, and S 14020, October 24, 1989).

Accordingly, this rulemaking retains the definition of "rural" at § 225.2 and amends § 225.6(b)(6) to clarify that, when private nonprofit organizations apply to sponsor both rural and urban sites, it may serve a maximum of 20 sites, of which no more than 5 may be urban.

D. Waivers of the 300-Child Per Site Limit

While section 102(a)(1)(C)(ii)(I) of the Reauthorization Act (amending section 13(a)(7)(B)(i) of the NSLA) authorized waivers of the 300-child per site limit for private nonprofit organizations, the Department believes that the law contains a strong presumption in favor of sites which serve 300 or fewer children at any approved meal service at any one site. Thus, the Department believes that the 300-child limit should be waived only rarely and that the reasons for such waivers should be well-documented. Such documentation should consist of school food service, census tract, or other data which demonstrate that the sponsor is likely to serve more than 300 children at an approved meal service at any one site and that the sponsor is fully capable of managing a site of this size. In addition, no waiver may be granted unless the State agency is fully satisfied that other sites cannot serve any portion of the children over 300 which the private nonprofit organization proposes to serve. It should be noted that the law provides that, even with a waiver, no site may serve more than 500 children at any approved meal service at any one site.

Accordingly, this rulemaking further amends § 225.6(b)(6) to specify the requirements pertaining to the waiver of the 300-child limit by the State agency.

E. Degree of Operational Control Over Sites

The next issue arising from the limitations on private nonprofit organizations' participation in the SFSP involves the degree of control which these organizations will be required to exercise over their sites. Section 13(a)(7)(B)(iv) of the NSLA requires private nonprofit organizations to "exercise full control and authority over the operation of the program at all sites under their sponsorship". The specificity of this language implies a degree of congressional concern over the relationship between private nonprofit organizations and their sites which is not present in most other parts of the law. The only instance in which the law previously made reference to the degree of control which sponsors have over sites involved the relationship between governmental sponsors and their sites. The Department believes that the law intends private nonprofit organizations to have a close degree of control over their sites which approximates the "direct operational control" currently required of government sponsors over their sites at section 13(a)(6) of the NSLA.

Accordingly, this rulemaking amends current §§ 225.6(c)(2)(viii) (redesignated § 225.6(c)(2)(x)) and 225.14(d)(4) to require that private nonprofit organizations exercise direct operational control over all of the sites which they administer.

F. Prohibition on Contracting With Commercial Food Service Management Companies

Another issue arising from the limitations on private nonprofit organizations' participation in the SFSP involves the prohibition in sections 13(a)(7)(B)(ii) and 13(l)(1) of the NSLA on private nonprofit organizations' contracting with commercial food service management companies (FSMCs). This limitation in section 13(a)(7)(B)(ii) originated in the demonstration project mandated by the Hunger Prevention Act of 1988, which required that private nonprofit organizations "use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university)." Section 102(a)(1)(C)(ii)(II) of the Reauthorization Act made a slight change to this limitation by allowing private nonprofit organizations to also obtain meals from any "school participating in the school lunch program under this Act" (i.e., the NSLP); however, the Act retained the demonstration project's general prohibition on private nonprofit organizations obtaining meals from commercial FSMCs. Section 102(a)(3) of the Reauthorization Act also amended section 13(l)(1) of the NSLA to further underscore this prohibition. This prohibition raises several Program issuers requiring discussion in this preamble.

First, prior to the publication of this rulemaking, several State agencies indicated that some school food authorities with year-round FSMC contracts had expressed an interest in providing meals (in their capacity as "public facilities") to private nonprofit organizations participating in the 1990 SFSP. The Department believes that such arrangements would be legally precarious—the contracting party "providing the meals"(the SFA) would, in effect, be acting as an agent for a commercial FSMC which was actually providing the meals, even though it was not a signatory party to the contract. Thus, the SFA would be required to assume full liability for any errors committed by the commercial company, even though it would have little if any control over the FSMC's day-to-day operations.

More importantly, however, the Department is convinced that such a contract would be in contravention of the law's intent. The statements which accompanied the final versions of the House and Senate bills referred repeatedly to the earlier problems with fraud, waste, and abuse which occurred when private nonprofit organizations participated in the SFSP during the late 1970s and early 1980s. In fact, Senator Leahy quoted the November 1979 report from the Department's Office of Inspector General to Congress which stated in part that "the greatest obstacle to the successful operation of the Summer Feeding Program is the continued participation of large private sponsor/private vendor combinations." (*Congressional Record*, S14016, October 24, 1989). Thus, the Department is convinced that any contractual arrangements which resurrected these "private sponsor/private vendor combinations"—even if made through a public or private SFA as an intermediary agent—would violate the law's intent to prohibit commercial FSMCS from providing Program meals to private nonprofit organizations.

A second point requiring discussion involves the appropriate administrative rate earned by private nonprofit organizations for meals obtained from a public facility or a school participating in the NSLP. Under current regulations at §§ 225.2 (definition of "self-preparation sponsor") and 225.9(d)(iii), a sponsor is entitled to receive the higher self-preparation administrative rate for meals served at a site only when it does *not* obtain any unitized meals, with or without milk, from an FSMC for service at that site and does not obtain management services from an FSMC. Furthermore, the regulations at § 225.2 define a food service management company as "any commercial enterprise or nonprofit organization" which supplies unitized meals or management services to a sponsor. This definition further specifies that FSMCs may include public agencies or entities and nonprofit organizations. Thus, in accordance with these definitions, a private nonprofit organization which contracts with any public facility, SFA, or school for unitized meals or management services must be considered a "vended" sponsor and would earn the lower vended administrative rate for its meal service.

G. Special Requirements Pertaining to Private Nonprofit Organizations

As previously mentioned, several aspects of the Reauthorization Act reflect congressional concerns over past SFSP abuses involving private nonprofit organizations and over the preliminary results of the demonstration project readmitting such organizations to Program sponsorship. In addition to the new requirements placed on private nonprofit organizations as a condition of eligibility (e.g., the one-year waiting period discussed in section 2(A) of the preamble above), Pub. L. 101-147 also added several provisions designed to ensure that those private nonprofit organizations approved for Program sponsorship are fully capable of administering the Program in accordance with the regulations. Specifically, section 102(a)(5) of the Reauthorization Act amended section 13 of the NSLA by adding a new subsection, (q), which promulgates special requirements designed to avoid past problems of fraud and abuse by private nonprofit organizations serving as Program sponsors.

More specifically, new section 13(q)(2) of the NSLA has been added to deter participation by private nonprofit organizations incapable of properly administering the Program. This new section requires that the Department and State administering agencies develop sponsor application forms and other pre-application materials for distribution to private nonprofit organizations which explain, in bold lettering, the criminal penalties for improper use of Program funds set forth in section 13(o) of the NSLA and the regulatory provisions for termination of Program sponsors.

Accordingly, this rulemaking adds a new paragraph, § 225.6(a)(5), which requires that sponsor application forms and other pre-application materials distributed to private nonprofit organizations include, in bold lettering, an explanation of the criminal penalties set forth at section 13(o) of the Act and the regulatory procedures for termination of sponsors.

New section 13(q)(3) of the NSLA also requires each State agency to establish, with the assistance of the Department, "an ongoing training and technical assistance program for private nonprofit organizations" which emphasizes Program regulations and accountability issues. In addition, new section 13(q)(4) of the Act allows the Department to reserve up to one-half of one percent of appropriated SFSP funds for developing and conducting additional training and monitoring of private nonprofit organizations. These two portions of the amended law clearly demonstrate congressional intent to implement expanded training for private nonprofit organizations. To this end, the Department intends to provide specific guidance to State agencies on the training needs of private nonprofit organizations.

There are, however, two portions of the existing Program regulations pertaining to State agency training responsibilities which require minor modification in this rulemaking as a result of the readmission of private nonprofit organizations to Program sponsorship. The current regulations at § 225.7(a) set forth general sponsor training requirements and mandate that State agencies take into account the differing needs of "sponsors or groups of sponsors" when developing such training. The Department believes that, even though the Department will specifically address the training needs of private nonprofit organizations in the aforementioned guidance, the regulations at § 225.7(a) should nevertheless underscore those accountability-related areas (e.g., proper meal counting techniques, meal pattern requirements, free and reduced price application requirements, restrictions on second meal service, prohibition on off-site meal consumption, timely and accurate claims submission, recordkeeping, etc.) which must be emphasized in the training of private nonprofit organizations.

Accordingly, this rulemaking amends § 225.7(a) by specifying several accountability-related issues which State agencies will be required to emphasize in their initial training of private nonprofit organizations.

The second minor modification to the existing training requirements involves the pre-approval visits described at § 225.7(d)(1) of the regulations. The current regulations at § 225.7(d)(1)(i) stipulate that, prior to the State agency's approval of an applicant sponsor which did not participate in the SFSP during the prior year, the State agency must conduct a "pre-approval visit" of such sponsors. These visits are designed to assess the applicant sponsor's ability to successfully administer the Program and to verify application information. The visits are also an opportunity for State agencies to provide pre-operational technical assistance to potential sponsors. Thus, since only a few private nonprofit organizations applying to sponsor the Program in 1990 will have participated in the 1989 SFSP as a sponsor (those which participated in the demonstration project), current regulations will require that all other private nonprofit organizations receive a "pre-approval visit" in 1990.

