

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 210, 220, 225, and 292**

[FNS–2023–0029]

RIN 0584–AE96

Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Interim final rule.

SUMMARY: The Consolidated Appropriations Act, 2023 requires the Secretary of Agriculture to make available an option to States to provide summer meals for non-congregate meal service in rural areas with no congregate meal service and to establish a permanent summer electronic benefits transfer for children program (Summer EBT) for the purpose of ensuring continued access to food when school is not in session for the summer. This interim final rule amends the Summer Food Service Program (SFSP) and the National School Lunch Program's Seamless Summer Option (SSO) regulations to codify the flexibility for rural program operators to provide non-congregate meal service in the SFSP and SSO, collectively referred to as the summer meal programs. This rule also establishes regulations and codifies the Summer EBT Program in the Code of Federal Regulations.

DATES:

Effective date: This rule is effective December 29, 2023.

Comment date: To be considered, written comments on this interim final rule must be received on or before April 29, 2024.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this interim final rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Send comments to Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.

- All written comments submitted in response to this interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the

individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the internet via <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Division Director, Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703–305–2537.

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I. Background

Summer is frequently the most challenging time of the year for children at risk of food insecurity when they no longer have access to daily school meals. The Summer Food Service Program (SFSP), authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761, has been the primary source of nutritional support for vulnerable children during the summer since its formal inception in 1975. The purpose of the SFSP is to provide nutritious meals to children in low-income areas when schools are not in session during the summer months, as well as during long school breaks in communities with year-round school calendars. Schools can also offer meals through the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP), which allows school food authorities to provide meals to children during the summer months, school breaks, and unanticipated school closures using the procedures of the school lunch and breakfast programs. The SFSP and SSO are collectively referred to as USDA summer meal programs. Through the summer meal programs, program operators provide meals and snacks to children at meal sites in their communities; these meals are served at no cost to children and were historically required to be consumed in a congregate setting on the meal site premises.

Among the USDA Child Nutrition Programs (CNPs), the summer meal programs are unique in many ways, including the seasonal nature of their operations, the diversity of organizations that operate the programs, and the range of sites at which meals are offered. Many sites offer summer programming in addition to meals. Meals served as part of the summer meal programs are served at a wide

variety of sites, including schools, recreation centers, parks, camps, and places of worship. In July 2022, the summer meal programs served an average of 4.1 million children daily at more than 36,000 sites nationwide.

Although the summer meal programs are an important source of nutrition for many children, program access remains inconsistent or out of reach for some communities and families that cannot reliably access summer meals. Children who may have difficulty accessing summer meals include those:

- living in rural areas who would have to travel long distances to receive a meal,
- living in communities without summer meal sites,
- living in areas with limited safe and reliable transportation options, and in families whose schedules do not allow them to travel to a site daily.

USDA, State administering agencies, program operators, and other nutrition security champions have worked hard to expand the reach of summer meal programs over the years. Despite these efforts, only 1 in 6 children¹ who eat free or reduced price school meals participate in the summer meal programs in a typical year, leaving a large gap between children in need of summer meals and those who receive them. This ongoing summer nutrition gap indicates that the nutritional needs of children throughout the U.S. during the summer months cannot be met with a one-size-fits-all approach.

In December 2022, Congress took action to address the summer nutrition gap by providing new tools to serve low-income children during the summer months. On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023 (the Act) (Pub. L. 117–328), which amended section 13 of the NSLA to allow children in rural areas to take their meals off-site beginning in 2023, and established a permanent, nationwide Summer Electronic Benefits Transfer for Children Program (Summer EBT) beginning in 2024. Regulations to amend the summer meal programs and establish Summer EBT are being promulgated through this interim final rule (IFR), as required by the Act.²

As mentioned above and pursuant to the requirements of the NSLA, which authorizes the summer meal programs, summer meal program rules previously required that children remain at a meal

service site while they consumed their meal or snack. This approach to program implementation, known as congregate meal service, has many benefits including providing the opportunity for children to socialize and engage in supervised activities offered at the site. However, as previously noted, some communities lack the resources or infrastructure to operate meal sites and supervise a meal service, and some families face significant barriers traveling to a site for each meal. The Act addresses these challenges by providing flexibility for sites in rural areas to provide a non-congregate meal service, which means allowing children to take meals off-site, for example, to their homes.

The Act also authorized a new permanent method for offering additional summer nutrition assistance for children. The new Summer EBT program will provide benefits on EBT cards so that families can purchase food for their children. Together, these changes will revolutionize how our nation supports the nutritional needs of children during the summer months, when school is not in session.

These two alternatives to connecting children to nutrition during the summer may be new as permanent options, but both have been tested extensively in recent years. Non-congregate meal service in the summer meal programs has been tested through demonstration projects, program waivers during the COVID–19 pandemic, and operational guidance in summer 2023; Summer EBT has been piloted through demonstration projects since 2011 and the Pandemic EBT program offered in response to COVID–19 was similar to Summer EBT in many ways.

A. USDA's Vision for Complementary Summer Nutrition Programs

USDA's goal across all summer nutrition programs is simple: to connect children with nutritious food during the summer months. While traditional congregate summer meal service remains a vital tool for providing low-income children with nutritious meals at no cost, USDA recognizes that not all children who would benefit from summer nutrition assistance are currently being reached through existing Programs. Due to numerous barriers to access that have already been highlighted, including time, distance, and transportation, many children who are eligible for free and reduced price school meals are not well served by traditional congregate summer meal sites. In particular, these challenges have been historically difficult to overcome in rural areas. USDA's goal is

¹ Calculated from 2022 FNS administrative data.

² 42 U.S.C. 1761(a)(13)(F) (“Not later than 1 year after December 29, 2022, the Secretary shall promulgate regulations (which shall include interim final regulations) to carry out this section. . . .”).

to leverage the provisions codified through this IFR, working aggressively to close access gaps and ensure that children receive critical nutrition assistance during the summer months.

The Consolidated Appropriations Act, 2023, as implemented by this rulemaking, expands the reach of USDA's summer nutrition programs by establishing three distinct and essential pillars of summer nutrition assistance that will work in tandem and in a complementary fashion. In addition to the traditional congregate summer meal option provided through the SFSP and the SSO, State agencies and Program operators can now utilize two new methods of providing children with summer nutrition assistance. Non-congregate meal service will address critical access challenges in rural areas by allowing SFSP and SSO Program operators to provide meals available for pick up or delivery that children can eat at the time and place that is convenient for them. Summer EBT is a nationwide, permanently authorized program that provides EBT benefits to eligible children that can be used to buy groceries. Taken together, these three pathways for providing summer nutrition assistance will help to better support rural, suburban, and urban communities alike.

The complementary nature of these nutrition assistance options is the foundation of their great potential to benefit children across the nation. They are intended to be used simultaneously for the purposes of delivering a more complete summer nutrition safety net. To illustrate, SFSP and SSO meal sites have provided nutritious summer meals, as well as recreational, educational, and other enrichment opportunities to generations of children. However, in rural areas, where there may be a lack of transportation, sites, funds, and staff to support traditional congregate meal service, non-congregate meal service can be used to help provide children in these areas with equitable access to nutritious food. Significantly, the provisions established by the Act and implemented under this rulemaking also allow for program operators to use the non-congregate option to complement congregate meals at the times when congregate meal service is not offered; for example, a rural site serving congregate meals during the week may also offer "wraparound" service, providing take-home meals for the weekend. The Summer EBT Program's addition of EBT benefits for children introduces a new layer of nutrition assistance that is flexible and allows families to supplement summer meals with foods of their choice that are

available anytime, including when meal sites are not open. The combination of these three approaches for providing nutrition during the summer months will help to ensure both equitable and more comprehensive access for children, and USDA looks forward to continued partnership with States, Tribes, and local stakeholders to use all the tools that are now available to meet their communities' needs.

B. Non-Congregate Meal Service

Demonstration Projects

The Act instructed USDA to incorporate best practices and lessons learned from demonstration projects carried out under section 749(g) of the Agriculture, Rural Development, Food and Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132), which provided \$85 million to USDA beginning in 2010 to initiate and implement the Summer Food for Children demonstration projects.³ One demonstration project was the Enhanced Summer Food Service Program (eSFSP), which tested changes to the existing structure and delivery mechanism of SFSP for the purpose of determining effects on program participation. The eSFSP included the Meal Delivery demonstration which offered breakfast and lunch delivery to homes of eligible children in rural areas, as well as the Food Backpack demonstration which provided weekend and holiday meals to SFSP participants for consumption when SFSP sites were not open. In 2013, the demonstration project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excess Heat was first implemented. Under this demonstration project, SFSP and SSO sponsors who were operating approved outdoor meal sites without temperature-controlled alternative sites could operate as non-congregate sites on days when the area was experiencing excessive heat. In addition to excessive heat, USDA approved four States to participate in the demonstration due to smoke and air-quality concerns in summer 2019. In more recent years, USDA implemented Meals-to-You (MTY) under the demonstration authority. MTY was developed in response to stakeholder feedback about the challenges and difficulties of serving summer meals in sparsely populated communities and remote areas. Through MTY, food boxes were mailed directly to families of

children who were eligible for free or reduced price school meals. Each eligible child received a weekly box, which contained five breakfast meals, five snacks, and five lunch/supper meals.

Historically, non-congregate meals were operated on a small scale through the above mentioned demonstration projects. However, during the COVID–19 public health emergency (PHE), non-congregate meals became more widely available as an important part of USDA's response to the pandemic. In March 2020, Federal, State, and local level efforts to reduce the spread of COVID–19 resulted in the abrupt closure of schools across the country, disrupting access to school meals for millions of children. In response, State agencies and program operators requested individual waivers under the authority of section 12(l) of the NSLA and implemented program flexibilities, such as the flexibility to allow non-congregate meal service through SFSP and SSO. To better address the urgent need for resources and operational flexibilities required to serve children throughout the pandemic, Congress provided USDA with temporary authority to waive statute and regulations on a nationwide basis for Child Nutrition Programs through the Families First Coronavirus Response Act of 2020 (FFRCA) (Pub. L. 116–127), and later through subsequent statutory extensions to help USDA continue to respond to changing needs throughout the pandemic. Such efforts included USDA issuing the Nationwide Waiver to Allow Non-Congregate Feeding and other complementary non-congregate waivers under section 2202(a) of the FFRCA. These waivers ensured that children continued to receive nutritious meals and helped to mitigate the impacts of the COVID–19 PHE.

