PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
*	* * * * * *	*
8	17. Working at high altitudes. Performing work at a land-based worksite more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	[Date of effectivenss of the final rule].

[FR Doc. 98–27344 Filed 10–9–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC06

Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes a change to the Summer Food Service Program (SFSP) which was mandated by the Healthy Meals for Healthy Americans Act of 1994. The change allows SFSP meal service to be provided at non-school sites to children who are not in school due to unanticipated school closures during the months of October through April caused by a natural disaster, building repair, court order, or similar occurrence. In addition, this rulemaking proposes discretionary changes to simplify the SFSP sponsor application and State monitoring requirements in order to eliminate unnecessary paperwork and reduce administrative burden for sponsors and State agencies.

DATES: To be assured of consideration, comments must be postmarked on or before December 14, 1998.

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Ms. Melissa Rothstein at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rule will streamline requirements and reduce administrative burden for State agencies and sponsors of the SFSP.

Executive Order 12372

The SFSP is listed in the Catalog of Federal Domestic Assistance under 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 notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Notice of Information Collection

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection.

Written comments must be submitted on or before December 14, 1998.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their comments on the information collection requirements from their comments on the remainder of the proposed rule.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504), FNS has submitted a request to OMB for a revision of the currently approved SFSP information collection requirements. OMB is required to make a decision concerning the collection(s) of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. All comments will be summarized and will become a matter of public record.

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

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

Title: 7 CFR part 225, Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: December 31, 1999.

Type of Request: Revision of existing collection.

Abstract: The proposed rule, Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring, proposes to implement the provision included in Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, that allows SFSP meals to be served ''at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.'' In addition, the rule also proposes to modify current SFSP sponsor and site application requirements and to allow State agencies to better target review efforts.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of this proposed rule as noted below:

Section	Annual Number of respondents	Annual frequency	Burden per response	Annual burden hours
7 CFR 225.6(b)(4)—State agencies provide immediate ''conditional approval'' to sponsors in emergency program situations: Proposed	[1] 5	1	1	5
7 CFR 225.6(c)—Requirements for new sponsors, new sites, and sponsors and sites which have experienced significant operational problems in the prior year: Proposed	[2] 179	1	3.33	596
7 CFR 225.6(c)—Removal of requirements for experienced sponsors and sites:				
Existing	[2] 3309	1	3.33	11,019
Proposed	[2] 3576	1	2.33	8,332
7 CFR 225.7—State agencies target reviews of sponsors and sites, concentrating on problem areas:				
Existing	[1] 49	[2] 43	8.0	16,856
Proposed	[1] 49	[2] 30	11.5	16,905
Existing	[1] 49	[3] 104	4	20,384
Proposed	[1] 49	[3] 73	6	21,462

[1] State Agencies.
[2] Sponsors.
[3] Sites.

Total Existing Burden Hours: 48,259.
Total Proposed Burden Hours: 47,300.
Total Difference: −959.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of the preamble of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurements by State agencies and sponsors, this includes any administrative appeal procedures to the extent required by 7 CFR part 3016. In the SFSP, the administrative procedures are set forth under the following regulations: (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR 225.17 and 7 CFR part 3015.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Background

The Summer Food Service Program (SFSP) is authorized by section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761). On November 2, 1994, the President signed into law Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994 (the Act). The Act reauthorized the SFSP through Fiscal Year 1998 and made a number of changes to the Program. Most of these mandated changes are non-discretionary and are being addressed in a separate interim rulemaking. However, the Act also included a provision that allows SFSP meals to be served ''at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.'' Since the wording of this change to the statute raises a number of implementation issues which may be subject to interpretation, the

Department is soliciting public comments through this proposed rulemaking.

The SFSP was established by Congress to ensure that children in low-income areas could continue to receive nutritious meals during the summer that are comparable to those they receive during the school year under the National School Lunch and School Breakfast Programs. To this end, the SFSP provides free meals to all children at approved SFSP sites in areas with significant concentrations of low-income children. Current law (section 13(a)(1) of the NSLA) defines such an area as one in which one-half or more of the children are from households with incomes at or below the eligibility level for free and reduced-price school meals (185 percent of the Federal poverty guidelines). In addition, Program sites may include homeless feeding sites and camps as defined at section 13(a)(3)(c) of the NSLA and SFSP regulations at 7 CFR 225.2. (The SFSP regulations are located in Title 7, part 225 of the Code of Federal Regulations. Hereinafter, all citations of SFSP regulations will simply indicate the particular section of the SFSP regulation being discussed without repeated reference to Title 7.)

When the SFSP was created, it was the intent of Congress to provide nutritious meals to children during the summer when school is out of session. Consequently, section 13(c)(1) of the NSLA limited SFSP operation to the months of May through September. In addition, in order to accommodate children who attend schools which operate on a year-round basis, that same section allowed SFSP sponsors to operate food service programs for children on school vacation at any time if the children attend school on a year-round, or continuous school calendar, basis.

Since the SFSP was established, there have been times (e.g., in the case of a school strike) when a single school or an entire school system did not open as scheduled at the end of summer. Because the NSLA prohibited the SFSP from operating after September 30 unless the school was in session on a year-round basis, and because the National School Lunch and Breakfast Programs may only operate when school is in session, many children in low-income areas were denied the benefit of a nutritious meal while the schools were closed. These situations led Congress to include in section 114(c) of Pub. L. 103–448 the aforementioned provision allowing sponsors to operate the SFSP and provide meals to children at eligible non-school sites during times of unanticipated school closures.

In order to implement this provision, the Department must consider a number of issues, including: (1) The circumstances that may warrant employing this authority; (2) the definition of ''non-school sites'' as eligible sites; and (3) the application of existing provisions of law when providing emergency SFSP benefits during the school year. These issues are discussed in more detail below.

In addition, in an effort to fulfill the Department's commitment to reduce barriers to SFSP participation, the Department has consulted with local, State, and Federal administrative personnel and hunger advocacy groups to explore ways of reducing and easing the administrative burden on State and local program administrators. The extensive SFSP sponsor and site application procedures and the requirements pertaining to State monitoring of the program have repeatedly been targeted as potential areas where paperwork could be reduced and administrative efforts better targeted. These issues are also discussed in detail in this preamble.