The Department believes that, in combination with the training requirements set forth at § 225.7(a) and the additional guidance being promulgated by the Department, these requirements provide an appropriate level of pre-operational training and technical assistance to private nonprofit organizations. The Department also wishes to emphasize that, in accordance with existing regulations set forth at § 225.7(d)(1)(ii), State agencies may also conduct pre-approval visits of those private nonprofit organizations which participated in the demonstration project in 1989 if the State agency believes that the applicant organization should be visited.

However, current regulations at § 225.7(d)(1)(iii) establish pre-approval visit requirements for certain *sites* as well. Specifically, pre-approval site visits are required when nonschool sites are expected to have an average daily attendance (ADA) of 300 or more and did not participate in the prior year's Program. Given that 300 is the *largest* number of meals which a private nonprofit organization may provide at an approved meal service without a special waiver, the Department believes that a different standard should be applied to pre-approval visits of new sites which a private nonprofit organization proposes to serve. The Department believes that requiring a pre-approval site visit for all private nonprofit organizations' sites with an expected attendance at an approved meal service of over 100 will provide an appropriate level of additional pre-operational training to private nonprofit organizations. Because few sites administered by private nonprofit organizations in fiscal year 1990 will have participated in the prior year's Program, this requirement will ensure that most of the larger sites administered by private nonprofit organizations will be subject to pre-approval visits in 1990.

Accordingly, this rulemaking adds a new paragraph, § 225.7(d)(l)(iv), which requires State agencies to conduct a pre-approval site visit when a private nonprofit organization proposes to serve a site which did not participate in the previous year's Program and which has an expected attendance at an approved meal service of more than 100.

Finally, new section 13(q)(l) of the NSLA requires the Secretary to establish a system under which the Secretary and each State agency monitor the compliance of private nonprofit organizations, in addition to the normal monitoring of sponsors. Based on the provision of the Reauthorization Act which allows the Department to reserve up to one-half of one percent of appropriated SFSP funds for the conduct of additional monitoring and training of private nonprofit organizations, and based on Senator Leahy's statements accompanying the final Senate version of the Reauthorization Act (*Congressional Record*, S 14017, October 24, 1989), the Department intends to concentrate the additional monitoring in a Federal monitoring system for private nonprofit organizations in th SFSP which will supplement the State agency monitoring of all sponsors which is required by these regulations.

Implementation of this Federal monitoring system will require that State agencies inform FNS as early as possible of the universe of private nonprofit organizations which will be participating in the SFSP in their State. This can best be accomplished by forwarding to the appropriate Regional Office of FNS, no later than May 1 of each year, a list of the private nonprofit organizations which responded to the State agency's solicitation of interest (see section 2(A) of this preamble, above) in sponsoring the Program. This listing must include the names and addresses of each potential private nonprofit organization, the geographical area(s) and approximate number of sites they propose to serve and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. In addition, when a private nonprofit organization is approved to participate as a Program sponsor, the State agency will be required to notify the appropriate Regional Office of FNS within five working days that the organization has been approved and to provide specific information regarding each of its approved sites, including: Their addresses, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service; and whether the site is rural or urban, vended or self-preparation, enrolled or open, or is a homeless feeding site.

Accordingly, this rulemaking amends § 225.8 by adding a new paragraph (e), which requires that State agencies submit to the appropriate Regional Office of FNS, not later than May 1 of each year, a list of the names and addresses of each potential private nonprofit organization, the geographical area(s) and approximate number of sites they propose to serve, and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. In addition, § 225.8(e) stipulates that, within five working days of approving a private nonprofit organization to sponsor the Program, the State agency shall notify the appropriate Regional Office and provide updated information regarding the organization's approved sites, including: Their addresses, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service; and whether the site is rural or urban, vended or self preparation, enrolled or open, or is a homeless feeding site.

Because the Department had decided to conduct the additional monitoring required by Public Law 101-147 with Federal personnel, the Department contemplates no substantive expansion of current regulatory requirements with regard to State agency monitoring of private nonprofit organizations. Nevertheless, due to the limits which the Reauthorization Act imposes on the number of children per site, total children, and urban and rural sites which private nonprofit organizations are permitted to administer, the Department believes that the criteria for determining when and whether private nonprofit organzations are reviewed by the State agency must be modified in the regulations at § 225.7(d).

Current regulations at § 225.7(d)(2) establish minimum standards for the monitoring of sponsors and sites by State agencies during the course of Program operations. The timing of these monitoring requirements is based on whether the sponsor participated in the prior year and on the number of sites which the sponsor administers. Sponsors which administer 10 or more sites and which did not participate during the prior year must be reviewed during the first four weeks of Program operations. In addition, an average of 15 percent of these sponsors' sites must be reviewed during the first four weeks of Program operations.

The Department believes that, due to the legislative limits placed on the number of sites administered by private nonprofit organizations, it is necessary to make minor changes to the requirements specifying the State agency's monitoring responsibilities in the case of private nonprofit organizations. For example, were current requirements applied to the monitoring of private nonprofit organizations in 1990, no such organization administering only urban sites would be subject to State agency review during the first four weeks of Program operations since they are limited to a maximum of 5 sites. Thus, the Department believes that, in such cases, the criteria for determining whether a State agency review must be conducted during the first four weeks of operation must be modified slightly. This modification will ensure that a reasonable number of private nonprofit organizations administering urban sites alone will be reviewed by State agency personnel during these first, critical weeks of Program operation in 1990.

Likewise, because the total number of sites administered by private nonprofit organizations is likely to be lower than the number of sites administered by other types of Program sponsors, the Department believes that the regulations must clarify that, regardless of the percentage of a sponsor's sites being reviewed, at least one site must be reviewed for every sponsor reviewed. This regulatory change will resolve any questions which might arise regarding the proper application of the current requirement to review 10 or 15 percent of a sponsor's sites when that sponsor only administers one or two or three sites. For example, if a private nonprofit organization sponsoring three urban sites was subject to review, reviewing 15 percent of its sites might leave some State agencies uncertain as to whether any site reviews were required (because 15 percent of three sites rounds to zero).

Accordingly, this rulemaking amends § 225.7(d)(2) by requiring State agencies to review during the first four weeks of operation all private nonprofit organizations which administer solely urban sites (and at least 15 percent of their sites) when such sponsors did not participate in the prior year's SFSP and administer three or more sites. In addition, this rulemaking further amends § 225.7(d)(2) to specify that at least one of the sponsor's sites must be reviewed whenever the sponsor is subject to review.

3. Year-Round Participation by National Youth Sports Program Sponsors

Section 213 of the Hunger Prevention Act of 1988 (Pub. L. 100-435) amended section 13(a)(1)(B) of the NSLA to allow public and private nonprofit colleges and universities to participate in the SFSP as sponsors provided that they are currently participating in the National Youth Sports Program (NYSP) and meet the other requirements for Program sponsorship. Since public colleges and universities were already eligible to serve as governmental sponsors of the SFSP, the main impact of this legislation was to make eligible for Program sponsorship roughly 60 private colleges and universities participating in the NYSP during the summer months. This legislative change was implemented in the final 1989 SFSP regulations published on April 27, 1989.

Since the passage of the Hunger Prevention Act, Congress has authorized colleges and universities administering the NYSP to establish drug awareness and counseling programs with funds appropriated under the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, November 18, 1988). Approximately 45 colleges and universities are operating extended NYSP projects during the current academic year in order to maintain contact with the disadvantaged youths who participate in the NYSP during the summer months and who are considered to be "at risk" with regard to their potential for substance abuse and related problems. Under these circumstances, Congress felt that it was appropriate to extend SFSP meal benefits—which are available to most other Program sponsors only during the months May through September—to these colleges and universities during the months of October through April in order to support their anti-drug efforts during the academic year.

Accordingly, this rulemaking amends § 225.2 by adding definitions of "NYSP", "NYSP feeding site", and "academic-year NYSP" to facilitate the more frequent references to the National Youth Sports Program and the new academic-year NYSP in the SFSP regulations resulting from this statutory amendment. In addition, this rulemaking further amends the definition of "sponsor" at § 225.2 and amends § 225.6(e)(1) to clarify the eligibility of NYSP sponsors during the months of October through April.

Section 102(a)(2)(B) of the Reauthorization Act amended section 13(c) of the NSLA to set forth a number of specific conditions attached to the participation of those NYSP sites during the academic year. In addition, section 102(b)(2) of the Reauthorization Act made academic-year benefits retroactively available to NYSP sponsors to October 1, 1989. The Department believes that these and other aspects of this new "academic-year" participation by NYSP sponsors in the SFSP merit separate discussion and clarification in the lettered paragraphs which follow.

A. Limits on Meal Reimbursements

Section 13(c)(2)(A) of the NSLA (as amended by section 102(a)(2)(B) of the Reauthorization Act) specifically limits academic-year NYSP sponsors to claiming only meals served to NYSP participants and to claiming SFSP reimbursement for no more than two meal services—either a meal and a snack or two meals—on any day of operation. In addition, it also prohibits NYSP sponsors from claiming reimbursement for more than 30 days of NYSP operation during the months of October through April.