For summer 2023, USDA provided guidance on non-congregate meal service operations in rural areas as required by the Act. Many of the non-congregate flexibilities allowed for summer 2023 operations were allowed through previous demonstrations, waivers, and guidance on non-congregate meal service operations during the COVID–19 PHE. Through this IFR, USDA is promulgating regulations for the summer meal programs rural non-congregate option for program year 2024 and beyond. These regulations are based on a combination of best practices from demonstration projects, non-congregate flexibilities offered during the COVID–19 pandemic, and prior guidance that was issued for operating rural non-

³ Information and supporting materials on each of the Summer Food for Children demonstration projects are available at: <https://www.fns.usda.gov/ops/summer-food-children-demonstrations>.

congregate meal service in summer 2023.

Stakeholder Feedback

Between April 5, 2023, and June 15, 2023, USDA hosted 21 listening sessions with external stakeholders on the topic of non-congregate summer meals. Input was gathered from State agency program administrators,⁴ school food authorities (SFAs) and other program operators, advocacy groups, and program participants. Listening session participants were asked a series of questions related to implementation, service models, program integrity, challenges, benefits, and definitions; each session also included open time where participants could share additional thoughts of interest to them. USDA also held consultations with Tribal leaders from Indian Tribal Organizations (ITOs) to obtain their input on the topic of non-congregate summer meals, as well as rural experts at Federal agencies to obtain their input on defining and identifying rural areas. USDA recorded and analyzed all comments shared during the listening sessions and has taken all comments into careful consideration when developing this rule.

Stakeholders were generally positive about non-congregate summer meals, citing enhanced program access as the primary benefit. However, 14 State agencies voiced concerns with program integrity and five State agencies expressed concern about nutritional quality and/or food safety of meals served. Fifteen additional stakeholders voiced concern about inadequate staff support to manage non-congregate meal service. Stakeholders said that the existing (long-standing) definition of “rural” did not sufficiently encompass rural areas and offered ideas for how the definition of “rural” could be expanded (see section II. A. ii. for rural definition discussion). Finally, stakeholders requested clear and timely guidance from USDA on a wide range of topics, including best practices, eligibility, and program integrity efforts; State agencies requested that guidance be issued anywhere from 6 to 18 months in advance of summer program operations.

C. Summer EBT

Section 13A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762, authorizes the Secretary to establish a program under which States, and Indian Tribal Organizations (ITOs) that administer the Special

Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program may, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits. For 2024, the value of the benefit will be \$40 per child for each month of the summer with amounts adjusted for Alaska, Hawaii, and the U.S. Territories.

Summer EBT Demonstration Projects

Although Summer EBT is the newest, permanent Federal food assistance entitlement program, it is not a new approach to addressing food insecurity during the summer months. In fact, Summer EBT has been tested through more than a decade of demonstration projects administered by USDA in collaboration with States and Indian Tribal Organizations. Prior to the publication of this interim final rulemaking, and under the same authority as the SFSP demonstration projects provided in 2010 (section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132)), the Summer Electronic Benefits Transfer for Children (SEBTC) demonstration project was implemented to help reduce summer food insecurity among children. Starting in 2011, the SEBTC demonstration distributed a monthly food benefit during the summer months to children eligible for free or reduced price school meals. Most States operating the demonstration projects utilized a debit card (or Supplemental Nutrition Assistance Program (SNAP)) model whereby eligible participants received benefits on a debit card, which could be redeemed at any SNAP-authorized retailer. Some States and several ITOs operated the Summer EBT program using a WIC-like model whereby eligible participants could purchase only foods prescribed in a defined food package at WIC-authorized retailers using their Summer EBT cards.

Through rigorous evaluation, the SEBTC demonstration projects have proven successful at mitigating food insecurity and improving diet quality and variety. SEBTC benefits reduced the most severe category of food insecurity among children during the summer by one-third when compared to those receiving no benefits.⁵ Evaluations of

USDA's previous experience with SEBTC demonstration projects indicated that this model could be effectively implemented in a wide variety of communities. The SEBTC demonstration projects were an innovative approach to meeting the nutritional needs of children during the summer months as the model provides families with flexibility to purchase food for their children at times and places that are convenient for them.

Pandemic Electronic Benefit Transfer

The effectiveness of the SEBTC demonstration projects facilitated the implementation of Pandemic Electronic Benefit Transfer (P–EBT). From 2020 to 2023, P–EBT was part of the COVID–19 pandemic response to prevent food insecurity among children while they did not have access to school meals. The Families First Coronavirus Response Act, (Pub. L. 116–127), as amended by the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. 116–159), the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), the American Rescue Plan Act of 2021 (Pub. L. 117–2), and the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) provided the Secretary authority to approve State agency plans to administer P–EBT. Children were eligible to receive P–EBT benefits if they would have received free or reduced price meals under the NSLA but missed those meals due to COVID–19. For example, the child's school was closed or operating at reduced hours or attendance due to COVID–19, or the child did not attend school because they were sick with COVID–19. Through P–EBT, eligible school children received temporary emergency nutrition benefits through EBT cards that families could use to purchase food at local retailers, allowing families with eligible children to purchase healthy food more easily during the pandemic.

The American Rescue Plan Act (Pub. L. 117–2) specifically authorized the extension of P–EBT for the covered summer period after any school year in which there was a public health emergency designation for all children who met P–EBT income eligibility requirements under the schools component of P–EBT. In December 2023, the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) authorized USDA to allow State agencies to implement P–EBT for summer 2023 without the need for an approved P–EBT plan for the preceding school year, limited P–EBT eligibility for school children to only those children who attended NSLP-participating schools at the end of the preceding school year,

⁴ USDA invited all State agencies to provide input, and the vast majority (47) of States actively participated in the listening sessions.

⁵ Food and Nutrition Service. (2013). SEBTC Demonstration: Evaluation Findings for the Full Implementation Year 2012 Final Report. U.S. Department of Agriculture, Food and Nutrition Service. <https://fns-prod.azureedge.us/sites/default/files/SEBTC2012.pdf>.

and redefined the P-EBT benefit amount for summer 2023 to \$120 for the entire covered period, with amounts adjusted for Alaska, Hawaii, and the U.S. Territories.

With the end of the COVID-19 PHE on May 11, 2023, FY 2023 was the final fiscal year that children were eligible for P-EBT benefits. The permanent Summer EBT program for school-aged children will begin in summer 2024 ensuring eligible school-aged children will continue to receive critical nutrition assistance.

Summer EBT as a Permanent Program

Beginning in summer 2024, the NSLA permanently establishes Summer EBT benefits at \$40 per month per eligible child and indexes the benefit to the SNAP Thrifty Food Plan to account for inflation. Summer EBT will provide EBT benefits to children from low-income households during the summer months to ensure continued access to nutrition when school is not in session. USDA anticipates that Summer EBT will help to close the summer nutrition gap for more than 29 million children once implemented nationwide. As amended, the NSLA allows States that participate in SNAP and Territories participating in NAP (including Puerto Rico, American Samoa and the Commonwealth of the Northern Mariana Islands) to issue benefits which are usable at SNAP or NAP retailers. The NSLA also provides that ITOs administering WIC may deliver Summer EBT benefits to be used at WIC authorized retailers. Benefit redemptions are made through EBT cards or 'other electronic methods.' The permanent Summer EBT Program is separate and distinct from the earlier SEBTC demonstration projects, which were limited in scope and conducted for the purpose of gaining insight into the effectiveness of the model. The permanent Summer EBT Program is also separate and distinct from P-EBT, which was a specific Federal Government response to COVID-19.

USDA published the following initial guidance for 2024 Summer EBT implementation prior to publication of this rulemaking to assist States with preparations:

1. SEBT 01–2023, *Initial Guidance for State Implementation of Summer EBT in 2024*, June 7, 2023;

2. SEBT 02–2023, *Initial Guidance for Implementation of Summer EBT in 2024 by Indian Tribal Organizations Administering WIC*, June 13, 2023;

3. SEBT 03–2023, *Summer EBT Eligibility, Certification, and Verification*, July 31, 2023;

4. SEBT 01–2024, *Summer EBT Administrative Funding Process for FY2024*, October 18, 2023.

Through this rulemaking, the Summer EBT Program will be codified in a new part 292 of Title 7 of the Code of Federal Regulations, which will supersede the memos listed above.

Summary of Stakeholder Feedback

Between April and June 2023, USDA hosted 24 listening sessions to solicit input about Summer EBT from State agencies administering SNAP and Child Nutrition Programs, school food authorities (SFAs) and other program operators, advocacy groups, local elected officials, and families. USDA also consulted with Tribal leaders on Summer EBT in May 2023, attended two conferences to meet with and gather feedback directly from ITOs administering WIC, and met with Tribal WIC administrators virtually. Listening session participants were asked for input about approaches to program implementation, program integrity, program costs, customer service, and technical aspects of Summer EBT operations. Participants were offered the opportunity to raise other issues of interest to them as well. USDA carefully considered this input when developing this rule.

Across listening sessions, State agencies, school food authorities, program participants and external organizations consistently expressed a desire for the Summer EBT program to run seamlessly and automatically, particularly around eligibility determinations and enrollment. State agencies, SFAs, and advocates expressed that data sharing and collection between State agencies [and between State agencies and local education agencies (LEAs)] must be streamlined and automated, and noted that centralized databases could help simplify the data-sharing process. Relatedly, many State agencies, school food authorities, and external organizations identified the need for States to provide Statewide applications for children who must apply using a Summer EBT application to avoid placing the responsibility of collecting and processing applications on LEAs, especially those participating in the Community Eligibility Provision (CEP) who do not collect school meals applications. Some State agency staff asked that USDA provide and maintain a nationwide Summer EBT application. There was universal concern about the impacts for both LEAs and households of requiring students at special provision schools (e.g., CEP schools) who are not “identified” to apply for

Summer EBT. Households with children enrolled in provision schools are not accustomed to completing annual income applications for school meal benefits and may not know if their child is “identified” through participation in other means tested programs or if an income application must be completed. Without effective processes to communicate with families and to collect applications, this could cause confusion and negatively impact program participation. Likewise, many CEP schools do not collect income applications even on a periodic basis as eligibility because the level of Federal reimbursement for the NSLP/SBP is solely based on the number of identified students. These schools do not currently have resources and staffing to support this effort. Additionally, a number of external organizations and States urged USDA to allow the use of “alternative” income applications to confer Summer EBT eligibility.