The Department has requested public comments on this proposed rule by December 14, 1998. Based on the number and nature of any public comments received, the Department will publish an interim or final rulemaking at a later date.

I. Unanticipated School Closures

A. Circumstances Warranting Implementation

Section 13(c)(1) of the NSLA, as amended by section 114(c) of Pub. L. 103–448, allows for a variety of circumstances warranting operation of the SFSP during unanticipated school closures. Generally, other than those times when schools operate on a continuous school calendar, the SFSP begins operation after the end of a school year and concludes prior to the start of the new school year. However, the Act's listing of ''natural disaster, building repair, court order, or similar cause'' suggests a variety of circumstances intended to authorize the service of SFSP meals during the months of October through April, including circumstances such as: (1) The need to remove asbestos from, or make major repairs to, one or more school buildings in order to comply with safety regulations or other State or local ordinances; (2) the destruction of one or more school buildings due to a natural disaster such as a tornado, flood, or hurricane; or (3) a labor-management dispute which prevents schools from opening, or which would close schools during the school year, pending the outcome of negotiations. Additionally, given the inclusion in the law of the phrase ''or similar cause,'' the Department recognizes that there may be other instances which warrant operation of the SFSP during an unanticipated school closure.

Accordingly, this rule proposes to amend § 225.6(e)(1) to specify several situations in which a sponsor may operate during unanticipated school closures in the months of October through April. In addition, given the numerous possibilities of ''similar causes'' that may warrant operation of the SFSP during an unanticipated school closure, and in order to maintain a sufficient level of oversight, § 225.6(e)(1) would also be amended to clarify that other situations which might fall into the category of ''similar cause'' could be considered and approved or denied on a case-by-case basis by the State agency. In addition, §225.6(b)(4) would be amended to permit State agencies to approve sponsors which do not meet the requirement of a year-round service to the community (in § 225.14(c)(5)) to serve as sponsors during unanticipated school closures.

B. ''Non-school Sites''

Section 114(c) of Pub. L. 103–448 further amended section 13(c)(1) of the NSLA by specifically stating that only ''non-school'' sites are considered eligible sites for SFSP operation during the months of October through April. The Department believes that the specific reference to ''non-school'' sites was included to ensure that, in the event of a labor-management dispute, SFSP meal service could be provided without exacerbating the dispute. However, since the law requires this in all cases, this rule proposes to amend § 225.6(d)(1) to provide that, regardless of the reason for the school closure, only those sites not located on the premises of a school will be considered eligible sites for the purpose of serving SFSP meals during an unanticipated school closure.

The specific reference to ''non-school sites'' in the law also raises questions with regard to whether school food authorities should be permitted to act as sponsors during operation of the SFSP under these conditions, or whether their sponsorship could create legal complications in the case of a strike. Despite this possibility, the Department recognizes that in many situations, the school food authority is the most capable—and possibly the only willing—sponsor available to operate

the program in an area. Therefore, in the interest of providing meals to affected children in the most expeditious and efficient manner, and to provide maximum State flexibility in responding to these situations, this rule does not alter the current regulations which permit the approval for program participation of all entities, including school food authorities, which meet the sponsor eligibility requirements contained in § 225.14(b) of the current regulations.

C. Applying Existing Provisions of Regulations During Emergency Program Participation

Although it is not possible to foresee all of the circumstances which might attend any particular instance of school closure, the Department believes it is important to consider how some existing provisions of program regulations will be applied during an unanticipated school closure.

1. Site Eligibility Documentation

Section 225.6(c)(2)(ii) of the current regulations requires a sponsor to provide documentation supporting the eligibility of each program site as serving an ''area in which poor economic conditions exist,'' as defined in § 225.2. Clearly, the aforementioned provision of Pub. L. 103–448 does not intend to override site eligibility documentation requirements. However, as indicated above, during situations involving unanticipated school closures, it is important to begin meal service as soon as possible so that affected children can receive program benefits.

Accordingly, in an effort to balance these opposing needs during unanticipated school closures, this rule proposes to amend §§ 225.6(c)(2)(i)(F) and (c)(3)(i)(B) (as amended by this proposed rule and discussed in Part II of this preamble) to consider as eligible without new documentation of area eligibility for these limited purposes, any site which has participated in the SFSP at any time during the current year or prior two calendar years. For example, if a sponsor wants to operate the SFSP at a particular site during an unanticipated school closure in October 1998, the site would have to have been in the SFSP at some time in the years 1996, 1997, or 1998 in order to be exempt from the site eligibility documentation requirements discussed above. Since a given area's demographics are not likely to change drastically within this period, we believe that exempting such sites from normal area eligibility documentation requirements is appropriate in these emergency situations.

2. Sponsor Applications and Agreements

The various requirements pertaining to sponsor applications and agreements are contained in the current regulations under §§ 225.6 and 225.14. These regulations require that each potential sponsor submit a written application to the State agency for participation in the program. This application must include detailed information regarding the proposed meal service, including documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist, a complete administrative and operating budget, several policy statements and program assurances, and other information.

This rule proposes to amend §§ 225.6(c)(1) and 225.14(a) to allow State agencies, at their discretion, to approve sponsors that have participated in the program at any time during the current year or prior two calendar years without a new application, solely for the purpose of sponsoring sites during periods of unexpected school closings from October to April. Allowing State agencies to rely on applications made within this timeframe will help to expedite operation of the emergency program. All sponsors would still be required to enter into written agreements with the State agency, in accordance with the requirements of § 225.6(e), prior to initiating program operations.

For those sponsors that have not participated in the SFSP at any time during the current year or the prior two calendar years, program applications would be required. However, as discussed below, the State agency would not be required to conduct pre-approval visits. Conforming changes would be made to the application requirements at § 225.6(c)(1) and § 225.14(a). Additionally, this rule proposes to amend § 225.6(b)(1) to add specific reference to exempt these sponsors from the annual June 15 deadline for receipt of sponsor applications.

3. Monitoring

Section 225.7(d)(1) of the current regulations requires each State agency to conduct pre-approval visits of certain sponsors and sites, including those applicants which did not participate in the program in the prior year, and all proposed non-school sites with an expected average daily attendance of more than 300 (or more than 100 for private nonprofit sponsors) which did not participate in the prior year. Similarly, § 225.14(c)(6) of the current regulations requires that a sponsor certify that it has visited all program sites in order to be eligible to participate in the program. The purpose of these visits is to assess the sponsor's or site's potential for successful program operations, and to verify the information contained in the program application.