Accordingly, this rulemaking adds new §§ 225.6(c)(2)(V), 225.9(d)(10), and 225.16(b)(3) and amends current § 225.9(d)(9) to specify the aforementioned limits on meal services provided by academic-year NYSP sponsors. In addition, the new definiton of "NYSP feeding site" at § 225.2 further emphasizes that, when sponsors administer a feeding site serving NYSP participants, only those enrolled participants may receive reimbursable Program meals at that site.

B. Continuity of Academic-Year Participation by NYSP Sponsors

Section 102(a)(2)(B) of the Reauthorization Act amends section 13(c)(2) of the NSLA to include several provisions designed to ensure continuity between the NYSP sponsor's participation in the SFSP during the normal months of Program operation (May through September) and their new "academic-year" (October through April) participation in the SFSP. These provisions stipulate: (1) That the same State agency which administers the SFSP during the months of May through September must administer the new NYSP academic-year portion of the Program; (2) that children participating in the NYSP during the academic year be eligible without submitting applications documenting their household's eligibility for Program benefits; and (3) that academic-year NYSP sponsors be eligible to participate in the SFSP without application.

The prohibition on alternate agencies administering the academic-year NYSP necessitates only minor modification to the existing regulations. In order to require that State agencies administering the SFSP during the summer months continue to do so during the academic year, the agreement between State agencies and FNS must stipulate that the State agency will administer the Program through eligible sponsors at any time during the fiscal year.

Accordingly, this rulemaking amends § 225.3(b) to require that the State agency which administers the SFSP during the summer months agree to administer the Program during the months of October through April as well.

Since these children must already apply to participate in the SFSP during the summer months in order to document the site's eligibility as an "enrollment program" (see paragraph (2), definition of "areas in which poor economic conditions exist", § 225.2), the Department believes that the requirement that children participating in the academic-year NYSP be eligible "without application" is intended to prohibit the taking of a *second* application from children participating in both the summer months and academic-year portions of the NYSP. Thus, the application of a child participating in the NYSP during the summer months would be valid throughout the academic-year phase of the Program as well (i.e., the application would be valid for the period May through April). These applications are compared to the income eligibility guidelines in effect on the preceding July 1 to determine whether at least 50 percent of the enrolled children are from households meeting the Program's income standards. Any site which had demonstrated its eligibility for the summer months (May through September) in this manner would then remain eligible for the academic-year phase of the NYSP without taking additional applications from NYSP participants. Those sites participating in the SFSP during the summer months only would continue to take free meal applications from children as they do currently in order to document site eligibility.

The only time children participating in the academic-year SFSP might be required to submit an application is if they are participating at a site which had not participated in the SFSP during the summer months (meaning that the site had not documented its eligibility as an "enrollment program" during the summer months). In this case, the site would be required to take enough applications to document the site's SFSP eligibility as an enrolled site for the academic-year phase of the Program. Sites taking applications from children during the academic year would, of course, compare these applications to the income guidelines published in the preceding July.

Accordingly, this rulemaking adds a new § 225.6(c)(2)(v) to require NYSP sponsors to certify that they will not take more than one application for free Program meals from children participating in both the academic-year and summer portions of the NYSP and that such applications shall be valid for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

With regard to the requirement that academic-year NYSP sponsors may participate "without application", the Department believes that this also means that NYSP sponsors may participate in both phases of the SFSP without making separate applications to and signing separate agreements with the State agency. As is the case with children participating in the NYSP, NYSP sponsors' applications shall be valid for no more than twelve months and for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year. Thus, NYSP sponsors anticipating that they would administer an academic-year program during the period October 1990–April 1991 would apply for year-round SFSP participation in applications for sponsorship submitted during the normal application cycle in the spring of 1990, in accordance with the deadline established in accordance with § 225.6(b)(1). The effect of this requirement to academic-year NYSP sites in Fiscal Year 1990 will be discussed in section 3(F) below, in which the procedures for academic-year NYSP sponsors' submission of retroactive claims is described.

However, as is the case with children, sponsors participating in the academic-year SFSP without having participated in the SFSP during the summer months would be required to submit applications to participate in the Program. Such applications would be taken on a different cycle than the one described at § 225.6(b)(1), with an application deadline no later than September 15. In addition, such application would only be valid for the remainder of the academic-year portion of the SFSP.

Accordingly, this rulemaking amends § 225.6(b)(1) to establish a September 15 deadline for the submission of Program applications by NYSP sponsors wishing to participate in the academic-year portion of the SFSP without having participated in the previous summer's SFSP. In addition, this rulemaking further amends § 225.6(e)(1) to clarify that the academic-year NYSP sponsor's agreement to operate the Program will be valid for a 12-month period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

C. Reimbursements During Academic-Year Participation by NYSP Sponsors

Section 102(a)(2)(B) of the Reauthorization Act (amending section 13(c)(2)(C) of the NSLA) also mandates that academic-year NYSP participants in the SFSP receive different reimbursements for the meals served during the months of October through April. Lunches and suppers served during these months will be reimbursed at the rate for free lunches under the NSLP, while breakfasts and supplements served during these months will be reimbursed at the rate for free severe need breakfasts under the School Breakfast Program (SBP). Based on rates in effect for these programs as of July 1, 1989, this would mean that academic-year NYSP participants would receive meal reimbursements for lunches and suppers which were slightly lower than those which they received for these meals during the summer months. However, per meal reimbursements for breakfasts would be slightly higher during the academic year, and per meal reimbursements for supplements would be more than double the comparable reimbursement for supplements served during the summer months.

Accordingly, this rulemaking amends § 225.9(d) by adding a new paragraph, (d)(10), which specifies the reimbursement rate structure mandated for academic-year NYSP participants in the SFSP by the Child Nutrition and WIC Reauthorization Act. In addition, because section 102(a)(2)(B) of the Reauthorization Act describes only the payment of a single per meal reimbursement to academic-year sponsors (as opposed to the payment of separate operating and administrative reimbursements based on a comparison of costs and rates), this rulemaking also amends § 225.9(d) (6) and (7) to exempt academic-year NYSP sponsors from basing their claims for reimbursement on a comparison of costs to rates.

D. Meal Pattern for Breakfasts and Supplements

Section 102(a)(2)(B) of the Reauthorization Act also specified that the meals served by academic-year NYSP sponsors meet different meal patterns than those which normally pertain in the SFSP. Specifically, new sections 13(c)(2) (D)(i) (I) and (II) of the NSLA mandate that lunches and suppers served by academic-year NYSP sponsors must meet the meal pattern for lunches served in the NSLP while breakfasts served by such sponsors must meet the meal pattern for breakfasts served in the SBP.

With regard to breakfasts, the Department believes that the law requires compliance with the new, four-item meal pattern prescribed for the SBP in the School Lunch and Child Nutrition Act Amendments of 1986 (Pub. L. 99-500 and 591) and implemented in final regulations published on March 30, 1989 (54 FR 13045). However, the Department does not believe that the Reauthorization Act intended the implementation of the "offer-versus-serve" aspect of the SBP meal pattern which was mandated in the same law and regulations or the offer-versus-serve aspect of the NSLP meal pattern. Offer-versus-serve allows students in the School Programs to refuse a specified number of food items which they do not intend to consume while allowing school food authorities to claim full reimbursement for that meal. Such a provision has existed for years in the NSLP, and Congress felt that it could work just as well in the structured school setting of the SBP. However, given the limited number of days which academic-year NYSP sponsors will operate, their familiarity with SFSP feeding practices, and the intermittent nature of the academic-year NYSP, the Department is convinced that any introduction of offer-versus-serve provisions at this time would be both unwise and administratively untenable.

Accordingly, this rulemaking amends §§ 225.16(d) (1) and (2) by adding language which excepts academic-year NYSP sponsors from the normal SFSP meal patterns for breakfast, lunch, and supper. In addition, this rulemaking adds a new § 225.16(e) which incorporates by reference the appropriate meal pattern from 7 CFR parts 210 and 220 (without the "offer versus serve" aspect of these meal patterns) for these meals when served by NYSP sponsors during the months of October through April.

With regard to supplements, section 13(c)(2)(D)(ii) of the NSLA as amended by section 102(a)(2)(B) of the Reauthorization Act provides the Department with the latitude to adopt or modify the SBP meal pattern for application to meal supplements served by NYSP sponsors during the academic year. Given that the reimbursement rate mandated for supplements served by academic-year NYSP participants in the SFSP is the same as that for severe need breakfasts served at the free rate in the SBP, the Department believes that the provision of a supplement by academic-year NYSP participants which meets the SBP meal pattern (again, without the offer-versus-serve element) will provide the additional nutritional component intended by Congress and will justify the additional reimbursement provided to these sponsors' for their supplemental meal service by the Reauthorization Act.

Accordingly, this rulemaking amends § 225.16(d)(3) by adding language which excepts academic-year NYSP sponsors from the normal SFSP meal pattern for supplements. In addition, this rulemaking further amends new § 225.16(e) to require that, for meals served by NYSP sponsors during the months of October through April, supplements must meet the breakfast meal pattern (without "offer versus serve") as set forth in the SBP regulations.