Additionally, FNS received numerous inquiries from States regarding which State Agency should lead the Summer EBT Program. Although SNAP and Child Nutrition Programs are generally administered by separate agencies at the State level, these agencies have historically teamed up to improve children’s nutrition. For example, SNAP and Child Nutrition agencies successfully stood up and implemented direct certification, a process that streamlines enrollment and reduces burden for millions of children every year, and they jointly provided P-EBT benefits at a time when many children were vulnerable to food insecurity. Similarly, State agencies should work together in a collaborative way to determine how they can best use their resources and expertise to support Summer EBT, and jointly decide the appropriate roles and responsibilities of each agency.

State agencies, ITOs, and external organizations expressed significant concerns about the 50 percent match funding required for Summer EBT administrative costs, particularly given the fact that, in many States, the window to request or allocate State funding for Summer EBT through the regular budgetary process was closing or had already closed. Some States shared that this may prevent them from standing up the program in Summer 2024. ITOs similarly expressed concerns about the required match, and specifically asked for a “planning year” in which benefits are not issued, but administrative funding can be received to set up the program. States and ITOs also requested clearer guidance from

USDA related to administrative funding and financial management.

States, school food authorities, and advocates also discussed lessons learned from operating P-EBT, and ways to improve operations when delivering the Summer EBT Program. Specifically, USDA heard the importance of delivering benefits timely, developing clear lines of communication on customer service (e.g., clear points of contact for households), and increased participant education, such as better messaging to households. States and advocates also noted the need to improve data quality, primarily ensuring that addresses for participants are accurate and current at the time benefits are issued.

Finally, ITOs shared robust feedback on three specific topics: the benefit delivery model for ITOs, enrolling eligible children, and de-duplication of benefits.

ITOs shared that they would appreciate flexibility in the benefit delivery model, meaning the ability to operate using a cash value benefit (CVB), a food package, a combination of the two, or an alternative approach. ITOs also shared concerns about communicating with families about the option to participate in the ITO-administered program and coordinating with States to ensure that children do not receive benefits from both State and ITO-operated Summer EBT programs. ITOs thus asked USDA to issue strong regulatory language requiring States to cooperate with ITOs on general program operations and data sharing. Additionally, ITOs recommended that ITOs administering the Program serve their entire jurisdictions to streamline program implementation and minimize de-duplication.

II. Discussion of the Interim Final Rule—SFSP and SSO Non-Congregate Option

This section of the preamble discusses the actions USDA is taking to implement the statutory provisions for non-congregate meal service in the SFSP in 7 CFR part 225 and the SSO in 7 CFR parts 210 and 220. All Program regulations and guidance, instructions, and handbooks issued by the USDA Food and Nutrition Service (FNS) apply to both congregate and non-congregate operations except as otherwise specified through this rulemaking.

A. Definitions

i. Site, Congregate Meal Service, and Non-Congregate Meal Service

SFSP regulations under 7 CFR part 225 have historically been framed in the

context of the long-standing congregate meal service model under the NSLA. Prior to amendments made in the Act, provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D) and Program regulations at § 225.6(i)(15) required Program meals to be served in a congregate setting and consumed by participants on site in order to be eligible for reimbursement. Therefore, under current regulations at § 225.2, “site” means a *physical* location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting. Currently, there is no separate statutory or regulatory definition of *congregate meal service*. However, the establishment of the non-congregate meal service option underscores the need to explicitly define and distinguish *congregate* and *non-congregate* meal service for Program purposes.

For Summer 2023, the NSLA was amended to allow Program operators to operate a non-congregate meal service in rural areas consistent with implementation models previously used in USDA summer demonstration projects, as discussed in section I. B. of this IFR. The two models available for both SFSP and SSO during summer 2023 were home delivery and meal pick-up. Under the home delivery model, meals are delivered directly to homes in eligible areas with eligible children. In the context of this model, FNS advised State agencies and sponsors through summer 2023 guidance to consider the non-congregate meal service operation overall as the site (for example, a delivery route or courier distribution process), instead of the individual residences to which the meals were delivered. Therefore, the inclusion of the phrases “physical location” and “supervised setting” in the definition of site at 7 CFR 225.2 is inconsistent with providing different models of non-congregate meal service, as non-congregate meals can be consumed anywhere, and do not have to be consumed under supervision.

Therefore, this rulemaking revises the existing definition of “site” and adds new definitions of “congregate meal service” and “non-congregate meal service” to provide clarity and applicability to new and existing Program requirements. USDA is codifying these working definitions as established in summer 2023 guidance into part 225.

Accordingly, this IFR makes the following amendments in § 225.2:

- Amends the definition of “site” to mean the place where a child receives a Program meal. A site may be the indoor or outdoor location where

congregate meals are served, a stop on a delivery route of a mobile congregate meal service, or the distribution location or route for a non-congregate meal service. However, a child’s residence is not considered a non-congregate meal site for Program monitoring purposes.

- Adds a definition of “congregate meal service” to mean a food service at which meals that are provided to children are consumed on site in a supervised setting; and
- Adds a definition of “non-congregate meal service” to mean a food service at which meals are provided for children to consume all the components off-site. The definition further clarifies that non-congregate meal service must only be operated at sites designated as “rural” and with no “congregate meal service,” as determined in § 225.6(h)(3) and (4).

ii. Rural

Newly added section 13(a)(13)(A) of the NSLA makes available to States the option to provide Program meals for non-congregate consumption in a rural area with no congregate meal service. This expansion of summer meal service prompted renewed interest in reviewing, revising, and modernizing the SFSP’s long-standing definition of “rural.”

In 1978, the Department proposed a definition of “rural” (44 FR 8) in response to the provisions of the NSLA and Child Nutrition Amendments of 1977 (Pub. L. 95–166), which amended section 13(a)(4) of the NSLA, 42 U.S.C. 1761(a)(4), to include a rural outreach mandate. Public Law 95–166 also instructed USDA to conduct a study of the food service operations to include: (i) an evaluation of meal quality as related to costs; and (ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in the NSLA should be made, including whether different reimbursement levels should be established for self-prepared meals and vended meals and which site-related costs, if any, should be considered administrative costs. Through this study, USDA confirmed sponsors that prepare their own meals and sponsors that operate in rural areas may incur higher costs than other types of sponsors [44 FR 36365, January 2, 1979]. As a result, USDA provided additional reimbursement to rural sites and self-preparation sites in the final rulemaking, which still stands today under regulations at § 225.9(d)(7). Because of the fiscal implications under that final rulemaking, USDA also codified the definition of “rural” as proposed (*Rural* means any county

which is not a part of a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget). USDA had considered revising the definition of rural to include “pockets” of rurality within Metropolitan Statistical Areas (MSAs); however, USDA was not able to develop a universally applicable definition based on the varied data collected at the time of the rulemaking and said it would re-consider the definition after evaluating implementation of the provisions in the 1979 program year. In 1980, based on experience gained during the 1979 Program year, the Department revised the definition of “rural” to include an option for States, with concurrence from USDA, to establish “pockets” of rurality within MSAs (45 FR 1844). The rural definition has not been further updated since 1980.

SFSP regulations at § 225.2 define “rural” as: (a) any area in a county which is not a part of a MSA or (b) any “pocket” within a MSA which, at the option of the State agency and with Food and Nutrition Service Regional Office (FNSRO) concurrence, is determined to be geographically isolated from urban areas. The current definition is based on the Office of Management and Budget’s (OMB) Standards for delineating core-based statistical areas (CBSA), specifically MSAs. Delineations are the result of the application of published standards to Census Bureau data on population estimates and commuting ties. USDA has released guidance over the years to provide technical assistance to States in this area. On April 21, 2015, USDA published memorandum SFSP 17–2015, *Rural Designations in the Summer Food Service Program—Revised*, available at: *Rural Designations in the Summer Food Service Program—Revised* | Food and Nutrition Service ([usda.gov](https://www.usda.gov)), to clarify rural designations in SFSP and to promote the use of FNS’ Rural Designation Map, which was designed to help State agencies and sponsors more easily identify rural areas according to paragraph (a) of the regulatory definition.

After the release of initial summer 2023 rural non-congregate guidance, USDA heard concerns from stakeholders that the current definition of “rural” was too generalized geographically to identify rural areas and pockets effectively. MSAs are comprised of a central county or counties containing the core area (*i.e.*, the central urban area with a population of 50,000 or more) plus adjacent outlying counties having a high degree of social and economic integration with that core as measured

through commuting. Because MSAs can include a cluster of counties surrounding one county with an urban center and because counties can be geographically expansive, MSAs often encompass areas that are considered rural based on additional information such as data at the census tract level. For example, a census tract within an outlying county may be sparsely populated and could be considered rural, but the county contains other census tracts or areas that have a high degree of social and economic integration with the population core, which results in the county being classified as part of the MSA.

Therefore, after consultation with Federal partners, USDA provided further guidance allowing States to use the following classification schemes to designate rural areas and pockets in summer 2023: (1) USDA Economic Research Service’s (USDA–ERS) Rural Urban Commuting Area (RUCA) codes 4–10, and in some isolated cases, RUCA codes 2–3; (2) USDA–ERS’ Rural-Urban Continuum Codes (RUCC) 4–9; (3) USDA–ERS’ Urban Influence Codes (UIC) 3–12; and (4) the National Center for Education Statistics (NCES) Locale Classifications and Criteria, codes 41–43. The guidance also allowed for the use of other data sources on a case-by-case basis with FNS approval.

