

(d) The agency, in its sole discretion, determines the duration of any period of debarment imposed under this section.

### Subpart C—OPM Suitability Action Procedures

#### § 731.301 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when OPM proposes to take, or instructs an agency to take, a final suitability action against an applicant, appointee or employee.

(b) *Definition.* In this subpart, *days* means calendar days.

#### § 731.302 Notice of proposed action.

(a) OPM shall notify the applicant, appointee, or employee (hereinafter, the “respondent”) in writing of the proposed action and of the charges against the respondent (including the availability for review, upon request, of the materials relied upon). The notice shall state the specific reasons for the proposed action and that the respondent has the right to answer the notice in writing. If the respondent is an employee, the notice shall further state that the employee may also make an oral answer, as specified in § 731.303(a). The notice shall further inform the respondent of the time limits for response as well as the address to which such response should be made.

(b) The notice of proposed action shall be served upon the respondent by being mailed or hand delivered to the respondent’s last known residence, and/or duty station, no less than 30 days prior to the effective date of the proposed action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in a pay status during the notice period.

(c) OPM shall send a copy of this notice to any employing agency that is involved.

#### § 731.303 Answer.

(a) *Respondent’s answer.* A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response. A respondent who is an employee may also answer orally. The respondent may be represented by a representative of the respondent’s choice, and such representative shall be designated in writing. To be timely, a written answer shall be made no more than 30 days after the date of the notice of proposed action. In the event an employee requests to make an oral answer, the request must be made within this 30 day time frame, and OPM shall determine

the time and place thereof, and shall consider any answer the respondent makes in reaching a decision.

(b) *Agency’s answer.* An employing agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer the agency makes in reaching a decision.

#### § 731.304 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. The employing agency shall remove the appointee or employee from the rolls within 5 work days of receipt of OPM’s final decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart DE of this part. OPM shall also notify the respondent’s employing agency of its decision.

### Subpart D—Agency Suitability Action Procedures

#### § 731.401 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when an agency proposes to take a final suitability action against an applicant or appointee.

(b) *Definition.* In this subpart, *days* mean calendar days.

#### § 731.402 Notice of proposed action.

The agency shall provide the applicant or appointee (hereinafter, the “respondent”) reasonable notice in writing of the proposed action and of the charges against the respondent (including the availability for review, upon request, of the materials relied upon). The notice shall state the specific reasons for the proposed action, and that the respondent has the right to answer the notice in writing. The notice shall inform the respondent of the time limits for response as well as the address to which such response should be made. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in a pay status during the notice period.

#### § 731.403 Answer.

A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response.

#### § 731.404 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. The respondent shall also be informed that an adverse decision can be appealed in accordance

with subpart E of this part. The employing agency shall remove an appointee from the rolls within 5 work days of their final decision.

### Subpart E—Appeal to the Merit Systems Protection Board

#### § 731.501 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual who has been found unsuitable for employment may appeal the determination to the Merit Systems Protection Board. If the Board finds that one or more charges are supported by a preponderance of the evidence, it shall affirm the determination. If the Board sustains fewer than all the charges, the Board shall remand the case to OPM or the agency to determine whether the action taken is still appropriate based on the sustained charge(s). This determination of whether the action taken is appropriate shall be final without any further appeal to the Board.

(b) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of this chapter.

### Subpart F—Savings Provision

#### § 731.601 Savings provision.

No provision of the regulations in this part shall be applied in such a way as to affect any administrative proceeding pending on January 29, 2001. An administrative proceeding is deemed to be pending from the date of the agency or OPM “notice of proposed action” described in § 731.402.

[FR Doc. 00–33114 Filed 12–27–00; 8:45 am]

BILLING CODE 6325–01–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 225

#### RIN 0584–AC23

### Summer Food Service Program Implementation of Legislative Reforms

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule, with technical amendments.

