

operational control. Such operational control means that the sponsor shall be responsible for:

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

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

(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.

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

#### **§225.15 Management responsibilities of sponsors.**

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

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, 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.*).

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

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

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

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

(4) In recognition of the fluctuation in participation levels which makes it

difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

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

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

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; record-keeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and

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

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

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

(e) *Media Release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall include: the Secretary's family-size and income standards for reduced price school meals labelled "SFSP Income Eligibility Standards"; a statement that children who are members of food stamp households or AFDC assistance units are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or handicap.

(f) *Application for free Program meals.* (1) For the purpose of determining eligibility for free Program meals, camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced price school meal eligi-

bility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals. Such forms and descriptive material may not contain the income standards for free meals in the National School Lunch or School Breakfast Programs. In addition, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free program meal benefits, subject to completion of the application as described in paragraph (f)(3) of this section.

(2) Except as provided in paragraph (f)(3) of this section, the application shall contain a request for the following information: (i) The names of all children for whom application is made; (ii) the names of all other household members; (iii) the social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; (iv) the income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income); (v) a statement to the effect that, "In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us"; (vi) a statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless a food stamp or AFDC case number is provided for your child, you must include the social security number of the adult household member signing the application, or indicate that the household member does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the signer does not have a social security number, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may

be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income; contacting a food stamp or welfare office to determine current certification for receipt of food stamp or AFDC benefits; contacting the State employment security office to determine the amount of benefits received; and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses. The sponsor shall take the income information provided by the household on the application and calculate the household's total current income; and (vii) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(3) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free

meal benefits are being claimed. Whenever households applying for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

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

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

(4) Households selected to provide verification shall provide a social security number for each adult household member or an indication that such member does not have one. The notice to households of selection for verification shall include the following:

(i) Section 9 of the National School Lunch requires that unless the child's food stamp or AFDC case number is provided, households selected for verification must provide the social security number of each adult household member;

(ii) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security number may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of

benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(v) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974). These households shall be provided with the name and phone number of an official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp or AFDC Program certification as described in paragraph (f)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

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

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

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

(4) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency

and with all the applicable provisions of this part.

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

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

(ii) The bids are publicly opened;

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

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

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

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

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

(viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

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

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

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

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

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

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

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

(8) Food service management companies shall obtain bid bonds and performance bonds only from surety com-

panies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

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

[54 FR 18208, Apr. 27, 1989, as amended at 55 FR 13470, Apr. 10, 1990; 61 FR 25553, May 22, 1996]

**§ 225.16 Meal service requirements.**

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

(b) *Meal Services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with this section.

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

(i) A camp may serve up to four meals each day;

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