The Department continues to prefer that the State agency conduct these visits in advance of a sponsor's approval when the sponsor has not recently participated in the SFSP. However, recognizing the time constraints that may often accompany unanticipated school closures, this rule proposes to amend § 225.7(d)(1)(i) to give State agencies discretion in conducting pre-approval visits of sponsors in cases in which sponsors are operating the program during unanticipated school closures. Of course, in cases in which State agencies feel compelled to approve an inexperienced sponsor to administer the SFSP during an unanticipated school closure without a pre-approval visit, the Department expects State personnel to work in especially close partnership with such sponsors to ensure the proper operation of the SFSP. This rule does not propose any change to the requirement in § 225.14(c)(6) that a sponsor certify that all sites have been visited because these visits are critical in helping to ensure that sites are capable of operating a safe and accountable meal service in accordance with program rules.

Sections 225.7(a) and 225.15(d) require that State agencies and sponsors, respectively, conduct training sessions for sponsor and site personnel prior to the beginning of Program operations. Again recognizing the time constraints accompanying emergency situations, this rule proposes to amend § 225.7(a) and 225.15(d) to permit the State agency, at its discretion, to waive these training requirements for operation of the Program during unanticipated school closures. As with pre-approval visits discussed above, the Department expects State agencies to work very closely with inexperienced sponsors which are approved to operate the Program in such situations. This assistance likely would involve on-site technical assistance and training during operation of the Program.

II. Paperwork Reduction

This rulemaking proposes to substantially reorganize and revise the SFSP sponsor and site application requirements which are currently set forth at § 225.6(c). These are the minimum standards for sponsor and site applications; State agencies administering the SFSP may include

other provisions in their prototype applications as long as they do not establish additional eligibility requirements for SFSP participation. Based on formal and informal input received from State Program administrators, as well as from sponsor staff and hunger advocacy groups, it has become apparent that some of the minimum Federal requirements set forth at § 225.6(c) have become unnecessary and/or duplicative. In addition, in recent years, several State agencies have requested and have received waivers to eliminate duplicative application requirements for experienced sponsors. These waivers were granted under the authority provided to the Department under section 12(l) of the NSLA (42 U.S.C. 1760). Therefore, the Department believes that it is appropriate to propose simplified minimum application standards for sponsors whose staff have had prior experience administering the SFSP.

As currently organized, § 225.6(c)(2)(i) sets forth the general requirements for the information which sponsors must provide for all sites which they plan to operate; §§ 225.6(c)(2)(ii)–(v) set forth special requirements pertaining to specific types of sites (e.g., camps, homeless feeding sites, etc.); and §§ 225.6(c)(2)(vi)–(x) set forth more generic, sponsor-level requirements for information to be included in all sponsor applications (e.g., administrative budget, staffing and monitoring plan, etc.).

The most detailed and lengthy of these paragraphs is § 225.6(c)(2)(i), which sets forth the minimum requirements for ''site information sheets.'' Sponsors must annually submit site information sheets for each of their sites, regardless of whether the site has previously participated in the SFSP, has undergone substantial changes in site staff or meal service systems from one year to the next, or is providing the same service at the same location year after year. It is this paragraph which the Department believes is most in need of revision.

First, this rule proposes to divide the information currently in § 225.6(c)(2) into new paragraphs (c)(2) and (c)(3). New paragraph (c)(2) would set forth the requirements for ''new'' sponsors and sites (i.e., sponsors and sites which did not participate in the SFSP in the prior Program year, or, as determined by the State agency, sponsors and sites which have had significant staff turnover from the prior year). The requirements in new paragraph (c)(2) would also apply to sponsors and sites which, in the determination of the State agency, have experienced significant operational problems in the prior Program year. New paragraph (c)(3) would set forth the simplified requirements for ''experienced'' sponsors and sites—those which successfully participated in the SFSP in the prior Program year. Experienced sponsors which add new sites must follow the site application requirements in paragraph (c)(2) (for ''new'' sites) only for their new sites. Such sponsors would follow the requirements of paragraph (c)(3) (for ''experienced'' sponsors and sites) for all other sites, and for sponsor information. At the discretion of the State agency, any of the requirements set forth for ''new'' sponsors and sites in paragraph (c)(2) could be applied to ''experienced'' sponsors and sites as well.

Accordingly, this rule proposes to amend § 225.6(c) by deleting paragraph (c)(2), by replacing it with two new paragraphs, (c)(2) and (c)(3), and by redesignating current paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), respectively. This rule also proposes to amend § 225.2 by adding definitions of ''new sponsor,'' ''new site,'' ''experienced sponsor,'' and ''experienced site,'' as discussed in the preceding paragraph. These definitions will help clarify application and other requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, and will also be used to better target State agency monitoring requirements, as discussed in Section III of this preamble, below.

A. General Requirements for Site Information Sheets

In addition to reorganizing § 225.6(c) as described above, this rule proposes to completely revise the text, as well. Described below are the changes which the Department proposes to make to current § 225.6(c)(2)(i).

Current § 225.6(c)(2)(i)(A) requires sponsors to describe their system for serving meals to children at each site. When this requirement was first promulgated, the SFSP was a new food assistance program with far fewer management controls written into the authorizing statute or the program regulations. The Department therefore believed that this requirement would help underscore the importance of a site having an organized food service system for efficient program operation.

However, now that the SFSP is an established program, we believe that including this information in every site's information sheet serves little purpose. The Department continues to recognize the importance of this information for new sites, and for those sites that have experienced significant operational problems in the prior year. Therefore, this requirement will be retained in § 225.6(c)(2)(i)(A) for new sponsors and sites, and for sponsors and sites, which, in the determination of the State agency, have experienced significant operational problems in the prior year. However, recognizing that, once established, the system for serving meals to children at each site does not change significantly from year to year for most sites, this rule proposes to remove this requirement for experienced sponsors and sites.