E. Monitoring of Academic-Year NYSP Sponsors

Because sponsors of academic-year NYSP sites will, in most States, operate during months when no other sponsor in the State is participating in the SFSP, it is necessary to address briefly in this preamble and the regulatory text below the matter of how often such sponsors and their sites shall be monitored by State agencies. Some level of Program monitoring is always necessary to ensure accountability. In the case of these sponsors and sites, which will operate the Program under somewhat different rules during the summer months and the academic year, it will be especially important to ensure that a degree of oversight is maintained during the months of October through April. Nevertheless, due to the small number of academic-year sites operating and the minimal amount of SFSP reimbursement which their sponsors will earn (as a result of the 30-day limit on their operation), it would be inappropriate to require frequent monitoring of these sites. Furthermore, given the delayed passage of the Reauthorization Act and the date of issuance of these interim regulations, the Department does not believe that it would be appropriate to *require* State agencies to conduct monitoring of academic-year sponsors before Fiscal Year 1991. However, the Department encourages State agencies to make every reasonable effort to conduct such monitoring during Fiscal Year 1990.

Accordingly, this rulemaking further amends § 225.7(d)(2) to require that, beginning on October 1, 1990, State agencies conduct at least one monitoring visit to each academic-year NYSP sponsor and at least one of their sites during the period October through April.

F. Retroactive Reimbursement to October 1, 1989

Section 102(b)(2) of the Reauthorization Act made retroactive to October 1, 1989 the eligibility of academic-year NYSP sponsors to receive SFSP benefits. Thus, although the Reauthorization Act was not signed into law until November 10, 1989, the approximately 45 colleges and universities which began administering the academic-year portion of the NYSP on October 1, 1989 may be eligible to retroactively claim SFSP reimbursement for the meals they have served to NYSP enrollees since that date.

This provision of the law will allow reimbursement to academic-year NYSP sponsors retroactive to October 1, 1989, *provided that:* (1) Free meal applications are on file to document the NYSP site's eligibility to participate in the Program; (2) meal counts by type (breakfast, lunch, supplement, and supper) are available; (3) food service revenue and expenditure records are sufficient to support the claim for reimbursement; (4) SFSP reimbursement does not duplicate other funding for the same meals; and (5) the meals claimed for reimbursement met all requirements of the SFSP meal pattern in terms of items and quantities served. The first and last of these requirements call for further explanation in this preamble.

With regard to the first requirement, the Department believes that, although NYSP sponsors were required to take applications last summer (in accordance with the definition of "Areas in which poor economic conditions exist" at § 225.2 and the site requirements set forth at § 225.6(c)(2)), they probably did not do so for this year's academic-year program based on the Reauthorization Act's stipulation that children participating in the academic-year NYSP may do so "without application". This is consistent with the Department's understanding of congressional intent with regard to the taking of a single application from households participating in both the summer and academic-year phases of the NYSP, as discussed in section 3(B) above. Thus, for the purpose of determining site eligibility for claiming retroactive reimbursements, the Department will require only that the site be able to document its participation in the 1989 SFSP (May through September 1989). Of course, academic-year sponsors and/or sites in the 1990 SFSP which did *not* participate in the 1989 SFSP would be required to document their site eligibility in order to claim retroactive reimbursement by taking enough applications to document that at least 50 percent of the children participating at each site came from households meeting the Program's income standards. As with the other household applications of NYSP participants, these applications would be valid only for the remainder of the academic year, through April 30, 1990.

With regard to the last requirement, the Department wishes to point out that the Reauthorization Act promulgated new rates of reimbursement and meal patterns for the academic-year NYSP. The Department does not believe that any of the meals claimed for retroactive reimbursement may be reimbursed at rates other than those authorized under the Reauthorization Act (i.e., the School Programs rates, as discussed in section 3(C) of this preamble, above) and incorporated in these regulations at § 225.9(d)(10). Furthermore, in accordance with the Reauthorization Act's explicit language at section 102(a)(2)(B) (amending section 13(c)(2)(C) of the NSLA), the Department will consider the meal pattern to have been met for any meal claimed retroactively by an academic-year NYSP sponsor only if that meal met the requirements of the new meal patterns incorporated by reference at § 225.16(e) of these regulations.

As discussed in section 3(B) above, beginning May 1, 1990 NYSP sponsors will need only sign a single agreement which will cover both the summer and academic-year phases of the NYSP. However, since at the time last summer's agreements were signed no authority for reimbursing academic-year NYSP sponsors existed, the State-sponsor agreements were not designed to include the academic-year phase. Therefore, any academic-year NYSP sponsor intending to claim reimbursement for the remainder of the academic year (through April 30, 1990) must sign a Program agreement covering this period.

In addition to the conditions set forth in the preceding paragraphs, the Department will also require that any academic-year NYSP sponsor claiming reimbursement for meals served prior to the execution of a Fiscal Year 1990 academic-year Program agreement between the State agency and the NYSP sponsor: (1) Execute such a Program agreement no later than 90 days after the publication of these regulations; (2) submit a claim for reimbursement for each month of operation for which retroactive claims are made; and (3) submit all claims for retroactive reimbursement within 30 days of the date the Program agreement is executed or the date set by § 225.9(d)(5), whichever date is later. To avoid confusion in the amendment of the regulatory text of 7 CFR part 225, all of the provisions pertaining to retroactive reimbursement have been set forth in § 225.18, "Miscellaneous Administrative Provisions", in a new paragraph, (i).

Accordingly, this rulemaking amends § 225.18 by adding a new paragraph, (i), which establishes the conditions under which academic-year NYSP sponsors may qualify for retroactive reimbursement of meals in the Fiscal Year 1990 academic-year phase of the SFSP.

4. Technical Corrections to SFSP Regulations

As mentioned in the "Summary" section above, this rulemaking also makes a number of technical corrections to the text of the final 1989 SFSP regulations which were published on April 27, 1989 (54 FR 18200). These technical corrections are necessary to provide administering agencies and the public with a fully corrected version of 7 CFR part 225. In most cases, these corrections involve minor typographical errors, misspellings, or the insertion of omitted words which do not affect Program policy. However, in several cases, more significant errors were made in the April 27, 1989 text which require correction in the regulatory text below and a brief explanation in this preamble.

First, several words in the definition of "sponsor" at § 225.2 which allude to Program meal requirements were inadvertently altered and are out of conformance with the statutory definition of "service institution" at section 13(a)(1)(B) of the NSLA. Specifically, the Act requires that eligible sponsors provide "food service *similar to* that made available to children" (emphasis added) in the School Lunch or School Breakfast Programs. The amended definition of "sponsor" in the April 27, 1989 regulations states that sponsors must provide "food service which meets the *same* meal requirements as meals served to children" in the School Programs (emphasis added). This definition is out of conformance with the NSLA and requires correction in this rulemaking.

Second, the regulatory text published in the Federal Register on April 27, 1989 also included two errors in the Program meal patterns. These errors—which involved the minimum required serving size for cold dry cereal in the breakfast meal pattern at § 225.16(d)(1) and for cooked dry beans or peas in the supplemental food pattern at § 225.16(d)(3)—have been corrected in the amendatory language preceding § 225.16 in the regulatory text below.

Accordingly, this rulemaking makes a series of technical corrections to the regulatory text published on April 27, 1989, including an amendment to the definition of sponsor at § 225.2 to bring that definition into conformance with the statutory language at section 13(a) of the NSLA and corrections of errors in the breakfast and supplemental food patterns at § 225.16.

List of Subjects in 7 CFR Part 225

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

Accordingly, the Department amends 7 CFR part 225 as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

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

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

2. In § 225.2:

a. New definitions of "academic-year NYSP", "homeless feeding site", "NYSP", "NYSP feeding site" and "private nonprofit organization" are added in alphabetical order.

b. The definitions of "private nonprofit" and "sponsor" are revised.

The additions and revisions specified above read as follows:

§ 225.2 Definitions.

Academic-Year NYSP means that portion of the NYSP operating drug awareness and counseling programs during the months October through April, as authorized under Public Law 100-690, the Anti-Drug Abuse Act of 1988.

* * * * *

Homeless feeding site means a feeding site whose primary purpose is to provide shelter and one or more regularly scheduled meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of 'school', §210.2 of the National School Lunch Program regulations.

* * * * *

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

NYSP feeding site means a site which qualifies for Program participation on the basis of free meal applications taken from enrolled children and at which all of the children receiving Program meals are enrolled in the NYSP.

* * * * *

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

(a) Serves a total of not more than 2,500 children per day;

(b) Administers the Program at no more than five sites in any urban area or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(c) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(d) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only sponsor the Program in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

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

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

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

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

* * * * *

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

* * * * *

3. In § 225.3, paragraph (b) is amended by revising the second sentence and adding a new third sentence to read as follows:

§ 225.3 Administration.