In the listening sessions held to inform this rule, stakeholders confirmed that the current definition of rural in § 225.2 does not adequately capture all rural areas. Stakeholders shared that the limitations of the existing definition were largely addressed by the addition of the classification schemes allowed in summer 2023 and noted that the use of these schemes seemed to satisfy most site location requests. However, some stakeholders still encouraged USDA to consider other factors in the definition of rural such as: access to public transportation, food deserts, physical barriers, and characteristics of rurality. One stakeholder encouraged USDA avoid overly rigid criteria or reliance on physical characteristics as many of these elements are influenced by community and State resources and priorities rather than inherent qualities, and that defining features of rural communities may vary by region. State agencies also reported a need for a streamlined process for identifying and approving rural areas and pockets, and requested one comprehensive mapping tool to determine rural designation. Therefore, based on feedback received from stakeholders and Federal partners, USDA is revising the current definition of “rural” to include the classification systems allowed for summer 2023

implementation. These classification schemes were used in summer 2023 to identify rural “pockets,” but now will be incorporated into the regulatory definition to define what rural is under the Program. In addition, this IFR will amend the current definition to provide discretion for the Department to accommodate updates to these classification schemes and to consider other classification schemes that were not identified through summer 2023 operations. Finally, USDA agrees with comments that potential community characteristics such as the presence of food deserts and physical barriers are not inherently rural or objective measures of rurality, nor may they be necessarily applied consistently across States and communities. However, to accommodate possible alternative standards that may be developed or identified, the revised definition will allow State agencies and USDA to consider requests to designate areas that may be rural in character based on other data sources on a case-by-case basis. Under this rulemaking, the definition of rural will mean:

- *Any area in a county not a part of an MSA based on the OMB’s delineation of MSAs.* This criterion will allow for non-MSA counties to be designated as rural under the Program.
- *Any area in a county classified as a non-metropolitan area based on RUCC and UIC.* This criterion will allow for counties classified as rural according to USDA–ERS’ RUCC and UIC codes to be designated as rural under the Program.
- *Any census tract classified as a non-metropolitan area based on RUCA codes.* This criterion will allow census tract areas classified as rural according to USDA–ERS’ RUCA codes to be designated as rural under the Program.
- *Any area of an MSA not part of a Census Bureau-defined urban area.* This criterion will allow for areas located within MSAs that are classified as rural according to NCES’ Locale Classifications and Criteria, which is based on the Census Bureau’s urban and rural areas, to be designated as rural under the Program.
- *Any area of a State, which is not part of an urban area as determined by the Secretary; or,*
- *Any “pocket” within an MSA which, at the option of the State agency and with FNSRO approval, is determined to be rural in character based on other data sources.* These last two criteria provide discretion for the Department and the State agency to consider other areas that may not be identified through this new definition.
- *Any subsequent substitution or update of the aforementioned*

classification schemes that Federal governing bodies create. This criterion is intended to accommodate updates or substitutions to the classification schemes that will be incorporated into the definition under this rule.

This framework more accurately represents rural populations and territories and is responsive to stakeholder feedback, while upholding established standard measures of rurality. Expanding the definition to allow the use of multiple recognized Federal classification schemes to designate areas as rural (without having to seek prior USDA approval) will also ease administrative burden and streamline the site identification and approval process for State agencies and Program operators. It also acknowledges the frequent stakeholder concern that any one objective measure cannot capture all rural pockets, and therefore, allows discretion for State agencies to identify rural pockets based on other data sources if needed with approval from USDA.

Accordingly, this rule expands the definition of “rural” in § 225.2 to include rural populations and territories within MSAs based on the summer 2023 approved sources, and to provide flexibility for “pockets” based on other data sources on a case-by-case basis. The amended definition of “rural” in § 225.2 will also provide discretion to USDA for any potential updates or changes to classification schemes at a future date. Following the publication of this rule, USDA will also release an updated FNS Rural Designation Map to reflect the new, comprehensive framework, which will provide one comprehensive mapping tool to assist State agencies in determining rural designations. In addition, this rule adds a new provision to establish an annual effective date by which USDA will issue updates to the approved rural data sources to be used for rural designations in that program year. The IFR also adds an effective period to the rural designation to establish the frequency at which sponsors must re-establish rural designation for non-congregate meal service sites. See section II. G. iv. and section II. B. vi., respectively, for a discussion of those provisions.

iii. Conditional Non-Congregate Site

Prior to the Act, sites were required to be located in areas which meet the definition of “areas in which poor economic conditions exist” or qualify as camps. Specific to non-congregate meals, the Act amended the NSLA to allow meal service in rural areas that are not areas in which poor economic conditions exist for children who are

determined to be eligible for free or reduced price school meals. The current regulations under § 225.2 do not include a definition for a site which qualifies for Program participation on the basis that the site conducts a non-congregate meal service for eligible children in an area that does not meet the definitions of “areas in which poor economic conditions exist,” and which does not qualify as a camp.

Under statutory and regulatory requirements, for Program purposes “areas in which poor economic conditions exist” is defined as: (1) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under the NSLP and the School Breakfast Program (SBP); (2) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under the NSLP and the SBP; (3) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced price school meals under the NSLP and the SBP; or (4) A closed enrolled site in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the NSLP and the SBP, as determined by approval of applications in accordance with § 225.15(f). See, 42 U.S.C. 1761(a)(1)(A) and § 225.2. The definition of “camps” included in § 225.2 “means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.”

FNS clarified in its implementation guidance for summer 2023 that sponsors may claim meals served to children who are eligible for free or reduced price school meals even if the rural area does not meet the definition of “areas in which poor economic conditions exist.” Non-congregate meals may be served to children who are not eligible for free or reduced price meals in rural areas, but they may not be claimed for reimbursement. Therefore, this rule adds a definition for “conditional non-congregate site” to codify this new site type and clarify applicable Program requirements.

Accordingly, this rule adds the following definition in § 225.2 for “conditional non-congregate site” as a site which qualifies for Program participation because it conducts a non-congregate meal service for children eligible for free or reduced price meals in an area that does not meet the definition of “areas in which poor economic conditions exist” and is not a “Camp” as defined in § 225.2.

iv. New Site

FNS provides administrative and operational flexibilities for experienced sponsors and sites that have already operated the SFSP without significant operational problems. For example, when applying to participate in the Program, experienced sponsors are not required to submit the same level of detail regarding organizational and operational information required of new sponsors and those with previous operational problems. For new sponsors, and sponsors that experienced significant operational problems in the previous year, detailed information is required including, but not limited to, site information, arrangements for meeting health and safety standards, and budgets. This information is necessary for State agencies to determine if new sponsors and sites, or those with previous operational problems, are capable of administering the SFSP efficiently and effectively, and complying with all program requirements. Likewise, new sponsors and sites, and sponsors and sites that have experienced significant operational problems in the previous year, may be held to more rigorous levels of training and monitoring, at the State’s discretion. To help clarify requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, § 225.2 contains definitions of “new sponsor”, “new site”, “experienced sponsor”, and “experienced site”.

For summer 2023, USDA determined and communicated through guidance that experienced sites which proposed to operate non-congregate meal service for the first time, including those sites switching from a congregate meal service model to a non-congregate model or to operating a hybrid of both congregate and non-congregate models, were “new” sites. These sites were required to follow monitoring procedures for new sites. Through this rulemaking, USDA is codifying the summer 2023 guidance, and requiring that all sites proposing to operate non-congregate meal service for the first time to use procedures for new sites (see sections II. B. and F. for application and

monitoring procedures). Therefore, this rule revises the current definition of “new site” to reflect these changes. This rulemaking does not affect the experience determination for sponsors.

Accordingly, this rule amends the definition of “new site” in § 225.2 to clarify that experienced sites operating a non-congregate meal service for the first time are considered new under the Program.

v. Site Supervisor and Operating Costs

Under this rulemaking, USDA is also modifying existing definitions of “site supervisor” and “operating costs” in § 225.2 to reflect the provision of non-congregate meal service under the Program.

USDA published the final rule, *Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program* (87 FR 79213), on September 19, 2022, which added a definition in § 225.2 for “site supervisor” stating that the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including but not limited to: ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

Therefore, with the new requirements established by the Act for non-congregate meal service, this rule amends the definition for “site supervisor” to mean the individual who has been trained by the sponsor and is responsible for all administrative and management activities at the site, including, but not limited to: maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts. Except for non-congregate meal service sites using delivery services, the individual is on site for the duration of the food service.

Program regulations in § 225.2 define the term “operating costs” to mean the cost of operating a food service under the Program, including the: cost of obtaining food, labor directly involved in the preparation and service of food, cost of nonfood supplies, rental and use allowances for equipment and space, and cost of transporting children in rural areas to meal service sites in rural areas. This rule amends the definition for “operating costs” to include the costs to deliver non-congregate meals in rural areas under the Program as an allowable cost.

Accordingly, this rule revises the definition of “site supervisor” and “operating costs” in § 225.2 to reflect the provision of non-congregate meal service under the Program.

vi. Good Standing

Under current Program regulations, there is no definition for good standing. The final rule, *Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program*, 87 FR 57304, September 19, 2022, reflected on the qualities that contribute to a Program operator’s successful performance. USDA indicated that an SFSP Program operator would be considered in “good standing” if it was reviewed by the State agency with no major Program findings or it had completed and implemented all corrective actions from the last compliance review. In addition, FNS intends to publish the proposed rule, *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP)*, RIN # 0584–AE83, which will propose changes to the existing serious deficiency process in the CACFP for unaffiliated centers and establishes a serious deficiency process for the SFSP. As part of the rule, USDA will propose a new definition of “good standing” for SFSP. USDA recognizes that providing further clarification to determine what good standing means will benefit State agencies and program operators.

USDA has determined that many of the requirements and allowable options codified at § 225.16(i) for non-congregate meal service will only be allowed for sponsors in good standing, as discussed in section II. E. of this rule. However, good standing is not currently defined under Program regulations at § 225.2. Therefore, in order to support State agency ability to determine if a sponsor is in good standing, this rule will codify “good standing” to mean the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time. This definition mirrors the definition that will be proposed in *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP)*, RIN # 0584–AE83. USDA will review comments received on this definition both through the proposed rule, as well as through this rulemaking, and may further revise this definition as needed in future rulemaking.

Accordingly, this rule adds a definition of “good standing” at § 225.2.

B. State Agency Responsibilities

i. Department Notification

Consistent with provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.3(b), by November 1 each fiscal year each State agency must notify USDA regarding the State’s intention to administer the Program in that fiscal year. Each State agency desiring to take part in the Program must enter into a written agreement with FNS for the administration of the Program. The Act amended section 13(n)(1) of the NSLA to require, for summer 2023 only, that each State desiring to participate in the Program must notify the USDA of its intent to administer the Program and must submit a management and administration plan (MAP) for the Program by April 1, 2023. In addition, the Act amended section 13(n)(2) of the NSLA to include that beginning in 2024, each State agency desiring to participate in the Program must notify the Department by January 1 of each year.