Section 225.6(c)(2)(i)(B) of the current regulations requires site information sheets to contain the estimated number and types of meals to be served and the times of meal service for each site. Such information helps both sponsors and State agencies develop their plans for monitoring site operations. Since meal service information can, and frequently does, change from year to year, we are not proposing a change to this requirement. This proposal would move this requirement to §§ 225.6(c)(2)(i)(B) and (c)(3)(i)(A).

Current § 225.6(c)(2)(i)(C) requires that each site information sheet provide information on arrangements, in accordance with State or local health standards, for delivery and holding of meals until they are served, and for storing and refrigerating any leftovers. The Department believes that this information is critical for new sites and for sites which have experienced significant operational problems in the prior year, in order to emphasize the sponsor's need for proper meal planning in accordance with § 225.15(b). However, for experienced sites, the logistics of delivering, holding and storing meals may not change significantly from year to year. Therefore, we are proposing to remove the requirement, for sponsors of experienced sites only, that sponsors provide information on arrangements for delivery and holding of meals until they are served, and for storing and refrigerating any leftovers. This requirement will be in new § 225.6(c)(2)(i)(C) for new sponsors and sites, and for sponsors and sites which, in the determination of the State agency, have experienced significant operational problems in the prior year.

Sections 225.6(c)(2)(i)(D) and (E) of the current regulations require that information be provided about sites regarding arrangements for food service during periods of inclement weather, and for access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the site's

average daily attendance, respectively. The Department believes that these types of arrangements, once made, typically remain constant from year to year. Therefore, we are proposing to remove these requirements for experienced sites. We are not proposing a change to these requirements for new sponsors and sites, and for sponsors and sites which have experienced significant operational problems in the prior year. For these sites, the requirements will be in new §§ 225.6(c)(2)(i)(D) and (c)(2)(i)(D), respectively.

Current §§ 225.6(c)(2)(i)(F) and (G) require that information be provided for each site on the geographic area to be served, and on the percentage of children in the area to be served by the site who meet the Program's income standards, respectively. The requirement in §§ 225.6(c)(2)(i)(F) and (G) to collect information on the geographic area to be served and the percentage of income-eligible children is duplicative, as it is already collected under current § 225.6(c)(2)(ii) (as redesignated by this proposal, §§ 225.6(c)(2)(vi)–(vii) and (c)(3)(iii)–(iv)). Accordingly, this rule proposes to delete the information contained in current §§ 225.6(c)(2)(i)(F) and (G).

Current § 225.6(c)(2)(i)(H) requires information from each site on whether it is rural or non-rural, and whether the site's food service will be self-prepared or vended. Realizing that sites tend to remain in the same area and that sites, once established, typically implement the same type of food service from year to year, the Department believes this information is unnecessary for experienced sponsors and sites. Therefore, this proposed rule will remove this requirement for experienced sponsors and sites only. For new sponsors and sites, and for sponsors and sites which have experienced significant operational problems in the prior year, the requirement will be relocated to § 225.6(c)(2)(i)(F).

In accordance with § 225.9(d)(7)(iii), meals served to participants at rural or self-preparation sites are eligible to receive additional administrative reimbursement. Thus, State agencies should remind sponsors that a failure to report changes in site status or food delivery service could result in over- or under-payments.

B. Site Information Sheet Requirements for Specific Types of Sites

Current §§ 225.6(c)(2)(ii)–(v) set forth specific site application requirements pertaining to how various types of sites (e.g., open sites, camps, homeless feeding sites, and migrant sites) document that they meet basic eligibility requirements. The requirements, as currently set forth, are incomplete in several cases. The Department therefore proposes to revise the information at current §§ 225.6(c)(2)(ii)–(v) and place it into new §§ 225.6(c)(2) and (3).

1. Area Eligible Sites—Open and Enrolled

Open sites are those at which meals are available to all children in the area, and are located in areas in which at least 50 percent of the children are from households that would be eligible for free and reduced price meals under the School Programs. ''Open'' sites qualify for participation in the SFSP on the basis of aggregate socioeconomic data, typically obtained from schools or from census data, which demonstrates that the area meets the 50 percent criterion described above.

As defined in guidance issued to State agencies on April 23, 1992, *open enrolled* sites exist where enrolled sites are initially open to broader community participation, but the sponsor limits attendance for reasons of security, safety, or control. The sponsor can document site eligibility through the use of area school or census data, as ''open'' sites do. Sponsors of ''open enrolled'' sites must make it publicly known, however, that the site is open on a first-come first-served basis to all children of the community at large, and that the site's total enrollment will be limited for reasons of security, safety, or control. Examples of these sites may include recreation programs sponsored by community organizations, and sites located in public housing projects.

In order to clarify the requirements for each of the types of sites, this rule proposes to amend § 225.2 to include definitions of ''open site'' and ''open enrolled site,'' as described above. This rule also proposes to amend the current definition of ''Areas in which poor economic conditions exist'' at § 225.2(a) to include explicit reference to open and open enrolled sites as eligible on the basis of school, census or other appropriate area data.

Current regulations at § 225.6(c)(2)(ii)(B) should indicate that ''open'' sites and ''open enrolled'' sites, as defined above, must submit documentation of area eligibility every other year. However, while this is the case for those sites qualifying based on school data, it is not true for sites qualifying on the basis of census data, since census data are only collected and published every ten years. Nevertheless, the Department believes that establishing a site's eligibility every other year when using school data is unnecessary since an area's socioeconomic status typically does not change rapidly. Therefore, to clarify the requirements for documenting area eligibility for ''open'' and ''open enrolled'' sites, and to alleviate unnecessary burden for site eligibility documentation, this rule proposes to include in new § 225.6(c)(3)(i)(B) the requirement for experienced sites that sponsors must obtain new documentation every three years when elementary school data are used. When census data are used, however, new documentation would be required only when new census data are made available, or earlier if the State agency has reason to believe that an area's socioeconomic status has changed significantly since the last decennial census. It is important to note that this proposed requirement is not intended to establish the implementation year of this rule as the ''base year'' for site eligibility determinations. Rather, it is intended to initiate time period requirements that apply to when a site was last determined eligible for ''open'' or ''open-enrolled'' status. For example, under this proposal, a site which last established its eligibility in 1997 would not be required to re-establish eligibility until 2000. For new sites, the current language in the introductory paragraph of § 225.6(c)(2)(ii) would be retained, but moved to new § 225.6(c)(2)(i)(G).