**SUMMARY:** This rule makes final an interim rule published in the **Federal Register** on December 28, 1999. This final rule adopts the changes made to the Summer Food Service Program by the interim rule as mandated by three public laws—the Healthy Meals for

Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Program changes include easing restrictions on participation by private nonprofit organizations and food service management companies, streamlining rules for schools to encourage Program sponsorship, and reducing paperwork burdens for State agencies. In addition, this rule makes minor technical changes to conform meal pattern requirements to the standards used in the National School Lunch Program and the School Breakfast Program, to correct errors in meal pattern charts and regional office addresses, and to conform application procedures to the Meal Benefit Form prototype. Finally, this rule restores and revises a paragraph that was inadvertently removed from program regulations by the interim rule.

**EFFECTIVE DATE:** December 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie or Ms. Melissa Rothstein, 703-305-2620.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Discussion of the Final Rule**

The Summer Food Service Program (SFSP) is authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1761). Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

In 1994, 1996, and 1998, substantive changes to the SFSP were made with the enactment of three public laws. Readers can find information about these laws and details on the corresponding changes we made to the SFSP regulations in the interim rule (64 FR 72474) that was published on December 28, 1999, in the **Federal Register**.

The 180-day comment period on the interim rule ended June 25, 2000. One comment was received on the interim rule. The commenter supported the changes made to the SFSP regulations by the interim rulemaking and suggested that we continue the process

of reducing paperwork burdens and streamlining requirements. This commenter provided a number of recommendations that we may consider in a future rulemaking. The specific comments made, however, did not apply directly to the language in the interim rulemaking.

We want to emphasize that the interim rule primarily brought the SFSP regulations up to date with the statutory requirements. Since these changes were implemented by State agencies based on Department guidance in a timely fashion after the enactment of each public law, there were essentially no new policy proposals in the rule to engender comments.

Following is a chart that lists by program area the provisions contained in the December 28, 1999, interim rule; we also provide regulatory citations in the chart for the reader's convenience in locating the changes within the SFSP regulations at 7 CFR part 225.

**BILLING CODE 3410-30-P**

<b>Implementing Legislative Reforms in the SFSP – Final Rule</b>	
<b>Provision</b>	<b>Found In</b>
<b>1. Private Nonprofit Organizations (PNOs):</b>	
• New sponsor selection priority system	§225.6(b)(5)
• The one-year waiting period is eliminated for PNOs to serve an area previously served by a school food authority (SFA) or a government sponsor.	Removed from: §§225.2 - definition of a PNO, 225.6(a)(3)(iv)(B), and 225.14(d)(7)(iv).
• Warnings only for PNOs printed on application materials are eliminated. At State option, all application materials may contain warning language. Upgraded maximum fine that can be levied to statutory limit of \$25,000.	§225.6(a)(4)
• Special training for PNOs is eliminated.	Removed from §225.7(a).
• Increase number of sites and children served at those sites by PNOs.	§§225.2 - definition of a PNO, 225.6(b)(6)(ii), and 225.14(d)(6)
• PNOs can use commercial vendors.	Removed prohibition from: §§225.2 - definition of a PNO, 225.6(a)(3), 225.14(d)(7), and 225.15(g)(3)
• Eliminated the March 1 indication of interest requirement.	Removed from: §§225.2 - definition of a PNO and 225.14(d)(7)(iv).
<b>2. Paperwork Reductions:</b>	
• Eliminated criteria from the State's Management and Administration Plans.	Remaining criteria at §225.4(d)
• Eliminated annual submission of free and reduced price policy statement for SFAs.	§225.6(c)(4)(i)
<b>3. Food Service Management Companies (FSMC)</b>	
• Eliminated requirement that FSMCs must be registered by State agencies; it is now a State option. Conforming changes made to appeal procedures.	§225.6(g) and 225.13(a)
• Eliminated State agency reporting requirement on registration of FSMCs.	Removed from: §225.8(d).
• Contracts with FSMCs must require mandatory periodic inspections of meals to determine if bacteria levels conform with local standards.	§225.6(h)(2)(v)
<b>4. School Food Authorities (SFAs)</b>	
• SFAs don't have to conduct training of site personnel	§225.9(c)(1)(i)