Accordingly, this rule amends the regulatory deadline at § 225.3(b) for a State to notify the Department of its intent to administer the SFSP from November 1 to January 1 of each fiscal year. This rule also makes changes to the MAP requirements in § 225.4, which are described in this section of the preamble. Finally, this rule establishes a requirement at § 225.3(e) for State agencies administering the summer meal programs and Summer EBT Program to develop and implement a coordinated services plan for the programs in their State. This plan is a separate requirement from the MAP and is meant to coordinate the statewide availability of services offered through the Summer Food Service Program. See section IV. for discussion of those requirements.

ii. Program Management and Administration Plan

Prior to the Act, provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.4 required State agencies to submit a MAP for approval by February 15 for the current fiscal year (*i.e.*, a plan that will cover program operations during the following summer). The State agency must include the State’s administrative budget, an estimate of need for monies to pay for the cost of conducting health inspections, and the State’s plans for use of Program funds (including providing technical assistance, monitoring, corrective action, fiscal integrity, and to ensure compliance with food service

management company procurement monitoring) in the MAP.

The Act amended section 13(n)(1) of the NSLA to require that, for summer 2023, each State agency will have until April 1, 2023, to submit their MAP, which must include the State's plan for using non-congregate meal service, if applicable, including plans to provide a reasonable opportunity to access meals across all areas of the State, in addition to the MAP requirements previously required under the NSLA (*i.e.*, the State's administrative budget for the fiscal year, an estimate of need for monies to pay for the cost of conducting health inspections, and the State's plan for the use of program funds, providing technical assistance, monitoring, taking timely action against program violators, certifying fiscal integrity, and to ensuring compliance with food service management company procurement monitoring). The summer 2023 Program guidance provided State agencies additional information detailing the plans for implementation of non-congregate meal service in their MAP. This information included participation projections, sponsor information, plans for targeting and outreach, how State Administrative Funds (SAF) would be used to support non-congregate meal service for summer 2023, and strategies for providing technical assistance to ensure integrity requirements are met. Guidance also allowed State agency discretion to establish statewide policies regarding aspects of rural non-congregate meal service, based on past experiences gained during the COVID-19 pandemic. State agencies were required to include statewide details related to the non-congregate meal service option in the MAP. Summer 2023 MAP submissions indicated that two State agencies used statewide discretion to prohibit the use of the non-congregate meal service for summer 2023 operations to allow them to evaluate non-congregate processes in order to safeguard Program integrity.

This rule codifies the amendments made to section 13(n)(2) of the NSLA, which provides that the MAP must include all provisions previously required under the NSLA, the new additional requirement under section 13(n)(1), and the State agency's plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals. This includes the State's plan to identify rural areas with no congregate meal service, and plan to target priority areas for non-congregate meal service. A discussion of the provisions and an "area with no congregate meal service" is described further below. USDA understands that

State agencies are best positioned to determine how non-congregate meal service may be conducted through sponsors to provide Program access to eligible children while maintaining Program accountability. Apart from the case-by-case determinations outlined in section II. E. of this rulemaking, State agencies should include any additional proposed statewide requirements or restrictions and operational safeguards as part of the State's plan to use non-congregate meal service in their MAP.

Accordingly, this rule codifies non-congregate meal service requirements in the MAP by adding a new § 225.4(d)(9) and (10). SAF as outlined in § 225.5, may be requested based on projected program growth with the additional meals that will be served as a part of both congregate and non-congregate meal service. The SAF can be used to support outreach to service institutions and encourage participation in both congregate and non-congregate meal service, as well as implementation of program accountability and integrity efforts.

iii. Priorities and Outreach Mandate

Program regulations at § 225.6(a)(2) require that, by February 1 of each fiscal year, each State agency must announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As a part of this effort, each State agency must identify rural areas, Indian Tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and actively seek eligible applicant sponsors to serve such areas. State agencies must identify priority outreach areas in accordance with USDA guidance and prioritize outreach efforts in these areas.

The Act amended section 13(a)(13)(D) of the NSLA to require State agencies to identify areas with no congregate meal service that could benefit the most from the provision of non-congregate meals and encourage participating service institutions in those areas to provide non-congregate meals as appropriate. Accordingly, this rule amends program requirements at § 225.6(a)(2) to reflect this new priority area for State agencies as required by statute. In addition, the rule revises the paragraph structure at § 225.6(a)(2) to improve the clarity of the regulations.

iv. Application Requirements—Content of Sponsor Applications and Site Information Sheets

Annually, each State agency must inform all the previous year's sponsors which meet current eligibility

requirements, as well as all other potential sponsors, of the application deadline for Program participation. Program regulations at § 225.6 outline State agency responsibilities when approving Program sponsors and sites. When reviewing applications, the State agency should consider the resources and capabilities of each applicant to sufficiently operate all proposed sites. This rule clarifies the State agency review requirements for the content of sponsor application and site application approval, which are discussed in this section.

Program regulations at § 225.6(g)(1) and (2) require that State agencies develop site information sheets for new or experienced sites where a food service is proposed. The site information sheets provide State agencies with the documentation needed to determine if the site can demonstrate administrative capability and financial viability to effectively operate a meal service. The site information sheet completed by the sponsor must demonstrate or describe the estimated number and types of meals to be served and times of service; documentation of eligibility; and, if the site qualifies as a camp, documentation of the number of children enrolled in the Program who meet the Program's income standards. New sites are also required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.

Program regulations do not include site information specific to non-congregate meal service. Therefore, this rule modifies the minimum information that must be demonstrated or described on the site information sheets to reflect the provision of non-congregate meal service under the Program. This information provided in the site information sheet for new sponsors must describe an organized and supervised system for serving meals to children; whether the site is rural and the documentation supporting the rural designation as discussed later in this section; whether the meal service is congregate or non-congregate; and, if the site qualifies as a conditional non-congregate site, documentation of the number of children enrolled in the

Program who meet the Program's income standards. For experienced sites, the site information sheets must include whether the meal service to be provided is congregate or non-congregate; whether the site is rural and documentation supporting the rural designation which is discussed later in this section; and, if the site qualifies as a conditional non-congregate site, documentation of the number of children enrolled in the Program who meet the Program's income standards.

As noted above, this rule is adding a documentation requirement for experienced sites to demonstrate that they are rural. Current regulations do not require that the site information sheet demonstrate or describe whether the site is rural for experienced sites, as required for new sites or sites with operational problems. This application requirement was removed for experienced sites under the Final Rule, *Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring* (64 FR 72889), to eliminate duplicative and unnecessary requirements for experienced sponsors, with the intent of reducing the paperwork associated with the application process for these sponsors. However, USDA has concluded that determining rurality is necessary for all Program sponsors due to the effect of a rural designation and non-congregate participation. This rule also adds an effective period to the rural designation to establish the frequency at which sponsors must re-establish rural designation for non-congregate meal service sites, which is discussed in later in this section of the rule.

In addition, USDA is codifying non-congregate meal service options under this IFR, as discussed in section II. E. ii. As part of those options, USDA will require integrity safeguards to prevent unallowable or duplicate meal distribution. Under this rule, sponsors opting to distribute multiple days' worth of meals must have procedures in place that document, to a reasonable extent, that the proper number of meals are distributed to each eligible child. In addition, sponsors opting to distribute meals to parents or guardians on behalf of children must have procedures in place to document that meals are only distributed to parents or guardians of eligible children and that duplicate meals are not distributed to any child. Therefore, this rule will require this information to be included in the applications for new sponsors, sponsors that have experienced significant operational problems in the prior year, and experienced sponsors.

Accordingly, this rule adds a new § 225.6(c)(2)(xi) and (3)(viii) to require that the application for new sponsors, sponsors that have experienced significant operational problems in the prior year, and experienced sponsors include procedures to document that meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options of multi-day meal issuance and parent or guardian meal pick-up. In addition, this rule amends Program regulations at § 225.6(g)(1)(iv) and (g)(2)(iii) to require sponsors to identify whether each meal service will be congregate or non-congregate. This rule also adds new § 225.6(g)(1)(xiv) and (g)(2)(viii) to require Program sponsors who are operating conditional non-congregate sites to specify the number of children enrolled who meet the Program's income standards. In addition, this rule amends requirements at § 225.6(g)(1)(iii) and 225.6(g)(2)(ii) to establish whether a site is rural, and that documentation supporting the rural designation is required. This rule also establishes the frequency at which the site must re-establish rural designation, which is described later in this section of this rule. Due to the addition of the new requirements, the rule revises the subordinate paragraph numbering at § 225.6(g)(1) and (2). Furthermore, this rule amends § 225.6(b)(6) to include State agency requirements for sponsor application approval related to site reviews, as discussed in section II. F. of this rulemaking. Lastly, this rule clarifies the requirement at § 225.6(g)(1)(v) with terms consistent with those defined in § 225.2.

v. Approval of Sites and Determining No Congregate Meal Service

Program regulations at § 225.6(h) provide the site requirements that must be evaluated by the State agency before site approval is granted. Program regulations at § 225.6(h)(1) require State agencies to ensure the proposed food service site is located in an "area in which poor economic conditions exist," or will serve specific groups of eligible children; the area which the site proposes to serve will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; the site is approved to serve no more than the number of children for which its facilities are adequate and; if it is a site proposed to operate during

any unanticipated school closure, it is a non-school site. Regulations at § 225.6(h)(2)(i), (ii), (iii), and (v) are specific to congregate meal service operations and require that each vended site must have an approved level for the maximum number of children's meals which may be served under the Program, which is commonly known as a "site cap."

Summer 2023 Program guidance provided specific requirements that the State agency must follow when approving Program sites to operate non-congregate meal service. Those requirements included:

- The proposed non-congregate meal service site must be in a rural area;
- The area proposing to be served will not be served by a congregate meal service; and
- Safeguards must be implemented to ensure children will not receive more than the maximum allowance of summer meals per day.

All existing application and approval requirements, including the priority system when approving applicants to operate sites that propose to serve the same area or the same enrolled children (7 CFR 225.6(b)(5)) and site cap requirements, continued to apply for both congregate and non-congregate meal service. In addition, summer 2023 guidance also included considerations when determining if an area was already being served by a congregate site. This guidance allowed for State agency discretion when approving sites for non-congregate meal service, if they ensured adherence to the requirements provided above, but with the caveat that State agencies may not deny a site based solely on the sponsor's intent to provide a non-congregate meal service. Sites that served the same children on different days, different weeks, or for different meals on the same day could provide a combination of congregate and non-congregate meal service if the State agency could ensure that the congregate and non-congregate sites would not serve the same population of children for the same meal service on the same day. Summer 2023 guidance also allowed congregate sites that existed prior to that time to switch from congregate to non-congregate meal service. However, the Department encouraged State agencies and sponsors to work to identify and prioritize those rural areas that the congregate Program cannot reliably reach.