However, the Department wishes to stress that, in determining the eligibility of open sites and open enrolled sites, census data should not be used when relevant, current-year information on free and reduced price eligibility in neighborhood elementary schools is available. School data are far more current than census data, which are collected only once every ten years, and should more accurately represent current neighborhood economic conditions. There may be certain, limited circumstances which warrant the use of census data to establish site eligibility, even when current-year school data are available. Examples include situations where: (1) The potential site is located in a rural area where geographically large school attendance areas may obscure localized pockets of poverty which can be identified through the use of census data; (2) school data show an area to be close to the 50 percent threshold, and the census data may reveal specific portions of the school's attendance area which are eligible for the SFSP; and (3) bussing has affected the percentage of free and reduced price eligibles in neighborhood schools, and the school is

unable to factor out the students bussed in from other areas and provide the sponsor with data on the percentage of free and reduced price eligibles in the school's immediate neighborhood. In any of these situations, use of census data would be warranted to help a State agency more precisely ascertain a neighborhood's current income poverty status.

Closed enrolled sites are those which are only open to enrolled children, not to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals, as determined by approval of applications for meals. The provisions of current regulations regarding ''closed enrolled'' sites are unclear. In 7 CFR part 225, enrolled sites are referred to in §§ 225.15(e) and 225.15(f)(1) as ''programs not eligible under § 225.2 (paragraph (a) of 'areas in which poor economic conditions exist').'' These sites are not specifically mentioned at all in current § 225.6(c)(2)(ii). The language in the current regulations could be read to imply that any site except camps and homeless feeding sites may submit documentation of eligibility every other year. However, this is not true, since the number and identity of the children attending a particular closed enrolled site will likely vary from year to year, and a closed enrolled site's Program eligibility is always predicated on at least 50 percent of enrolled children being from free and reduced price households.

Therefore, this rule proposes to add a definition of ''closed enrolled site,'' to revise the definition of ''Areas in which poor economic conditions exist'' in § 225.2 by adding specific reference to open, open enrolled, and closed enrolled sites, and to clarify the requirement in both new §§ 225.6(c)(2)(i)(H) and (c)(3)(i)(C) that site information sheets for closed enrolled sites must include the projected number of children enrolled and the projected number of children eligible for free and reduced price meals. The actual numbers must be monitored carefully by State agency personnel during early-Program visits in order to ensure that the 50 percent level is actually reached.

National Youth Sports Program (NYSP) sites are a particular type of site eligible to participate in the SFSP. Prior to the enactment of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, NYSP sites were eligible to participate in the SFSP during both the summer months and during the academic year (October through April). However, § 706(d) of Pub. L. 104–193 amended section 13(c) of the NSLA to eliminate academic-year NYSP sites from the SFSP. This rule also removes references to academic year NYSP sites under § 225.6(e)(1), ''State-Sponsor Agreements.''

Section 225.6(c)(2)(v) of the current regulations requires that site information sheets for NYSP sites include certification from the sponsor on items related to streamlining applications for children who participate in the NYSP during both the summer months and academic year. Since academic-year NYSP sites are no longer eligible to participate in the SFSP, this rule removes the certification requirements pertaining to academic-year NYSP sites.

Section 225.6(c)(2)(v) of the current regulations also requires sponsors of NYSP sites to certify that all of the children who will receive SFSP meals are enrolled participants in the SFSP. Therefore, this rule proposes to include this requirement in new §§ 225.6(c)(2)(i)(I) for new sponsors and sites, and for sponsors and sites which experienced significant operational problems in the prior year. However, the Department believes that requiring experienced sponsors and sites to include this certification every year is unnecessary.

Finally, this rule proposes to delete the redundant language at § 225.14(d)(1), which requires that sponsors for sites other than camps or homeless feeding sites provide documentation of area eligibility, since this requirement will be contained in revised §§ 225.6 (c)(2)(i)(G) and (c)(3)(i)(B).

2. Camps

Current regulations at § 225.6(c)(2)(iii) require camps to provide documentation showing the number of children enrolled in each session who meet the Program's income standards. In a situation similar to the closed enrolled sites discussed above, the children attending a camp may change from year to year and from session to session. In addition, camps only receive reimbursement for meals served to children who are eligible for free and reduced price school meals. Therefore, this rule retains the sponsor application information requirements in current § 225.6(c)(2)(iii) in new Sections 225.6(c)(2)(i)(J) and (c)(3)(i)(D), and clarifies that camps are not required to submit the individual free and reduced price applications to the State agency, but rather the actual number of enrolled children who meet the Program's income standards. Of course, all camps must have the individual free and reduced price applications on file.

3. Migrant Sites

To demonstrate that they serve areas in which poor economic conditions exist, § 225.6(c)(2)(ii)(A) of the current regulations specifies that sites which serve children of migrant workers may provide ''data from an organization determined by the State agency to be a migrant organization which supports the eligibility of those children as a group.'' In the past, we have interpreted this requirement to mean that a State migrant organization must have actual statistical data which show that the families served by a specific site are income eligible for participation in the SFSP. However, it has become increasingly apparent that few State and local migrant organizations have such data available.

Because of the difficulties inherent in documenting the income of small groups of migrants, and the discernible poverty of migrant workers as a whole, as documented by national studies and corroborated by several Federal agencies that work directly with this population group, we believe it is more appropriate to use national data to support the eligibility of sites which serve children of migrant workers. Therefore, as previously addressed in Departmental guidance issued on March 12, 1993, and May 27, 1998, this rule proposes to remove the migrant site documentation requirements in current § 225.6(c)(2)(ii)(A). For new sponsors and sites, and for those that have experienced significant operational problems in the prior year, this rule proposes to require in new § 225.6(c)(2)(i)(K) that a migrant site document its eligibility with certification from a migrant organization which attests that the site serves children of migrant worker families. If the site also serves non-migrant children, the sponsor will also be required to certify that the site predominantly serves migrant children. Although different families may be present from year to year, the Department believes that migrant sites that participate in the SFSP every year continue to serve the children of migrant worker families. Therefore, this rule does not require experienced sponsors and sites to include this certification.