* * * * *

(b) * * * With the exception of State agencies having academic-year NYSP sponsors, each State agency shall notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. Those State agencies whose Program will include academic-year NYSP sponsors shall enter into an agreement with FNS by October 1 which shall cover the entire fiscal year and shall administer the Program for all eligible sponsors within the State during the agreement period. * * *

* * * * *

4. In § 225.4, paragraphs (d)(2) and (d)(3) are revised as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) * * *

(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, its plans and schedule for informing sponsors of the availability of the Program, and, beginning in Fiscal Year 1991, its plans for making efforts to inform private nonprofit organizations of their potential eligibility for Program sponsorship;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of

means to be served, the number of children who will participate, and a description of the estimating methods used by the State. Estimates of participation by private nonprofit organizations and their potential impact on the number of children and meals served need not be included in the plan until Fiscal Year 1991;

* * * * *

5. In § 225.6:

a. Paragraph (a)(2) is revised.

b. Paragraph (a)(3) is redesignated as paragraph (a)(4).

c. Two new paragraphs, (a)(3) and (a)(5), are added.

d. Paragraph (b)(1) is amended by revising the second sentence.

e. Paragraph (b)(5) is amended by removing the word "and" at the end of paragraph (b)(5)(iv), by removing the period at the end of paragraph (b)(5)(v) and adding in its place "; and", and by adding a new paragraph, (b)(5)(vi).

f. Paragraph (b)(6) is revised.

g. Paragraph (c)(2)(ii) is amended by adding the words "or a homeless feeding site" after the word "camp".

h. Paragraphs (c)(2)(iv)–(c)(2)(viii) are redesignated as paragraphs (c)(2)(vi)–(c)(2)(x) and two new paragraphs, (c)(2)(iv) and (v), are added.

i. Redesignated paragraph (c)(2)(x) is amended by adding, after the word "government," the words "or under § 225.14(b)(5) as a private nonprofit organization,".

j. Paragraph (d)(1)(i) is amended by adding the words "or a homeless feeding site" after the word "camp" and by removing the word "as" the first time it appears.

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

l. Paragraph (g)(1) is amended by removing the word "exemption" in the first sentence and adding in its place the word "exemptions".

m. Paragraph (g)(3) is amended by removing the word "statutes" and adding in its place the word "statutes".

n. Paragraph (h)(7) is amended by removing the words "§ 225.15(m)" and adding in their place the words "§ 225.15(g)(1)".

The revisions and additions specified above read as follows:

§ 225.6 State Agency responsibilities.

(a) * * *

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

(3) Each State agency shall take the following steps to determine the eligibility of private nonprofit organizations to apply to sponsor the Program in particular areas:

(i) By February 1 each year, compile a list of potentially eligible sponsors (except potential sponsors which are private nonprofit organizations, discussed in paragraph (a)(3)(iii) of this section) which have not previously participated in the Program and contact them. These potential sponsors shall be encouraged to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(ii) By February 1 each year, when contacting the previous year's school food authority and governmental sponsors as required by paragraph (a)(3)(i) of this section, ask them to indicate in writing, no later than March 1, their interest in again serving as Program sponsors, in providing Program meals at the same sites which they served in the prior year, and in providing Program meals in new areas which they did not serve in the previous year. In addition, such entities shall be asked to list those sites or areas which they served in the prior year but do not intend to serve in the current year's Program. For each new area which these entities propose to serve, the school food authority or governmental sponsor shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed new site. If such entities indicate their intention not to provide Program service at a site or in an area in which they sponsored the Program in the previous year, the State agency shall consult with the school food authority or unit of government to determine their reasons for discontinuing service at that site, and such reasons shall be accurately documented by the State agency;

(iii) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and identify areas which apparently will be unserved in the current year's Program. After identifying potentially unserved areas, the State agency shall compile a list of potentially eligible private nonprofit organizations and contact them to ask that they provide, no later than April 25, a written indication of their interest in serving as Program sponsors, the geographical area(s) they propose to serve, and the approximate number of sites which they propose to serve. For each area which they propose to serve, the private nonprofit organization shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Private nonprofit organizations shall be advised that they are required to use their own facilities for meal preparation or to obtain meals from a public facility or a school participating in the National School Lunch Program; and

(iv) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i)–(a)(3)(iii) of this section and, no later than May 1, notify private nonprofit organizations responding to the solicitation of interest described in paragraph (a)(3)(iii) of this section, of any sites which they would *not* be allowed to include in their formal application for Program sponsorships. This analysis shall be based upon:

(A) The State agency's application of the priority system described in paragraph (b)(5) of this section; and

(B) The ineligibility of private nonprofit organizations to sponsor the Program in an area where a school food authority or governmental sponsor had provided Program meal service during the previous 12 months. Such ineligibility may be waived by the State agency only if it is convinced (based on the contact described in paragraph (a)(3)(ii) of this section or, if the former sponsor did not respond, direct contact with the school food authority or governmental sponsor) that the school food authority or governmental sponsor would not have a particular area regardless of the potential availability of a private nonprofit organization to sponsor the Program in that area.

* * * * *

(5) In addition to the warnings specified in paragraph (a)(4) of this section, applications and pre-application materials distributed to private nonprofit organizations shall include, in bold lettering:

(i) The following criminal penalties and provisions established in section 13(o) of the National School Lunch Act (42 U.S.C. 1761(o)):

(A) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the Program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the Program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(B) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the Program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this Program, or any money, funds, assets, or property derived from benefits provided by this Program, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(C) If two or more persons conspire or collude to accomplish any act described in paragraphs (a)(5)(i) (A) and (B) of this section, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

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

(b) * * *

(1) * * *. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15 or, in the case of sponsors applying to administer the Program at academic-year NYSP sites when they did not participate in the previous summer's Program, by September 15. * * *

* * * * *

(5) * * *

(vi) Applicants which are private nonprofit organizations.

(6)(i) With the exception of private nonprofit organizations, 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.

(ii) State agencies shall approve no applicant private nonprofit organization to administer more than 5 urban or 20 rural sites or to serve more than 2,500 children per day. In addition, no private nonprofit organization shall be approved to serve any site with an anticipated attendance of more than 300 children at any approved meal service at any one site. However, private nonprofit organizations may apply for a waiver of the limit on the number of children served at a site in accordance with paragraph (b)(6)(iii) of this section. In instances where the private nonprofit organization is approved to administer both rural and urban sites, it may serve a maximum of 20 sites, of which no more than 5 many be urban.

(iii) No applicant private nonprofit organization may apply for a waiver of the limits on the number of urban, rural, or total sites, or the total number of children served at each approved meal service at such sites, which are set forth in paragraph (b)(6)(ii) of this section. Such applicant private nonprofit organization may, however, apply for a waiver of the 300-child per site limit set forth at paragraph (b)(6)(ii) of this section. Such waiver application shall demonstrate to the satisfaction of the State agency, through the use of school food service, census tract, or other data, that more than 300 children are likely to be served at an approved meal service at a given site and that the sponsor is fully capable of managing a site of this size. In addition, State agencies shall grant such waivers only if they are satisfied that no other sponsor is capable of serving the children in excess of 300 which the applicant sponsor proposes to serve at a particular meal service and site. In no case may a State agency approve an applicant private nonprofit organization to serve more than 500 children at any approved meal service at any one site.

* * * * *

(c) * * *

(2) * * *

(iv) Along with its site information sheet for a homeless feeding site, information sufficient to demonstrate that the site is not a residential child care institution as defined in paragraph (c), definition of 'school', § 210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families. In addition, if cash payments, food stamps, or any in-kind service are required of any meal recipient at such site, sponsors shall describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children.

(v) Along with its site information sheet for NYSP sites, sponsors shall certify: That all of the children who will receive Program meals are enrolled participants in the NYSP; that no child participating in the NYSP during both the summer months and the academic year shall be required to submit more than one application to participate in the summer and academic-year phases of the Program; and that such applications shall be valid for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

* * * * *

(e) * * *

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or during the period from October through April under the academic-year NYSP. Sponsors participating in both the summer and academic-year phases of the NYSP shall be required to enter into one agreement with the State agency which shall be valid for a 12-month period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year;

* * * * *

6. In § 225.7:

a. Paragraph (a) is amended by adding a sentence at the end of the paragraph.

b. Paragraph (d)(1)(iii) is amended by adding the words, "With the exception of sites administered by private nonprofit organizations," at the beginning of the paragraph.

c. A new paragraph, (d)(1)(iv), is added.

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

The additions and revision specified above read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * In the training of private nonprofit organizations, State agencies shall give special emphasis to proper meal counting techniques, meal pattern requirements, free and reduced price application requirements, restrictions on second meal service, the prohibition on off-site meal consumption, timely and accurate claims submission, and recordkeeping.

* * * * *

(d) * * *

(1) * * *

(iv) In the case of private nonprofit organizations, all proposed sites with an expected attendance at an approved meal service of 100 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 and 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 conduct both a review of sponsor operations and review an average of 15 percent of the following sponsors' sites (with a minimum of one site reviewed per sponsor) during the first four weeks of operation:

(A) Private nonprofit organizations which administer only urban sites, when such sponsors did not participate in the prior year's SFSP and administer three or more urban sites;

(B) Other private nonprofit organizations which are determined by the State agency to need early reviews;

(C) Any sponsors, including private nonprofit organizations, which have 10 or more sites and which did not operate the Program in the prior year; and

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

(ii) Beginning in Fiscal Year 1991, State agencies shall conduct a review of academic-year NYSP sponsors, and at least one of their sites, during the period October through April.