USDA received mixed feedback from stakeholders related to defining an area with no congregate meal service. Some stakeholders suggested setting parameters for an "area with no congregate meal service," such as a

specified distance from congregate sites. Other stakeholders suggested that an “area with no congregate meal service” should be left to State agency discretion, since Program operations vary across States. One stakeholder suggested requiring sponsors to provide an integrity plan prior to site approval to avoid meal duplication.

This final rule incorporates new statutory requirements and summer 2023 Program guidance with additional regulatory clarifications as to how to determine areas with no congregate meal service.

First, in accordance with summer 2023 guidance which stated that State agencies may not deny a site based solely on the sponsor’s intent to provide a non-congregate meal service, USDA is adding a new § 225.6(b)(12) to require that the State agency must not deny a sponsor’s application based solely on the sponsor’s intent to provide a non-congregate meal service.

Second, this rule amends Program regulations at § 225.6(h)(1)(i) to require that the proposed site will serve an “area in which poor economic conditions exist,” unless it is a conditional non-congregate site, as discussed in this rulemaking. This rule also amends § 225.6(h)(2) to clarify that each vended site must have an approved level for the maximum number of children’s meals which may be served under the Program as they relate to congregate and non-congregate meal service.

Third, this rule adds a new § 225.6(h)(3) to address the elements of the proposed site operations that the State agency must ensure when approving the application of sites to provide non-congregate meal service. Under this rulemaking, the State agency must ensure that the proposed site: is rural; will only distribute the allowable number of reimbursable meals that would be provided over a 10-calendar day period, although the State agency may establish a shorter calendar day period on a case-by-case basis and without regard to sponsor type (as described in section II. E.); serves an area in which poor economic conditions exist or is approved for reimbursement only for meals served free to enrolled children who meet the Program’s income standards; and will not serve an area where children would receive the same meal at an approved congregate meal site, unless it can be demonstrated to the satisfaction of the State agency that the site will serve a different group of children who may not be otherwise served. Also, as discussed in sections II. A. and F., this rule clarifies that all sites proposing to operate non-congregate

meal service for the first time must use procedures for new sites. The rule reflects this regulatory change by adding a requirement that the State agency must ensure that the sponsor follows the site information sheet requirements at § 225.6(g)(1) for new sites, where a non-congregate food service operation is proposed for the first time.

Fourth, this rule adds a new § 225.6(h)(4) to address the elements of the proposed site operations that the State agency must ensure when approving the application of a site which will provide both a congregate meal service and a non-congregate meal service, effectively allowing State agencies to approve sites which will operate both meal services, with some restrictions to ensure the non-congregate meal service does not compete with or duplicate the congregate meal service. This includes regulations to require the State agency to ensure that the proposed site will only conduct a non-congregate meal service when the site is not providing a congregate meal service, and that the sponsor has a system in place to prevent meal service overlap when providing a congregate and non-congregate meal service at the same site to reasonably ensure children are not receiving more than the daily maximum allowance of meals. Note that for sites that operate both congregate and non-congregate service, it is not considered a meal service overlap if the site provides a congregate breakfast and then a non-congregate lunch intended to be consumed at a later time offsite (for example). Finally, the new requirements for approving sites operating a non-congregate meal service are in addition to the existing program requirements at § 225.6(h)(1) and (2).

Some stakeholders requested that USDA establish more specific criteria or standards to define “an area with no congregate meal service.” However, USDA agrees with the majority of stakeholders who suggested that USDA allow some discretion for State agencies to consider operational and environmental factors, which may vary by location. USDA also determined that providing discretion would avoid introducing complexity into the regulations and allow necessary flexibility to support successful implementation. USDA intends to provide additional guidance and technical assistance to support implementation of this provision.

Accordingly, this IFR adds a new § 225.6(b)(12) to require that the State agency must not deny a sponsor’s application based solely on the sponsor’s intent to provide a non-congregate meal service. The IFR also

makes the following amendments to § 225.6(h):

- Amends Program regulations at § 225.6(h)(1)(i) to include conditional non-congregate sites.
- Adds a new § 225.6(h)(3) and (4) to include site application approval requirements that State agencies must ensure when evaluating the proposed site which will provide a non-congregate meal service and determining an “area with no congregate meal service.”
- Revises terminology used in § 225.6(h)(2) to clarify the applicability of regulations to both congregate and non-congregate meal services.

vi. Duration of Rural Designation

The Act authorized non-congregate meal service in “rural areas where no congregate meal service is available.” Currently, no effective period is established in statute, regulations, or guidance for rural designations. As discussed in section II. B. iv. of this rule, current Federal regulations do not require an experienced site to demonstrate it is rural as part of the site information sheets. However, USDA concluded that determining rurality is a necessary documentation submission, regardless of the level of site or sponsor experience, due to the significant effect of a rural designation under the non-congregate provision added by the Act. Therefore, this rule adds a new documentation requirement for experienced sites (discussed at section II. B. iv.) and establishes the frequency at which the site must re-establish its rural designation.

This rule codifies the requirement that Program sponsors re-determine their sites’ rural designations every 5 years. Once a site is established as rural based on the rural definition in Program regulations at § 225.2, the rural status is effective for a period of 5 years from the date of determination. At the discretion of the State agency, redetermination prior to the 5-year period may be required, if the State agency determines that an area’s rural status has changed significantly since the previous determination.

USDA evaluated the effective period for similar application documentation requirements (such as area eligibility) as well as the frequency in which the allowable rural data sources are updated. Using this information, USDA determined a streamlined approach to minimize administrative burden. Standards, classifications, and delineations of rural data sources allowed under summer 2023 and moving forward (see section II.A.ii.) are updated with each decennial census

and periodically based on annual census surveys. Although more frequent redeterminations may more accurately and timely capture changes to an area's rural status, particularly during periods that overlap with census years, USDA concludes that shorter effective periods for rural designation may be too burdensome and are unnecessary for State agencies and Program operators.

Accordingly, this rule adds language at § 225.6(g)(1)(iii) and (g)(2)(ii) to require new documentation of rural designation every 5 years, or earlier, if the State agency believes that an area's rural status has changed significantly since the previous determination.

vii. Clarifications to Existing Requirements: Free Meal Policy Statement, State-Sponsor Agreement, and Corrective Action Procedures

This rule clarifies existing requirements in §§ 225.6 and 225.11, which fall under the purview of the State agency. These clarifications reflect the provision of non-congregate meal service under the Program, specifically in response to the addition of the new site type, conditional non-congregate site, as defined under this rulemaking.

Program regulations at § 225.6 require that State agencies provide and obtain specific information regarding a sponsor's meal service sites. Regulations at § 225.6(f) require that as part of the free meal policy statement, sponsors must submit a nondiscrimination statement of their policy for serving meals to children. This rule clarifies that sponsors operating conditional non-congregate sites are exempt from including a statement that meals served are free at all sites. In addition, the rule clarifies that sponsors operating conditional non-congregate sites that charge separately for meals must also include specific eligibility information in the policy statement, and that each sponsor of a conditional non-congregate site must submit a copy of its hearing procedures with its application.

Furthermore, Program regulations at § 225.6(i) require that a sponsor approved for Program participation must enter into a written agreement with the State agency. Under the requirements in which all sponsors must agree to in writing, the rule clarifies that a sponsor of sites operating as conditional non-congregate sites are excepted from serving meals without cost to all children and may charge for meals served to children who do not meet the Program's income standards. These sponsors may claim reimbursement only for meals served to children who meet the Program's income standards. In addition, the rule

clarifies that the requirement to maintain children on site while meals are consumed only applies for sponsors providing a congregate meal service. Finally, this rule revises the language at § 225.6(i) to reflect the definition of "termination for convenience" that will be proposed in *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP)*, RIN # 0584–AE83. Program regulations at § 225.6(i) allow the State agency or sponsor to terminate the agreement at its convenience, for considerations unrelated to the sponsor's performance of Program responsibilities under the agreement. USDA is revising this language to clarify that the State agency or sponsor may terminate the agreement at its convenience, *upon mutual agreement, due to considerations unrelated to either party's performance of Program responsibilities under the agreement*. USDA will review comments received on this definition both through the proposed rule, as well as through this rulemaking, and may further revise this terminology as needed in future rulemaking.

Program regulations at § 225.11 require the State agency to use corrective action procedures to improve Program performance, such as investigations, denial of applications and termination of sponsors, meal service restrictions, meal disallowances, corrective action and termination of sites, and technical assistance for improved meal service. This rule clarifies that the serious deficiencies of the simultaneous service of more than one meal to any child and excessive instances of off-site meal consumption outlined in Program regulations at § 225.11 (c)(4)(iv) and (viii), respectively, are specific to congregate meal service operations. Also, as discussed in section II. B. v. and section II. E. i. of this rule, non-congregate meals must be served according to the number and type of meals allowed for the site type at 7 CFR 225.16(b)(3), and sponsors must implement an organized and supervised system which prevents overlap between meal services to reasonably ensure children are not receiving more than the daily maximum allowance of meals. Therefore, USDA is adding a new Program violation that is specific to non-congregate meal service to the list outlined at § 225.11(c)(4). Under this IFR, for non-congregate meal service operations, distributing more than the daily meal limit when multi-day service is used is considered a serious deficiency which is grounds for disapproval of applications and for

termination when the violation is recorded at a significant proportion of the sponsor's sites.

In addition, Program regulations at § 225.11(d) require that, with the exception of residential camps, the State agency must restrict to one meal service per day any site determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time, and all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set. The regulations also require the State agency to make a reasonable effort to locate another source of meal service for these children if this action results in children not receiving meals under the Program. Given the exceptions to the meal service time requirements for non-congregate meal service provided through this rulemaking (see section II. E.), and that restricting non-congregate sites to one meal service per day could impact children served by that site, this rule clarifies that non-congregate meal service sites are also excepted from the meal service restrictions at § 225.11(d).

Accordingly, this rule amends § 225.6(f) to clarify nondiscrimination and hearing procedures statement requirements for non-congregate meal service. Additionally, this rule amends § 225.6(i) introductory text, (i)(4), (i)(7)(i) and (ii), and (i)(15) to clarify State-sponsor agreement requirements for sites that provide non-congregate meal service. Lastly, this rule amends § 225.11(c)(4) and (d) to clarify corrective action procedures as they relate to congregate and non-congregate meal service.