4. Homeless Feeding Sites

For homeless feeding sites, current regulations at § 225.6(c)(2)(iv) require the submission of information sufficient to document that the site is not a residential child care institution, and

that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families. Sponsors also are required to describe the methods used to ensure that cash payments, food stamps, and in-kind services are not received for any SFSP meal served to children at these sites. The Department believes that the above information continues to be important for new sponsors and sites, and for sponsors and sites which have experienced significant operational problems in the prior year.

Current § 225.14(d)(5) also contains the requirement that sponsors of homeless feeding sites provide documentation that the site is not a residential child care institution, as well as certification that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to children (homeless and non-homeless). This rule proposes to relocate the requirement for documentation of nonresidential status and certification of meal counting methods to new § 225.6(c)(2)(i)(L) for new sponsors and sites and for sponsors and sites which have experienced significant operational problems in the prior year, and to delete § 225.14(d)(5) as duplicative. However, this information is not necessary for experienced sponsors and sites since, once established, the status of the site (as nonresidential) and meal counting methods, typically do not change. Therefore, this proposed rule would remove the requirement for experienced sponsors and sites.

Accordingly, this rule proposes to amend § 225.14(d) by deleting paragraph (d)(1) (as discussed under ''Area eligible sites'' above), by deleting paragraph (d)(5), and by redesignating paragraphs (d)(2) through (d)(4), and (d)(6) through (d)(7) as paragraphs (d)(1) through (d)(5), respectively.

C. Other Requirements for Sponsor Applications

Current § 225.6(c)(2)(vi) requires that sponsor applications include information in sufficient detail to enable the State agency to determine whether the sponsor meets the criteria for Program participation outlined in § 225.14; the extent of Program payments needed; and a staffing and monitoring plan. For new sponsors and sponsors which, in the determination of the State agency, have experienced significant operational problems in the prior year, this rule retains in proposed new § 225.6(c)(2)(ii)(A) the requirement in the first clause of current § 225.6(c)(2)(vi) that applications include information for determining sponsor eligibility. However, such information would not be necessary for experienced sponsors (i.e., sponsors that have been determined eligible and have successfully participated in the Program in the prior year). Consequently, this rule proposes to delete the collection of that information for experienced sponsors. This rule retains, for all sponsors, in new §§ 225.6(c)(2)(ii)(A) and (c)(3)(ii)(A), the current requirements for estimating Program payments, requesting advance or start-up funds, if applicable, and submitting the staffing and monitoring plan in the application.

In accordance with § 225.6(c)(2)(vii), a sponsor's application must also currently include a complete administrative and operating budget for State agency review and approval each year. Unquestionably, administrative and operating budgets should be updated each year the Program is in operation, not only to ensure that Federal funds are properly spent, but also to help sponsors determine whether their planned expenditures will be adequately funded under the SFSP's ''lesser of costs versus rates'' funding formula. Accordingly, this rule retains, but relocates the requirements in current § 225.6(c)(2)(vii) to new §§ 225.6(c)(2)(ii)(B) and (c)(3)(ii)(B).

Current § 225.6(c)(2)(viii) requires that a sponsor submit ''[a] plan for and a synopsis of its invitation to bid for food service, if an invitation to bid is required under Section 225.15(g).'' The wording of this regulation is somewhat ambiguous, leaving unclear whether sponsors must always summarize their plans for obtaining meals. Therefore, to clarify this point, this rule proposes to add in new § 225.6(c)(2)(ii)(C) the requirement that new sponsors and sponsors which have experienced significant operational problems in the prior year, as determined by State agencies, submit a summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and transported from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, or some combination of these or other methods). In addition, if an invitation to bid is required under Section 225.15(g), new sponsors and sponsors which have experienced significant operational problems in the prior year will be required to submit a schedule for bid dates, and a copy of their invitation for bid (IFB). Under proposed § 225.6(c)(3)(ii)(C), experienced sponsors will be required to submit the bid schedule each year, but will only be required to submit a summary of their meal service and their IFB if they are changing their method of procuring meals or their IFB.

Section 225.6(c)(2)(ix) of the current regulations requires submission by sponsors of a free meal policy statement. Since such a statement already is required and further explained in current § 225.6(c)(3) (redesignated § 225.6(c)(4) by this rule), the Department is proposing to delete current § 225.6(c)(2)(ix) as redundant.

Section 225.6(c)(2)(x) of the current regulations requires that sponsors that seek to operate the Program as units of local, municipal, county or State government, or as private nonprofit organizations, provide certification in their annual applications that they will have direct operational control over the Program, as further defined in § 225.14(d)(4). Realizing that experienced sponsors typically implement the same, continual, service from year to year, it is the Department's belief that this information also remains constant. Therefore, this rule proposes to delete this requirement for experienced sponsors and sites, and to relocate this requirement to new § 225.6(c)(2)(ii)(D) for new sponsors.

Finally, current § 225.6(c)(3), which has been redesignated as § 225.6(c)(4) by this proposed rule, requires that all sponsors, regardless of type, submit a statement of their policy for serving free meals at all sites under their jurisdiction. This Section also contains, in paragraph (ii), additional requirements for policy statements for camps that charge separately for meals. The requirements for all sponsors are contained in the introductory paragraph and in paragraph (i). For improved organizational purposes, this rule proposes to amend redesignated § 225.6(c)(4) by combining the introductory paragraph with paragraph (i) under new Section 225.6(c)(4)(i).

III. State Agency Monitoring Requirements

As is true of the sponsor and site application requirements discussed above, the monitoring provisions contained in the current regulations are minimum standards. State agencies and sponsors may elect to conduct additional reviews, outside of the prescribed requirements, to ensure compliance with Program requirements.

The current regulations contain various minimum requirements for monitoring of SFSP sites by sponsors. For example, a sponsor in the SFSP must: (1) Certify prior to submitting its application that all proposed sites have been visited (§ 225.14(c)(6)); (2) visit each site at least once during the first

week of operation (§ 225.15(d)(2)); and (3) formally review food service operations at each site at least once during the first four weeks of operation, and at reasonable intervals thereafter (§ 225.15(d)(3)). This proposed rule will not make revisions to the monitoring requirements for sponsors because we believe that the current requirements are reasonable and necessary for efficient and effective operation of the Program.