(iii) In addition to the reviews specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the State agency shall also conduct the following reviews (with a minimum of one site reviewed per sponsor) 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.

* * * * *

7. In § 225.8, a new paragraph, (e), is added which reads as follows:

§ 225.8 Records and reports.

* * * * *

(e) No later than May 1 of each year, State agencies shall submit to the appropriate FNSRO a list of names and addresses of each potential private nonprofit organization, the geographical area(s) which such potential sponsors propose to serve, the approximate number of sites which they propose to serve and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Such listing shall be based on the information gathered and analyzed in accordance with § 225.6(a)(3) of this part. In addition, within five working days of approving a private nonprofit organization to participate in the Program, State agencies shall notify FNS of such approval and shall provide updated information for each of the private nonprofit organization's approved sites regarding the sites' locations, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service at each site; and whether the site is rural or urban, vended or self-preparation, enrolled or open, or is a homeless feeding site.

8. In § 225.9:

a. The introductory text of paragraphs (d)(6) and (d)(7) is revised.

b. Paragraph (d)(9) is revised.

c. Paragraph (d)(10) is redesignated as paragraph (d)(11).

d. A new paragraph, (d)(10), is added.

The revisions and addition specified above read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(d) * * *

(6) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for operating costs shall equal the lesser of the following totals:

* * * * *

(7) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for administrative costs shall equal the lowest of the following totals:

* * * * *

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

(10) Sponsors of NYSP sites operating during the academic year shall claim reimbursement for no more than 30 days of meal service for the period October through April. For meals served to children at NYSP sites during the months October through April, sponsors shall be reimbursed as follows:

(i) For each eligible lunch or supper served, the rate for lunches served free in the National School Lunch Program, as described in 7 CFR part 210, § 210.4(b).

(ii) For each eligible breakfast or supplement served, the rate for severe need breakfasts served free in the School Breakfast Program, as described in 7 CFR part 220, § 220.9(b).

* * * * *

§ 225.11 [Amended]

9. In § 225.11, paragraph (c)(3) is amended by removing the period at the end of the paragraph and adding in its place a semicolon and the word "and".

10. In § 225.14:

a. Paragraph (b)(3) is amended by removing the word "and".

b. Paragraph (b)(4) is amended by removing the period and replacing it with "; and".

c. A new paragraph, (b)(5), is added.

d. Paragraph (c)(3) is amended by adding the words "or a homeless feeding site" after the word "camp".

e. Paragraph (c)(6) is amended by adding the word "and" after the semicolon.

f. Paragraph (d)(1) is amended by adding the words "or a homeless feeding site" after the word "camp".

g. Paragraph (d)(4) is amended by adding, after the word "government", the words ", and sponsors which are private nonprofit organizations,".

h. New paragraphs (d)(5), (d)(6), and (d)(7) are added.

The additions specified above read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(b) * * *

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

* * * * *

(d) * * *

(5) If the sponsor administers homeless feeding sites, it shall document that the site is not a residential child

care institution as defined in paragraph (c), definition of 'school', § 210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and meals to homeless families. In addition, sponsors of homeless feeding sites shall certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

(6) If the sponsor administers NYSP sites, it shall ensure that applications have been taken to document the site's eligibility and that all children at such sites are enrolled participants in the NYSP.

(7) If the sponsor is a private nonprofit organization, it shall certify that it:

(i) Serves a total of not more than 2,500 children per day;

(ii) Serves no more than five sites in any urban area, or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(iii) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(iv) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of local government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only operate in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

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

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

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

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

11. In § 225.15:

a. Paragraph (a)(2) is revised.

b. Paragraph (g)(3) is amended by adding, after the word "sponsor", the words "except a private nonprofit organization".

c. Paragraph (g)(5)(xii) is amended by adding, after the semicolon, the word "and".

The revision specified above reads as follows:

§ 225.15 Management responsibilities of sponsors.

(a) * * *

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, sponsors administering homeless feeding sites shall ensure that, if such sites receive commodities as a "charitable institution" pursuant to part 250 of this chapter (§§ 250.3 and 250.41) during their participation in the Program, the site's records establish that its allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative costs in accordance with the definition of "income accruing to the Program" at § 225.2 and with the regulations at § 225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this Part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

* * * * *

12. In § 225.16:

a. Paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

b. Two new paragraphs, (b)(2) and (b)(3), are added.

c. Redesignated paragraph (b)(4) is revised.

d. Paragraph (d)(1) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph and by removing from the Bread and Bread Alternates portion of the Breakfast meal pattern the words "Cold dry cereal—½ cup" and adding in their place the words "Cold dry cereal—¾ cup or 1 oz.".

e. Paragraph (d)(2) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph and, in footnote 5, by adding a semicolon after the word "enriched" the first time it occurs and by adding a semicolon after the word "flour".

f. Paragraph (d)(3) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph, by removing from the Meat and Meat Alternates portion of the Supplemental Food meal pattern the words "Cooked dry beans or peas—½ cup" and adding in their place the words "Cooked dry beans or peas—¼ cup", and, in footnote 3, by adding a semicolon after the word "flour".

g. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively.

h. A new paragraph, (e), is added.

The additions and revision specified above read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) * * *

(2) *Homeless Feeding Sites.* Sponsors of homeless feeding sites shall ensure that the site's primary purpose is to provide shelter and meals to homeless families and that such sites claim reimbursement only for meals served to homeless and non-homeless children. Homeless feeding sites are not subject to the time restrictions for meal service set forth at paragraphs (c)(1)–(3) of this section.

(3) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites. NYSP sites participating in the Program during the months of October through April shall claim reimbursement for no more than two meals or one meal and one supplement per day for not more than 30 days of meal service.

(4) *Restrictions on the number and type of meals served.* Food service sites other than camps, NYSP sites operation during the months of October through April, and sites which primarily serve migrant children may serve either: (i) One meal each day, a breakfast, a lunch, or supplement; or (ii) two meals each day, if one is a lunch and the other is a breakfast or a supplement.

* * * * *

(e) NYSP sponsors participating in the Program during the months of October through April shall ensure that meals served meet all of the requirements specified in this paragraph.

(1) At a minimum, a breakfast or a supplement shall contain the components and quantities specified for breakfasts in 7 CFR part 220, § 220.8(a)(1)–(2), grades K–12.

(2) At a minimum, a lunch or supper shall contain the components and quantities specified for lunches in 7 CFR

part 210, § 210.10 (c) and (d), Group IV (age 9 and older) and, when possible, the recommended quantities for children 12 and older.

* * * * *

13. In § 225.18:

a. Paragraph (e) is amended by removing the word "law" and adding in its place the word "laws".

b. Paragraph (g) is amended by adding the word "or," before the words "if such" the second time they appear.

c. A new paragraph, (i), is added.

The addition specified above reads as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(i) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this part, the following shall apply:

(1) State agencies shall provide reimbursement as set forth in § 225.9(d)(10) of this part, for meal service provided by any academic-year NYSP sponsor between October 1, 1989 and the date of the Fiscal Year 1990 academic-year Program agreement between the State agency and the academic-year NYSP sponsor under the following conditions, *provided that:*

(i) The sponsor can document, for any meals claimed that:

(A) The NYSP site participated in the Program during the 1989 SFSP or, if the site did not participate in the 1989 SFSP, free meal applications are on file to document the site's eligibility during the Fiscal Year 1990 academic-year phase of the SFSP;

(B) Meal counts by type (breakfast, lunch, supplement, and supper) are available;

(C) Food service revenue and expenditure records are sufficient to support the claim for reimbursement;

(D) Program reimbursement does not duplicate other funding for the same meals;

(E) The meals claimed for reimbursement met the requirements of the appropriate meal patterns set forth at § 225.16(e) of this part in terms of items and quantities served; and

(ii) The Fiscal Year 1990 academic-year Program agreement between the State agency and the academic-year NYSP sponsor is executed no later than 90 days after the publication of the 1990 Program regulations; and any claims for reimbursement for meals served between October 1, 1989 and the date of said Program agreement are grouped by month and are received by the State agency no later than 30 days after the execution of the State-sponsor agreement or the date established by § 225.9(d)(5), whichever date is later.

§ 225.19 [Amended]

14. In § 225.19:

a. Paragraph (a) is amended by removing the word "State" and adding in its place the word "States".

b. Paragraph (b) is amended by removing the words "Puerto Rio" and adding in their place the words "Puerto Rico" and by removing the word "Agriculuture" and adding in its place the word "Agriculture".

c. Paragraph (c) is amended by removing the words "1100 Spring Street, NW., Atlanta, GA 30367" and adding in their place the words "77 Forsyth Street, SW, Suite 112, Atlanta, GA 30303".

d. Paragraph (g) is amended by removing the word "North" and adding in its place the word "Northern".

Dated: April 4, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-8171 Filed 4-5-90; 9:49 am]

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Tuesday
April 10, 1990

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25567, Amdt. No. 25-71]

RIN 2120-AC44

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment upgrades the airworthiness requirements for pressurized compartments on transport category airplanes by (1) amending the criteria for evaluation of the secondary effects caused by openings in the pressure vessel, and (2) extending the area of consideration to include openings anywhere in any pressurized compartment. There are no changes to the sizes of the openings that must be considered. This amendment is a result of recent service experience and is intended to make the pressurized compartment load requirements less design-dependent and more objective. It requires evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside the pressurized compartment.