C. Requirements for Sponsor Participation

i. Sponsor Eligibility

Program regulations at § 225.14 outline requirements for sponsor participation. The requirements include application procedures, sponsor eligibility, and demonstration of administrative and financial ability to manage a food service effectively. Sponsor eligibility is limited to public or private nonprofit SFAs; public or private nonprofit residential summer camps; units of local, municipal, county, Tribal, or State governments; public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and private nonprofit organizations as defined in § 225.2 and outlined at § 225.14(b). Additionally, Program regulations at § 225.14(d) provide requirements that are specific to

sponsor types, such as camps. The Act requires State agencies to encourage participating service institutions in rural areas with no congregate meal service to provide non-congregate meals as appropriate.

Summer 2023 guidance allowed any service institution that met the definition of sponsor in Program regulations at § 225.2 to participate in the non-congregate meal service option with State agency approval, including sponsors new to the Program. Camps were also allowed to participate, though guidance acknowledged that regulations require camps to provide a regularly scheduled food service as part of an organized program for enrolled children, and such programming is generally understood to be congregate in nature. Furthermore, Summer 2023 guidance instructed that to participate, experienced sponsors must be considered in “good standing.” However, sponsors that have experienced serious deficiencies in prior years may be approved to operate non-congregate meal service if, to the satisfaction of the State agency, all appropriate corrective actions to prevent recurrence of the deficiencies were taken as outlined in Program regulations at § 225.6(b)(9).

USDA received stakeholder feedback that expressed integrity concerns related to non-congregate meal service provided by community sponsors in recent years, most notably during non-congregate meal service operations provided during the COVID-19 pandemic. Several State agencies expressed more confidence in SFAs’ ability to operate non-congregate meal service as compared to other program sponsors due to their familiarity with NSLP and SBP meal service operations, as well as potential greater logistical capacity. One stakeholder commented that in their State only SFA sponsors were allowed to operate non-congregate meal service. However, three State agencies and four additional stakeholders emphasized the need to maintain access when considering important integrity measures. Finally, USDA did not receive direct feedback on camp (as defined at § 225.2) participation from stakeholders. A limited number of State agencies reported that they did not include camps in non-congregate service this summer due to their interpretation that such sites are inherently congregate in nature.

Program sponsors who provide year-round meal service have consistent program operations and thus are more readily able to demonstrate administrative capabilities than sponsors who only operate during the

summer period. Although several stakeholders expressed concern for certain sponsor types operating a non-congregate meal service, USDA concludes that all service institutions listed under requirements at § 225.14(b) are eligible to sponsor the Program, including providing congregate and non-congregate meal services, and thus, this rulemaking establishes no restrictions on providing non-congregate meal service based on sponsor type. This decision is based on the need to maintain program access and support the stipulation that all sponsors considered in good standing and who meet all other program requirements should have the opportunity to provide non-congregate meal service. This decision also pertains to public or nonprofit private residential summer camps. As defined in 7 CFR 225.2, camps must provide a regularly scheduled food service as part of an organized program for enrolled children, and as mentioned above, such programming is generally understood to be congregate in nature. However, USDA recognizes that there may be situations where it makes sense to allow a camp to operate a non-congregate meal service for their enrolled children, such as service of the third meal if a congregate meal service is not provided, or meals provided to be consumed over the weekend while an enrolled child is in an active camp session, but during which there are no congregate meals provided. USDA encourages State agencies to work with potential sponsors of all types to determine how their proposed site(s) and operations can best serve communities in identified rural areas that could benefit the most from the provision of non-congregate meals and fill in gaps in service.

Accordingly, this rule makes no regulatory changes to existing sponsor eligibility requirements § 225.14(b), effectively allowing all service institutions listed under requirements at § 225.14(b) to be eligible to sponsor the Program, including operating both congregate and non-congregate meal services. Although USDA is not making changes to sponsor eligibility, this rule limits some meal service options to sponsors in good standing and retains the meal service option of offer versus serve to SFAs, as discussed in section II. E. of this rule.

i. Clarifications to Existing Requirements: General Requirements at § 225.14(c)

Program regulations at § 225.14(c)(3) require that, to be eligible to participate in the SFSP, applicant sponsors must conduct a regularly scheduled food

service for children in areas in which poor economic conditions exist or must qualify as a camp. With the establishment of the non-congregate option in eligible rural areas, conditional non-congregate sites, as defined under this rulemaking, can also provide a regularly scheduled food service for children in non-area eligible locations.

Accordingly, this rule amends § 225.14(c)(3) to clarify this qualification for applicant sponsors which will operate a conditional non-congregate site.

D. Responsibilities of Sponsors

i. Identification and Determination of Eligible Children

As discussed in the background section of this rule, for summer 2023 non-congregate meal service operations, the Act allowed State agencies to use service models developed for demonstration projects carried out under section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132). Summer 2023 guidance allowed home delivery and meal pick-up options as provided in past demonstrations. The home delivery model allowed for non-congregate meals to be delivered directly to homes of participants. Program guidance required that sponsors approved to provide non-congregate meal service through home delivery must be able to identify and invite households of eligible children to participate in the meal delivery service. The guidance also required that sponsors obtain written consent from the eligible child’s parent or guardian that the household wants to receive delivered meals. Written consent could include hard copy, email, or other electronic means of communication. Furthermore, sponsors were required to confirm the household’s current contact information and the number of eligible children in the household to ensure the correct number of meals were delivered to the correct location.

In addition, Summer 2023 Program guidance required non-SFA sponsors that planned to obtain individual children’s program eligibility information through free and reduced price school meal eligibility data to enter into a written agreement or Memorandum of Understanding (MOU) with an SFA. However, non-SFA sponsors could also use the household application procedures outlined in Program regulations at § 225.15(f) to identify eligible children in non-area eligible areas instead of entering into a

written agreement or MOU with the local SFA. Lastly, sponsors were required to protect the confidentiality of participants and their households throughout the process in accordance with confidentiality and disclosure provisions in the NSLA and Program regulations at § 225.15(f) through (l). These home delivery requirements were also implemented during non-congregate meal service during COVID-19 operations.

In the listening sessions held to inform this rule, stakeholders shared challenges with the home delivery model when providing non-congregate meal service, particularly, concerns with delivering Program meals when participants are not home. USDA heard from stakeholders that communication with participating families was imperative to home delivery operations. Several stakeholders explained that obtaining delivery signatures or asking parents to provide delivery instructions worked well in their State. Another stakeholder suggested text notifications or reminders to participating families about meal deliveries would be helpful to confirm someone was home to receive the meals, and thus ensure a smoother delivery and reduced food waste. In addition, several stakeholders reported the importance of protecting student data by requiring a MOU to receive student eligibility data from a local SFA. One stakeholder requested USDA allow non-profit sponsors to provide home delivery without requiring an MOU with an SFA, and that limiting home delivery to students identified through an MOU with an SFA excludes students who are homeschooled or in virtual school as well as families with children not yet in school. Finally, stakeholders also reported concerns with overt identification of those children who are eligible to receive free and reduced price meals when providing home delivered meals in non-area eligible areas.

USDA agrees with stakeholders that communication with participating families and protecting participants' right to confidentiality is imperative to Program integrity and operations. Therefore, through this rulemaking, USDA is codifying summer 2023 guidance for obtaining written parental consent for home delivery. This rule requires sponsors that provide meals directly to children's homes to obtain written parental consent prior to providing home delivered meals to children. While USDA sought to minimize burden on program operators and participants wherever feasible, the Agency determined that obtaining

written consent prior to delivering meals to private residences is the only reasonable approach for setting up delivery service with basic integrity safeguards. Establishing both the presence of children in each household as well as the household's consent to receive meals is critical to ensuring Program integrity, and preventing any unnecessary financial burden, time burden, and potential for food waste, as well as possible convenience for households. However, USDA appreciates that up-front time and resource investment associated with obtaining consent and up-to-date information from households, and seeks comments on effective strategies to streamline this process and ensure validity of household information.

USDA is also codifying the requirement that non-SFA sponsors must enter into a written agreement or MOU with the State agency or local SFA to receive student data for identification and eligibility determinations. Program regulations at § 225.15(k) require that the State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information like that required for disclosures to Medicaid and the Children's Health Insurance Program (CHIP) specified in Program regulations at § 225.15(k)(2). Sponsors are responsible for the proper handling and storage of student data with applicable SFAs in accordance with confidentiality and disclosure provisions in the NSLA and SFSP regulations (§ 225.15(f) through (l)). Program sponsors should consider safeguards to protect participant confidentiality prior to implementation of the non-congregate meal service option. USDA reiterates that sponsors are not limited to using school data or providing meals to students identified through school data. Both congregate and non-congregate Program sponsors may use household applications or other means, such as household's receipt of SNAP, TANIF, and FDIPIR benefits (as described in 7 CFR 225.15(f)(3)) to identify and notify children in the area of the option to receive meal deliveries, including students who are homeschooled or in virtual school as well as families with children not yet in school. Requirements regarding applications for free Program meals outlined at § 225.15(f) must be followed when using

household applications to determine the eligibility of children.

Accordingly, this rule adds new §§ 225.14(d)(6) and 225.16(b)(5)(i) to require sponsors operating a non-congregate meal service which delivers meals directly to children's homes to obtain written parental consent prior to providing meals to the children. In addition, this rule adds a new § 225.14(d)(8) to establish the requirement that non-SFA sponsors must enter into a written agreement or MOU with the State agency or local SFA if they wish to receive student data for identification and eligibility determination purposes.

i. Meal Ordering and Second Meals

Program regulations at § 225.15(b)(4) allow sponsors to claim reimbursement for several second meals which does not exceed 2 percent of the number of first meals served to children for each meal type (*i.e.*, breakfasts, lunches, snacks, or suppers) during the claiming period. This option is provided in recognition of the fluctuation in participation during summer operations which makes forecasting difficult. The State agency must 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 must be served only after all participating children at the site's meal service have been served a meal. Summer 2023 Program policy only allowed second meals to be claimed at congregate meal sites. In this rule, USDA maintains its determination that the purpose and design of the non-congregate meal service option does not support the basis for claiming second meals at non-congregate meal service sites.

Accordingly, this rule amends Program regulations at § 225.15(b)(4) to limit reimbursement of second meals to congregate meal service. State agencies must disallow claims if it determines sponsors served second meals as part of a non-congregate meal service.

i. Requirements Specific to Sponsors Operating Conditional Non-Congregate Sites

As stated in the section II. A. of this rule, USDA is defining conditional non-congregate sites under this rulemaking and clarifying applicable program requirements. This section describes the changes and clarifications USDA is making for this new site type as it relates to Sponsor responsibilities.