Given the critical importance of monitoring as a tool for effective Program management, this rule also does not propose to lessen the overall effort currently expended by State agencies in their monitoring of sponsors. However, the Department believes that current monitoring requirements do not afford State agencies sufficient flexibility to determine where to focus their monitoring resources. The current State agency monitoring requirements and our proposed changes to these requirements are discussed in detail below.

A. Pre-Approval Visits

Section 225.7(d)(1) of the current regulations requires the State agency to conduct pre-approval visits of all applicant sponsors which did not participate in the SFSP in the prior year, with the exception of school food authorities which have been reviewed by the State agency under the National School Lunch Program during the preceding 12 months and had no significant deficiencies noted. State agencies may conduct pre-approval visits of these school food authority sponsors at their discretion. State agencies also exercise discretion in conducting pre-approval visits for all sponsors which had operational problems noted in the prior year.

Current § 225.7(d)(1) further requires each State agency to conduct pre-approval visits of all new nonschool sites with an expected average daily attendance of 300 children or more, and all new sites administered by private nonprofit organization sponsors with an expected average daily attendance of 100 children or more.

Since there is considerable variation among State agencies with regard to what constitutes a ''large'' site, the Department believes that requiring a State agency to conduct monitoring visits, based on the number of attending children, may be ineffective. Furthermore, State agencies have first-hand experience and knowledge of sponsors with problem-prone sites. Therefore, in order to provide maximum State flexibility while ensuring sufficient program oversight, we are retaining the current requirements in §§ 225.7(d)(1)(i) and (ii) for State agency pre-approval visits of sponsors (except for the change proposed in Section I (C)(3) of the preamble above), but are proposing to amend § 225.7(d)(1)(iii) and to remove § 225.7(d)(1)(iv) to make pre-approval visits of sites by State agencies discretionary.

B. Sponsor and Site Reviews

Section 225.7(d)(2)(i) of the current regulations requires that, within the first four weeks of operation, State agencies conduct a review of sponsor operations, and review an average of 15 percent of sponsors' sites (with a minimum of one site reviewed per sponsor) for: (1) New private nonprofit organizations which administer only urban sites and have three or more urban sites; (2) any new sponsor which has 10 or more sites; and (3) any other private nonprofit organization, and any other sponsor with 10 or more sites, which the State agency determines need early reviews. Section 225.7(d)(2)(iii) requires State agencies to conduct reviews, at any time during the Program year, of an average of at least 15 percent of the sites of all remaining sponsors with 10 or more sites; and, for 70 percent of remaining sponsors with fewer than 10 sites, an average of at least 10 percent of their sites. Finally, § 225.7(d)(2)(ii) requires that State agencies review all academic-year NYSP sponsors, and at least one of their sites, during the period October through April. This rulemaking proposes a number of changes to these existing requirements.

First, this rule proposes to eliminate the special requirements in § 225.7(d)(2)(i) for State agency review of private nonprofit organizations described above. The Department believes that the additional level of monitoring required by Congress for private nonprofit organizations under section 13(p)(1) of the NSLA is satisfactorily provided under the current Federal review system. In addition, although Pub. L. 103–448 maintained this special Federal monitoring of private nonprofit organizations, it made a number of other changes to the rules governing their program participation which demonstrate Congressional intent to now recognize that, as a result of additional Federal monitoring and training materials, these organizations are more capable of properly administering the SFSP. (For example, section 114(b) of Pub.L. 103–448 amended section 13(a)(7) of the NSLA to eliminate the one year waiting period formerly imposed on private, nonprofit organizations in some areas for participation in the SFSP). Therefore, this rule proposes to eliminate the current requirements for State-level review of new urban private nonprofit organizations with three or more sites during the first four weeks of program operation, as set forth at current § 225.7(d)(2)(i)(A).

In addition, as indicated earlier in this preamble, Pub. L. 104–193 removed the participation of academic-year NYSP sites from SFSP. Therefore, this proposed rule would remove the review requirement for these sponsors in § 225.7(d)(2)(ii).

Also, in order to streamline and simplify the current general monitoring requirements and provide increased flexibility to State agencies, this rule proposes to revise the minimum State agency review requirements for sponsors and their sites. This proposal would require the State agency to review every new sponsor, as defined in § 225.2 of this proposed rule, at least once during its first year of operation. State agencies would also be required under this proposed rule to review each year every sponsor with 20 or more sites, and every sponsor which, in the determination of the State agency, experienced significant operational problems in the prior year. In place of the current requirement that reviews of certain sponsors take place in the first four weeks of operation, the timing of reviews of these sponsors would be at the discretion of the State agency, with the stipulation that sponsors with large sites, larger numbers of sites, or significant operational problems in the prior year, be reviewed earlier. Finally, all sponsors would be required to be reviewed by the State agency at least once every three years.

The Department believes that these new proposed requirements better target State agency reviews by restricting required reviews in a given year to new and large sponsors, which monitoring data indicate are the most problem-prone sponsors in the SFSP, and those which experienced significant operational problems in the prior year. They also provide an updated and more realistic definition of ''large'' sponsors (those administering more than 20 sites), and permit State agencies to review experienced sponsors with fewer than 20 sites as infrequently as once every three years, at the State agency's discretion. This rule should not result in a reduction in a State agency's monitoring efforts. Rather, it is intended that the State agency's monitoring resources would become more targeted to reviews of new sponsors and sponsors of over 20 sites, and other sponsors the State agency identifies, and that a correspondingly greater amount of

State agency time and effort could be spent in conducting such reviews.

In addition, this rule proposes to amend § 225.7(d)(2) by adding language which recommends that State agencies prioritize other review efforts to target all other sponsors which increase their total number of sites by five or more from one year to the next, or whose participation increases substantially from one year to the next. Such targeting is important since smaller, experienced sponsors (those with 20 or fewer sites) which add a number of new sites or additional children at the same time may experience difficulties administering a Program which is significantly larger than the prior year's Program.

For reviews of sites, this rule proposes to amend § 225.7(d)(2) by requiring that, as a part of each sponsor review, the State agency also conduct annual reviews of at least 10 percent of the sponsor's sites or one site, whichever number is greater. This revision will further simplify the current requirements, while providing a reasonable sample size and a guarantee that at least one site for each sponsor will be reviewed.