<b>Implementing Legislative Reforms in the SFSP – Final Rule</b>	
<b>Provision</b>	<b>Found In</b>
before getting their second advance operating payment.	
• SFAs may utilize “offer versus serve” option at all sites.	§225.16(f)(1)(ii)
• SFAs must use a single permanent agreement and common claims form for all child nutrition programs.	§§225.6(e) and 225.9(d)
• SFAs with satisfactory reviews under the National School Lunch Program (NSLP) are exempt from SFSP review in the same year.	§225.7(d)(2)
<b>5. Definition of Household Types and Clarifying Language on Application Procedures</b>	
All references to “AFDC” are removed and replaced with “TANF”. “FDPIR household” is added as a definition and as a qualifying program for automatic eligibility for SFSP benefits.	§§225.2 definitions, 225.6(c)(4)(ii)(B), 225.15(e), and 225.15(f)(3),(4), and (5)
<b>6. National Youth Sports Program (NYSP)</b>	
• Statutory authority for Academic-Year NYSP sites expired; all references to “academic-year NYSP” are removed.	§225.2 - definitions and throughout Part 225
• Definition of “NYSP feeding site” is revised to allow eligibility based on enrollment or area eligibility.	§§225.2
<b>7. Consolidated Benefits for Homeless Children</b>	
• Administration and delivery of benefits to homeless children was consolidated under the Child and Adult Care Food Program. Homeless shelters may still operate SFSP as either open or enrolled sites.	References to homeless emergency shelters removed at: §§225.2, 225.6(c)(2), 225.6(d), 225.8(e), 225.14(c)(3), 225.14(d)(4), 225.15(a)(2), and 225.16(b)(2).
<b>8. Number of Meals and Meal Pattern Requirements</b>	
• Reimbursable meals for camps and migrant sites were reduced from 4 to 3 (or 2 meals and 1 snack) per day per child.	§§225.16(b)(1)(i) and 225.16(b)(4)
• The term “snack” replaced the term “supplement”.	Starting at §225.16(b)
• Equivalencies of egg to meat or meat alternatives are changed to conform to those used in the National School Lunch Program and School Breakfast Programs.	§225.16(d)
<b>9. Program Payments</b>	
Reimbursement rates for Alaska and Hawaii were adjusted upward to reflect the higher cost of living in those States.	§225.9(d)(9)

### Restoring a State Agency Reporting Requirement

Since 1990, FNS has played a special role in monitoring the participation of PNOs in the SFSP. Section 13(p)(1) of the NSLA, which was added by Pub. L. 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, authorizes the Secretary to establish a system of compliance monitoring of PNOs. As mandated in section 13(p)(2), one half of one percent of each annual appropriation of the SFSP funds this monitoring system. FNS regional offices carry out this special monitoring effort by conducting reviews of PNOs in their States. In order to conduct these reviews, regional offices rely on receiving information on a timely basis from the State agencies about the PNOs that are approved each year to operate the Program. Because of the importance of these reviews, the SFSP regulations were amended on April 10, 1990, to require State agency submission of this information to FNS regional offices.

In the December 28, 1999 interim rule, paragraph (e) of § 225.8 which contained this submission requirement was mistakenly removed. This paragraph required State agencies to submit to their FNS regional office a list of potential PNO sponsors and their addresses by May 1st each year. For each potential PNO sponsor, State agencies were required to estimate the number of sites, locations, dates of operation per site, and daily attendance per site. This paragraph also referenced the need to gather and analyze information on PNOs that was required in § 225.6(a)(3). (The interim rule removed § 225.6(a)(3) because the statutory requirement addressed in this paragraph was eliminated by Pub. L. 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998). Additionally, State agencies were required to supply additional information and to update previously estimated information about each approved PNO within 5 working days of the approval.