EFFECTIVE DATE: May 10, 1990.

FOR FURTHER INFORMATION CONTACT: James Haynes, Airframe and Propulsion Branch (ANM-112), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2113.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 88-5, which was published in the **Federal Register** on March 16, 1988 (53 FR 8742). The notice proposed to upgrade the requirements concerning pressurized cabin and compartment design loads by requiring that the specified openings for rapid decompression evalution be considered in all compartments of the pressure vessel and that the effects of the differential pressure load be considered for any structure inside or outside the pressure vessel.

As discussed in the notice, § 25.365 "Pressurized cabin loads" was revised by Amendment 25-54 (effective October 14, 1980) to include a new requirement for the structural evaluation of the effects of rapid depressurization resulting from a specific size opening in the fuselage. This requirement was initially prompted by a transport airplane accident in which a failed door resulted in decompression and collapse of the floor with subsequent jamming of the flight controls and loss of the airplane. This accident raised concerns regarding the reliability of outward opening doors and the potential harm to the airplane from openings that may occur in the pressure vessel from a variety of causes including the detonation of bombs, mid-air collisions, and maintenance and production errors. These concerns resulted in proposal number 1051 of the Biennial Airworthiness Review of 1974-1975 which, in turn, resulted in the issuance of NPRM No. 75-31 (40 FR 29410; July 11, 1975).

In NPRM No. 75-31, the FAA proposed to amend the transport category airplane airworthiness standards to prevent floor failure, or any structural failure that would prevent continued safe flight and landing caused by the sudden release of pressure through an opening in any compartment at any approved operating altitude. This would have been accomplished by considering openings from bomb detonations, nonplug door failures, engine disintegrations, bird strikes, and any other eventualities. However, in the rule that was eventually adopted (Amendment 25-54; effective October 14, 1980), the requirement to consider compartment openings was limited to those openings caused by engine disintegration and other airplane or equipment failures. To account for other openings, the rule prescribed an opening of a computed size (based on a formula) in the passenger and cargo compartments. The evaluation of the effects was limited to partitions, floors and bulkheads within the pressurized cabin.

The final rule adopted in 1980 (Amendment 25-54) addressed the original concerns by: (1) Revising § 25.783, "Doors," to improve the standards for doors to the point that the failure of an outward-opening door was considered extremely improbable; and (2) requiring designs that prevent the collapse of floors and bulkheads in the event of an opening of a specific size in passenger and cargo compartments. The size of that opening was based on a formula involving the maximum cross-sectional area of the fuselage; however, the rule did not require the consideration of a size greater than 20 square feet.

The changes made to § 25.783 in 1980 were considered to have adequately addressed the occurrence of fuselage openings resulting from the opening of large doors; and the changes to § 25.365 were considered to have provided protection against the secondary effects of decompression resulting from other causes of fuselage openings. Although these changes were principally prompted by concerns over fuselage openings caused by the detonation of bombs during pressurized flight, the computed opening was considered large enough to cover other conceivable causes of fuselage openings. These included openings caused by structural failure resulting from corrosion, failure of rotating machinery, and errors in maintenance, production or operation.

The intent of the proposed change to § 25.365(e) in NPRM No. 75-31 was to provide some level of protection for the critical systems and components from the effects of decompression in the event of a fuselage opening that in itself may not cause the loss of the airplane. As adopted, the rule required an airplane to be designed to prevent the failure of floors and bulkheads in the event of an opening of a specified size. The physiological effects of decompression on the crew and passengers and the loss of structural integrity at the opening location, were not addressed in NPRM No. 75-31 or the resulting Amendment 25-54.

Section 25.365(e), as revised by Amendment 25-54, required that an airplane be designed to prevent the failure of floors, bulkheads and partitions that could result from a computed opening in any pressurized passenger or cargo compartment. The location of the computed opening was limited to these areas because they were considered the most likely locations for a bomb.

A requirement similar to that of § 25.365(e), as revised by Amendment 25-54, had already been issued in the form of an airworthiness directive (AD 75-15-05, Amendment 39-2262; 40 FR 29269; July 11, 1975) and made applicable to all wide body airplanes. This airworthiness directive resulted in the strengthening of the floors and in provisions for additional ventilation between compartments. It appears that the benefits of these requirements were realized in 1984 when a Boeing 747 airplane survived a 40 square foot opening from a bomb detonation.

Additional service experience since adoption of Amendment 25-54 indicates that the venting of pressure into normally unpressurized areas can cause secondary structural damage which in turn can lead to failure of critical flight control systems and components.

Furthermore, experience shows that all compartments of the airplane are subject to potentially survivable openings resulting from bomb detonation or the other events cited in NPRM No. 75–31.

In NPRM No. 88–5, the FAA proposed to upgrade the requirements to consider design loads on any structure, inside or outside the pressurized compartments, resulting from decompression through specified openings in any compartment. The proposal addressed only the secondary effects of the decompression loads on any structure and required each structure to withstand the loads if the failure of the structure could interfere with safe flight and landing. All effects on systems, equipment, or other structural components resulting from the secondary structural failures were to be evaluated.

A special requirement was provided for very small compartments where the required opening of the proposed § 25.365(e)(2) could not reasonably be expected to be confined to the small compartment. Instead of the computed opening, an opening of the maximum size expected to remain confined in the small compartment would be considered in the small compartment. As a separate condition, the small compartment would then be combined with an adjacent pressurized compartment and both considered as a single compartment for the maximum size opening specified by the formula. The cockpit would not be considered a small compartment for the purposes of the proposal.

Discussion of Comments

Comments were received from foreign and domestic airplane manufacturers, foreign government agencies, airplane operators and organizations representing pilots and flight engineers. The overwhelming majority of the commenters indicate support for the proposed changes, while some recommend additional or more stringent requirements and a few oppose certain provisions of the proposed rule. Many commenters recommend editorial, organizational, and clarifying comments which would result in a more understandable regulation.

Several commenters recommend that proposed § 25.365(h) be incorporated into new § 25.365(e) to simplify and improve the organization of the requirements. The FAA agrees, and the provisions of proposed paragraph (h) are incorporated into paragraph (e). Section 25.365(e) now applies to any structure, component, or part inside and outside the pressurized compartments. At the same time, the specific references to "bulkheads, floors, and partitions" in paragraph (e) are retained and moved from paragraph (e) to paragraph (g) to clarify the passenger protection aspects related to failure of these specific structures in occupied compartments regardless of whether the failure of these structures would interfere with safe flight and landing. Paragraph (g) is the more appropriate paragraph in which to address this concern since it already addresses the need for passenger protection from injury caused by the detachment of other parts under decompression conditions.

One commenter suggests that the reference to "any structure" might not be interpreted consistently to include components and supports for systems. To clarify that the rule applies to all structures that can be exposed to depressurization loads, including components and supports for systems, new § 25.365(e) now refers to "any structure, component, or part." The intent is to require that any structure, component, and part, the failure of which could interfere with continued safe flight and landing, be designed to withstand the differential pressure loads resulting from the release of pressure through openings in pressurized compartments. The evaluation includes not only the failure of the structure, component, or part, but also any subsequent failures that could result from the failure of that structure, component or part.

Several commenters recommend that the wording be revised to clarify that the loads resulting from the decompression events are ultimate load conditions. The FAA agrees and changes have been made to paragraph (f) to allow the resulting differential pressure loads to be considered as ultimate loads, provided that any resulting deformation does not interfere with continued safe flight and landing.

Several commenters suggest that the word "compartment" be used instead of "cabin" unless occupied compartments are intended. The FAA agrees, and changes have been made to the proposed paragraphs as well as to the title and other paragraphs of the rule to be consistent in the use of the word "compartment."

One commenter points out that the environmental qualification requirements for equipment that could be flight critical allow 15 seconds for decompression, while the current requirement as well as that in § 25.365 could result in a much shorter time interval. The commenter suggests that consideration be given to improving the equipment qualification standards for critical flight equipment. This would be beyond the scope of this rulemaking; however, the FAA is addressing this concern in separate actions.

One commenter proposes that, in view of the JAL accident of 1985, the FAA consider increasing the upper limit on the computed opening size set forth by the formula in § 25.365(e)(2). The commenter provided no information that would indicate that the depressurization criteria provided by this rule would have been ineffective in preventing that accident. The computed opening defined in § 25.365(e)(2), with the 20 square foot maximum limit, is considered adequate for current and future designs, and to increase the maximum size of this opening would be beyond the scope of the proposals. Furthermore, there are other opening criteria provided by the rule which have no maximum limit. The computed opening established by § 25.365(e)(2) is intended to require consideration of a minimum size opening regardless of the opening sizes derived from specified failure conditions. Sections 25.365(e)(1) and 25.365(e)(3) require the consideration of other openings which could result from airplane, engine, and equipment failures regardless of the size of those openings.