The Department expects that State agencies will use this increased flexibility to properly target their reviews to ensure program accountability and integrity. Each State's level of resources devoted to monitoring should remain the same under these revised regulations. Improved targeting of the resources will ensure better program oversight with the same level of resource commitment.

Accordingly, this rule proposes to completely revise the review requirements in current §§ 225.7(d)(2)(i)–(iii) and to replace them with the new requirements discussed above.

List of Subjects in 7 CFR Part 225

Food and Consumer Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 225 is proposed to be amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

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 *Closed enrolled site, Experienced site, Experienced sponsor, New site, New sponsor, Open enrolled site*, and *Open site* are added in alphabetical order; and

b. The definition of *Areas in which poor economic conditions exist* is revised.

The additions and revision read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

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

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

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

(3) From other appropriate sources; or

(b) A closed enrolled site.

* * * * *

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f) of this part.

* * * * *

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

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

* * * * *

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

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

* * * * *

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

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

* * * * *

3. In § 225.6:

a. Paragraph (b)(1) is amended by adding a new sentence at the end;

b. Paragraph (b)(4) is revised;

c. Paragraph (c)(1) is amended by adding a new sentence after the first sentence;

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

e. Paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(4) and (c)(5), respectively, and a new paragraph (c)(3) is added;

f. Newly redesignated paragraph (c)(4) is amended by removing paragraph (c)(4) introductory text and adding it as the first sentence in newly redesignated paragraph (c)(4)(i); the paragraph is further amended by removing the reference to ''(c)(4)'' in paragraph (c)(4)(ii)(D) and adding in its place a reference to ''(c)(5)'.

g. Paragraph (d)(1)(ii) is amended by removing the word ''and'' at the end of the paragraph;

h. Paragraph (d)(1)(iii) is amended by removing the period at the end of the paragraph and adding in its place the word ''; and'';

i. A new paragraph (d)(1)(iv) is added;

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

The additions and revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(1) * * * Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April shall be exempt from the application submission deadline.

* * * * *

(4) The State agency shall determine the eligibility of applicant sponsors

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

* * * * *

(c) * * *

(1) * * * Sponsors proposing to serve an area affected by an unanticipated school closure during the period from October through April may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or prior two calendar years. * * *

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

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

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

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

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

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

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

(G) For open and open enrolled sites, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. For sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April, any site which has participated in the Program at any time during the current year or prior two ccalendar years shall be considered eligible without new documentation of serving an area in which poor economic conditions exist;

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

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

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

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

(L) For homeless feeding sites, information sufficient to demonstrate that the site is not a residential child care institution as defined in paragraph (c) of the definition of *school* in § 210.2, of 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. 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. In addition, sponsors 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.

(ii) New sponsors and sponsors which in the determination of the State agency have experienced significant operational problems in the prior year shall also include in their applications:

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

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

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

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

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

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

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

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

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

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

(ii) Experienced sponsors shall also include on their applications:

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

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

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

* * * * *

(d) * * *

(1) * * *

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

* * * * *

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

* * * * *

4. In § 225.7:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1)(i) is amended by removing the semicolon at the end of the paragraph, by adding a period in its place, and by adding a new sentence at the end of the paragraph;

c. Paragraph (d)(1)(iii) is revised;

d. Paragraph (d)(1)(iv) is removed; and

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

The additions and revisions read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April.

* * * * *

(d) * * *

(1) * * *

(i) * * * In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures during the period from October through April may be conducted at the discretion of the State agency;

* * * * *

(iii) Pre-approval visits of sites may be conducted at the discretion of the State agency.

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

(i) State agencies shall conduct a review of every new sponsor at least once during the first year of operation. State agencies shall also conduct a review each year of every sponsor operating 20 or more sites, and every sponsor which, in the determination of the State agency, experienced significant operational problems in the prior year. The timing of these reviews is at the discretion of the State agency, except that reviews of sponsors with large sites, a larger number of sites, or significant operational problems in the prior year shall be conducted earlier than reviews of other sponsors.

(ii) State agencies shall conduct a review of every Program sponsor at least once every 3 years.

(iii) For all other reviews of sponsors, State agencies should focus review efforts on those sponsors which increase their total number of sites by 5 or more, or whose participation increases substantially, from one year to the next, as determined by the State agency.

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

* * * * *

5. In § 225.14:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraphs (d)(1) and (d)(5) are removed; and

c. Paragraphs (d)(2) through (d)(4), and (d)(6) through (d)(7) are redesignated as paragraphs (d)(1) through (d)(5), respectively.

The addition reads as follows:

§ 225.14 Requirements for sponsor participation.

(a) * * * Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at

any time during the current year or prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April. * * *

* * * * *

Dated: October 1, 1998.

Samuel Chambers, Jr.,

Acting Administrator.

[FR Doc. 98–27316 Filed 10–9–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC64

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food and Nutrition Services and Administration Funding Formulas Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise both the food and the nutrition services and administration (NSA) funding formulas to improve the effectiveness of WIC funds distribution now that WIC is in a relatively stable funding environment. The revised food funding formula would help to ensure food funds are allocated to State agencies that can utilize the funds to maintain current participation as well as to direct funds, as available, to State agencies that are serving a lesser proportion of their WIC eligible population than other State agencies. The revised NSA funding formula would simplify the funding formula by deleting obsolete components and updating existing components to more equitably distribute funds among State agencies.

DATE: To be assured of consideration, written comments on this rule must be postmarked by January 11, 1999. No electronically transmitted correspondence will be accepted.

ADDRESSES: Comments may be mailed to Ron Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5:00 p.m. Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710. An analysis package containing the formula database, comparisons and mathematical computations is available upon request at the above address.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866 and has been determined to be significant. An impact analysis statement has been prepared and is available upon request.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4 (2 U.S.C.), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect how FNS will calculate food and NSA grant allocations for State agencies. State agencies are not small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Dates'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Background

Need for Revisions to the WIC Funding Formulas

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well-being of low-income women, infants and children at nutritionally related medical or dietary risk. The WIC Program has grown and changed significantly during the past few years. However, as growth has plateaued, FNS believes that it is appropriate to propose changes to both the NSA and food funding formulas to enhance their effectiveness at distributing funds fairly and equitably among WIC State agencies