To eliminate the potential for confusion about FNS' need for this information, we are restoring this requirement in § 225.8 in this rulemaking. The new paragraph contains similar language to the old paragraph, with some exceptions. The new paragraph does not require the analysis of information collected in accordance with § 225.6(a)(3), since that analysis is no longer required. Similarly, we do not ask State agencies to report homeless sites, since sites are no longer categorized as specifically serving a homeless population.

Accordingly, a new paragraph (d) is added to § 225.8 to require State agency submission of a list of potential PNO sponsors by May 1st of each year. New paragraph (d) will also require State agencies to submit additional detailed information of PNO sponsors within 5 days of their approval to participate in the Program.

### Corrections

This rule corrects several errors in part 225. We are revising § 225.15(f)(4)(vii) to specify that the penalties notice should appear immediately above the signature block on the application for free meals. This is consistent with the Meal Benefit Form prototype (free and reduced price meal application) that FNS revised in spring 2000. Another correction is to the breakfast meal pattern chart found in § 225.16(d)(1). The minimum amount for cooked dry beans or peas under the meat and meat alternates component is shown as ½ cup. The correct amount should be ¼ cup. The SFSP meal pattern charts were most recently updated in a final rule entitled "Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program," which was published on March 9, 2000 (65 FR 12429). Lastly, we are correcting addresses for several FNS regional offices in various paragraphs of § 225.19.

### II. Procedural Matters

#### *Executive Order 12866*

This final 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.

#### *Public Law 104-4*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires 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 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 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 the 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 the UMRA.

#### *Executive Order 12372*

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *Regulatory Flexibility Act*

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Since the provisions contained in this rule were previously implemented, it will have no impact.

#### *Executive Order 12988*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving

procurement by State agencies and sponsors.

*Paperwork Reduction Act*

This final rule contains information collection requirements in § 225.8(d) that have been approved by the Office of Management and Budget on February 28, 2000 (control number 0584-0280) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

**List of Subjects in 7 CFR Part 225**

Food and Nutrition Service, Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 225, which was published at 64 FR 72474 on December 28, 1999, is adopted as a final rule with the following changes:

**PART 225—SUMMER FOOD SERVICE PROGRAM**

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

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

2. In § 225.8, add new paragraph (d) to read as follows:

**§ 225.8 Records and reports.**

\* \* \* \* \*

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

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

(2) State agencies must also notify the appropriate FNSRO within 5 working days after they approve each private nonprofit organization to participate as a SFSP sponsor. When State agencies notify the FNSRO of sponsor approval, they must provide the following information:

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

plan reviews, including whether the site is rural or urban, or vended or self-preparation.

3. In 225.15, revise paragraph (f)(4)(vii) to read as follows:

**§ 225.15 Management responsibilities of sponsors.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

4. In § 225.16, revise the entry for “Cooked dry beans or peas” in the table under Meat and Meat Alternates (Optional) in paragraph (d)(1) to read as follows:

**§ 225.16 Meal service requirements.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

Food components	Minimum amount
* * * * *	* * * * *
<b>Meat and Meat Alternates (Optional)</b>	
* * * * *	* * * * *
Cooked dry beans or peas ...	¼ cup.
* * * * *	* * * * *

5. In § 225.19, revise paragraphs (b), (c), (d), (e), (f) and (g) to read as follows:

**§ 225.19 Regional office addresses.**

\* \* \* \* \*

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

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

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

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

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

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

Dated: December 21, 2000.

**George A. Braley,**  
*Acting Administrator.*

[FR Doc. 00-33095 Filed 12-27-00; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 930**

[Docket No. FV00-930-4 FIR]

**Tart Cherries Grown in the States of Michigan, et al.; Authorization of Japan as an Eligible Export Outlet for Diversion and Exemption Purposes**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which authorizes Japan as an eligible export market under the diversion and exemption provisions of the Federal tart cherry marketing order (order). Previously, shipments to Canada, Mexico, or Japan did not qualify for diversion credit and could not be approved as exempt uses. The Cherry Industry Administrative Board (Board) recommended allowing shipments to Japan to qualify as exempt use shipments and to be eligible for diversion credit. The order regulates the