The same commenter also recommended expanding the scope of the rule to include consideration of the primary effects of the opening in the external hull. The FAA agrees that some consideration of the primary effects of openings may have merit as it relates to protection of systems from major structural damage. Government and industry studies regarding the protection of systems from major structural damage are currently being conducted and may result in additional rulemaking action. However, the intent of § 25.365(e), as revised by this amendment, is to establish differential pressure design loads. It addresses only the secondary effects of decompression loading conditions on other structures, components and parts regardless of where they may be located on the airplane.

One commenter suggests that in some circumstances flight loads imposed by decompression emergency conditions should be combined with the resulting differential pressure loads, provided that they could exist simultaneously. The FAA agrees, and paragraph (f) has been clarified to indicate that any differential pressure loads be combined with the loads arising from decompression emergency procedures in a rational and conservative manner.

One commenter opposes the inclusion of the cockpit as a compartment where the opening of § 25.365(e)(2) of the proposal is to be considered, since the cockpit size on wide-body airplanes may not be proportional to fuselage size. The commenter suggests that separate criteria should be established for the cockpit. The FAA does not agree since the intent of the requirement is to establish structural design loads resulting from specified openings in the pressure vessel. The applicability of the decompression criteria to a specific compartment should not be determined by the use of that compartment as a cockpit. In addition, § 25.365(e)(2) already establishes a 20 square foot upper limit on the size of the computed opening, which can be feasible and potentially survivable for the cockpit of wide-body transports.

Only one commenter suggests that extending the computed opening to the cockpit might result in some economic impact. However, that commenter provides no data to support his claim. All other commenters, which include representatives of all U.S. manufacturers and operators, support the FAA contention that there would be no significant cost associated with this change.

Another commenter believes that openings in the center wing box should not be required since an opening at this location would cause immediate loss of the airplane. The FAA disagrees. The formula for the opening size results in opening areas proportional to airplane size that might reasonably be expected without loss of sufficient load carrying capability in the wing. Furthermore, the proposed § 25.365(e)(2) was not intended to address the primary effects of the opening (loss of strength, fuel leakage, fire hazard, etc.).

Regulatory Evaluation

Benefit-Cost Analysis

This regulatory evaluation examines the cost and benefit aspects of the final rule to establish improved structural requirements for pressurized cabins and compartments in transport category airplanes. The rule amends part 25 of the Federal Aviation Regulations (FAR). It will require evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside of the pressurized cabin.

The rule is a result of an FAA review of the pressurized cabin load requirements.

The rule potentially impacts U.S. and foreign manufacturers that sell newly type certificated transport category airplanes in the U.S.

Costs

The FAA estimates the incremental cost of compliance that is expected to accrue from implementation of the rule to be minor. This assessment is based largely on information received from industry sources. According to the industry sources, the Japan Airlines (JAL) Flight 123 accident, which occurred in Japan in 1985 and represents one of the most tragic in aviation history, prompted increased world-wide safety awareness. This awareness, coupled with an anticipation of FAA rulemaking action related to the subject accident, provided most of the impetus behind the voluntary adoption of structural changes similar to those that will be required by this rule by manufacturers of transport category airplanes (including those designed expressly for executive transportation). Manufacturers of these airplanes reviewed their existing and future designs for possible flaws similar to those believed to have contributed to the JAL Flight 123 accident in 1985. Appropriate structural changes were made to some airplanes in the design stage and to some airplanes currently in use by operators. For these reasons, the FAA believes compliance with the rule will not impose any significant additional costs on manufacturers of transport category airplanes.

The belief that manufacturers of transport category airplanes will not incur significant costs as a result of this final rule has been reinforced by the fact that the FAA did not receive any negative comments from U.S. manufacturers or operators. The sole negative comment from a foreign manufacturer was not supported by cost data.

Benefits

The potential benefits of the rule represent the prevention of casualty losses (fatalities and to a lesser extent property damage) that would be expected to occur if the standards of this rule were not adopted.

Based largely on information received from industry sources, the FAA expects the rule to ensure that a sufficient level of safety will be maintained with openings of up to 20 square feet in size anywhere within the pressurized fuselages of transport airplanes. This effort will be accomplished by assuring that the current high level of voluntary measures continues with respect to newly type certificated aircraft. As a result of the voluntary measures, there is an unlikely chance of an accident occurring, which would be due to openings in the pressurized fuselages of transport airplanes, over the next 10 or more years. If, however, the rule were not adopted and newly type certificated transport category airplanes did not enjoy the level of safety presently achieved by voluntary measures, a number of aviation accidents involving such airplanes might occur over the next 10 years. Conservative monetary estimates of at least one of those accidents would amount to either a uniform stream of $13.8 million annually or a cumulative $85.4 million discounted at 10 percent over the next 10 years, in 1988 dollars, starting in 1990. These estimates are based on the occurrence of only one accident because it is not known how many accidents would occur over the next 10 years. Nevertheless, it is almost certain that at least one would occur.

Comparison of Costs and Benefits

This area of the evaluation summary presents a comparison of costs and benefits that could accrue over a period of 10 years as the result of implementation of this rule. The potential benefits of this rule are derived from the requirement that industry continue its current practices of addressing the problems identified in this rule and taking appropriate actions. This will greatly reduce the potential for the occurrence of an accident similar to or worse than the JAL Flight 123 disaster. Minimum benefits of $13.8 million annually or $85.4 million cumulative could be realized over the next ten years.

The costs associated with this rule are estimated to be minor since manufacturers have taken the initiative to implement most of the design changes necessary to meet the requirements contained in the rule. The FAA, therefore, considers this rulemaking action to be cost-beneficial.

The Regulatory Evaluation that has been placed in the Rule Docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." Since the Act applies to U.S. entities, only U.S. manufacturers and operators of transport category airplanes would be affected.

In the United States, there are two manufacturers that specialize in commercial transport category airplanes, The Boeing Company and McDonnell Douglas Corporation. In addition, there are others that specialize in the manufacture of other transport category airplanes, such as those designed for executive transportation. These are Cessna Aircraft Corporation, Beech Aircraft Corporation, Gulfstream Corporation and Gates Learjet Corporation.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees; any manufacturer with more than 75 employees is considered not to be a small entity. Because none of the U.S. manufacturers of transport category airplanes is a small entity, this rule has no impact on any manufacturer that is a "small entity."

Because this rule does not have a "significant economic impact on a substantial number of small entities," no review is required in this regard by the Act.

International Trade Impact Assessment

This rule is not expected to have an adverse impact on the trade opportunities of either U.S. manufacturers of transport category airplanes doing business abroad or foreign aircraft manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufactuers, which sell their products in the United States, there will be no competitive trade advantage to either.

Federalism Implications

The regulations adopted herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not warrant the preparation of a Federalism Assessment.

Conclusion

Because amending the structural requirements for pressurized compartments on transport category airplanes is not expected to result in a substantial cost, the FAA has determined that this amendment is not major as defined in Executive Order 12291. For the same reason, this amendment is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since there are no small entities affected by this rulemaking, it is certified, under the criteria of the regulatory Flexibility Act, that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, part 25 of the Federal Aviation Regulations (FAR) 14 CFR part 25, is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983). 49 CFR 1.47(a).

2. Amend § 25.365, by revising the introductory paragraph and by revising paragraphs (c), (e), (f) and (g) to read as follows.

§ 25.365 Pressurized compartment loads.

For airplanes with one or more pressurized compartments the following apply:

* * * * *

(c) If landings may be made with the compartment pressurized, landing loads must be combined with pressure differential loads from zero up to the maximum allowed during landing.

* * * * *

(e) Any structure, component or part, inside or outside a pressurized compartment, the failure of which could interfere with continued safe flight and landing, must be designed to withstand the effects of a sudden release of pressure through an opening in any compartment at any operating altitude resulting from each of the following conditions:

(1) The penetration of the compartment by a portion of an engine following an engine disintegration;

(2) Any opening in any pressurized compartment up to the size H_o in square feet; however, small compartments may be combined with an adjacent pressurized compartment and both considered as a single compartment for openings that cannot reasonably be expected to be confined to the small compartment. The size H_o must be computed by the following formula:

$H_o = PA_s$

where,

H_o = Maximum opening in square feet, need not exceed 20 square feet.

$$P = \frac{A_s}{6240} + .024$$

A_s = Maximum cross-sectional area of the pressurized shell normal to the longitudinal axis, in square feet; and

(3) The maximum opening caused by airplane or equipment failures not shown to be extremely improbable.

(f) In complying with paragraph (e) of this section, the fail-safe features of the design may be considered in determining the probability of failure or penetration and probable size of openings, provided that possible improper operation of closure devices and inadvertent door openings are also considered. Furthermore, the resulting differential pressure loads must be combined in a rational and conservative manner with 1–g level flight loads and any loads arising from emergency depressurization conditions. These loads may be considered as ultimate conditions; however, any deformations associated with these conditions must not interfere with continued safe flight and landing. The pressure relief provided by intercompartment venting may also be considered.

(g) Bulkheads, floors, and partitions in pressurized compartments for occupants must be designed to withstand the conditions specified in paragraph (e) of this section. In addition, reasonable design precautions must be taken to minimize the probability of parts becoming detached and injuring occupants while in their seats.

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James B. Busey,

Administrator.

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