1. Certification To Collect Information on Participant Eligibility

As is discussed throughout this section of the rule, sponsors of conditional non-congregate sites may only claim meals served to children who meet the Program's income standards. Program regulations at § 225.14(d) provide requirements for specific sponsor types, such as sponsors that operate camp sites, and States that those sponsor types must certify that they will collect information on children's Program eligibility to support their claim for reimbursement. Accordingly, this IFR adds a new § 225.14(d)(7) to clarify that if the sponsor operates a conditional non-congregate site, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

2. Notification to the Community

Summer 2023 guidance required sponsors of non-congregate meal service sites to announce the availability of free meals in the local media as outlined in Program regulations at § 225.15(e). Program regulations at § 225.15(e) require sponsors operating the SFSP, including sponsors of open sites, camps, and closed enrolled sites, to annually announce the availability of free meals in the media serving the area from which the sponsor draws its attendance. Sponsors of camps and closed enrolled sites must notify participants of the availability of free meals and if a free meal application is needed. The regulations specify that for sites that use free meal applications to determine individual eligibility, the notification to the community must include the Program's income eligibility standards, a statement explaining that certain children (such as children in households that receive SNAP) 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 disability. USDA reminds State agencies and program operators that, despite the introduction of new SFSP regulations in this IFR, the requirement to provide reasonable modifications to accommodate participants with disabilities remains unchanged. With the addition of the new conditional non-congregate site type to Program regulations, USDA is amending Program requirements at § 225.15(e) to clarify that sponsors of conditional non-congregate sites must notify participants of the availability of free meals and if a free meal application is needed, as with sponsors of camps

and closed enrolled sites. Program regulations at § 225.15(e) continue to apply to sponsors regardless of the meal service type provided.

Accordingly, this rule amends § 225.15(e) to clarify notification requirements for sponsors of conditional non-congregate sites. This IFR also revises the language at § 225.15(e) to reflect the current federally protected bases for the CNPs, as discussed in section II. H. of this rule.

E. Non-Congregate Meal Service

i. Non-Congregate Meal Service Requirements

Under the SFSP, meals which may be served to children are breakfast, lunch, supper, and snacks. A sponsor may claim reimbursement only for the types of meals the sponsor is approved to serve under its agreement with the State agency. Sponsors' food service sites may be approved to serve any combination of two meals or one meal and one snack during each day of operation, except that lunch and supper cannot be served on the same day. In addition, sites that serve meals primarily to migrant children (commonly referred to as "migrant sites" under the Program) or camps may serve up to three meals (breakfast, lunch, and supper), or two meals and one snack, during each day of operation. A sponsor may only be reimbursed for meals that meet the meal pattern requirements, adhere to State and local health, safety, and sanitation requirements, and which are served during the approved meal service times, among other meal service requirements at § 225.16. The Act added additional provisions specific to non-congregate feeding, which USDA is codifying into regulations through this rulemaking.

The NSLA was amended to allow States to provide program meals under the SFSP for non-congregate consumption in a rural area with no congregate meal service, as determined by the Secretary. In addition, under the new non-congregate provision, meals may only be claimed when served to children in an area in which poor economic conditions exist, or, in an area that is not an area in which poor economic conditions exist, if the child is determined to be eligible for free or reduced price school meals under the NSLP or the SBP. Finally, as with any meal served for congregate consumption, non-congregate meals must be served according to the number and type of meals allowed for the site type, and must meet all applicable State, Tribal, and local health, safety, and sanitation standards, and the nutritional

standards prescribed under the Program meal pattern.

Accordingly, this rule adds a new § 225.16(b)(5) to codify the additional meal service requirements for non-congregate meals, in accordance with the statute. In addition, the rule reiterates pertinent existing requirements that continue to apply to non-congregate meal service, including restrictions on the number and type of meals served per operational day, and provisions that sponsors must only be approved to operate if they have the administrative and operational capability to do so. This rule makes further changes to the meal service requirements in § 225.16, which are described in this section of the preamble.

ii. Non-Congregate Meal Service Options

Under summer 2023 guidance, USDA allowed meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components. Based on stakeholder feedback, experience gained under COVID-19 operations, and summer 2023 implementation, USDA is codifying the use of these three specified options. The rule also includes several integrity safeguards, as well as parameters around State agency approval to use these options through this rulemaking. First, these meal service options may only be used by sponsors in good standing (good standing is discussed in section II. A. vi. of this rule), as determined by the State agency. Furthermore, a State agency may prohibit sponsors from using these options only on a case-by-case basis and without regard to sponsor type if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites. Finally, a State agency's decision to prohibit a sponsor from using an option is not an appealable action.

This flexible approach promotes integrity while ensuring that sponsors who have demonstrated the administrative capability to carry out these options, are able to use these options as part of a non-congregate meal service to meet the needs of the children in their area. Maintaining such access is critical for rural areas which may benefit from the use of these options where children would otherwise have to travel long distances to receive a meal.

USDA understands that State agencies are best positioned to determine how sponsors may conduct non-congregate meal service to provide Program access

for eligible children while maintaining Program accountability. USDA encourages State agencies and sponsors to implement safeguards to ensure food safety and Program integrity. State agencies should include any additional statewide requirements and operational safeguards as part of the State's plan to use non-congregate meal service, as required for MAPs under this rulemaking (see section II. B. ii. of this rule).

Accordingly, this IFR adds a new § 225.16(i) to establish the use of these options for non-congregate meal service. A discussion of each of the provisions, stakeholder feedback, and USDA's actions and rationale for each of these options is included below.

1. Multi-Day Meal Issuance

Program regulations under part 225 reflect the long-standing congregate meal service requirements of the NSLA. Provisions of the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.6(i)(15) require Program meals to be served in a congregate setting and consumed by participants on site in order to be eligible for reimbursement. The NSLA further requires at 42 U.S.C. 1761(b)(2) that a service institution may only serve up to two meals (or one snack and one meal) per day, per child (except for camps and migrant sites which may serve up to three meals (or two meals and one snack) per day, per child). However, the Act added section 13(a)(13)(E) [42 U.S.C. 1761(a)(13)(E)] to the NSLA which provides the option to provide multi-day meal distribution at rural non-congregate sites. Specifically, it allows that over a 10-calendar day period, the number of reimbursable non-congregate meals provided to a child does not exceed the number of meals that could be provided over a 10-calendar day period under congregate feeding. Under summer 2023 guidance, USDA did not establish further Federal limitations and allowed State agencies, at their discretion, to approve sponsors for multi-day distribution of meals that could be provided over a 10-calendar day period, consistent with the statute.

During COVID-19 operations, about 30 percent of State agencies reported that more than half of Program sponsors provided 2 to 3 days' worth of meals at one time. In addition, about one fourth of State agencies reported that more than half of these local Program sponsors provided a full week of meals at one time.⁶ Through the listening

sessions, USDA received varied feedback from stakeholders regarding the multi-day meal issuance option when used for non-congregate meal service during the COVID-19 pandemic. Many of the comments focused on the difficulty of balancing Program integrity with Program access. Some stakeholders, including a few State agencies, stated that multi-day meal issuance is an essential method of providing non-congregate meals in rural areas and praised the benefits to the community, such as the ability to provide children meals for the weekend. Though, stakeholders expressed concerns about food safety or food quality when multiple days of meals are provided at one time, as well as providers' and households' storage capabilities. Many State agencies reported limiting multi-day meal issuance to no more than 5- or 7-days during summer 2023, while other State agencies reported prohibiting multi-day meal issuance for all sponsors due to operational challenges experienced during the COVID-19 pandemic. Some State agencies noted that they permitted the maximum number of days' worth of meals allowed (*i.e.*, 10 calendar days) when sponsors provided a valid rationale or a food safety plan. Acknowledging some State agencies' concerns with multi-day meal issuance, one stakeholder suggested USDA provide State agencies a tiered system based on a risk assessment to determine the number of days' worth of meals that a sponsor or site can distribute at one time. This tiered system could include years of operation (total and utilizing non-congregate service), prior review findings, degree of remoteness of the service area, and presence of other sites in the vicinity.

This rule codifies into regulations the provision at section 13(a)(13)(E) of the NSLA, as amended by the Act, which requires that the number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 10-calendar day period. However, the State agency may establish a shorter calendar day period on a case-by-case basis for an individual sponsor, considering possible concerns regarding a sponsor's ability to ensure Program integrity, food safety, and meal quality. For State agency approval to operate sites that provide multi-day meal service, sponsors opting to distribute multi-day

meals must have procedures in place that document, to a reasonable extent, that the proper number of meals are distributed to each eligible child, these procedures must be included in the sponsor's application to participate in the Program (as discussed in section II.B.iv.) and may also impose additional requirements, at the State's discretion. As noted above, this rule further requires that multi-day meal issuance may only be used by Program sponsors in good standing, and that State agencies may only prohibit sponsors from using these options on a case-by-case basis without regard to sponsor type, if the State agency determines that a sponsor does not have the capability to effectively operate or oversee non-congregate meal services at their sites. USDA encourages State agencies, when considering the imposition of additional multi-day meal issuance requirements, to also consider the potential challenges for participants to access sites (which could include the effort required for families who reside in remote areas to travel to pick-up sites more than once per week).

Accordingly, this rule codifies the option for multi-day meal issuance by adding a new § 225.16(i)(1) to allow State agency approved sponsors to operate multi-day meal service. Sponsors opting to distribute multi-day meals must ensure through documented procedures, approved by their State agency, that the proper number of meals are distributed to each eligible child.

2. Parent or Guardian Meal Pick-Up

Prior to the Act, provisions under the NSLA at 42 U.S.C. 1761(f)(3) and Program regulations at § 225.9(d)(7) required that meals must be served to eligible children. These requirements ensured that Program sponsors provided meals directly to children who participate in the SFSP. As previously mentioned, the Act authorized USDA to issue guidance for summer 2023 rural non-congregate meal service. Through that guidance, USDA allowed the option for Program meals to be distributed to parents or guardians to take home to children and for non-congregate meals to be delivered to participants' homes. During the COVID-19 PHE, USDA used temporary legislative authority to grant a nationwide waiver, allowing sponsors to set up meal service in which parents or guardians could pick up meals for their children, without requiring the child to be present. This option proved to be a useful tool for ensuring children's access to Program meals in a non-congregate setting. USDA established guidance that required Program sponsors opting to distribute

⁶ Severn, Veronica, Liana Washburn, Rachel Frisk, and Kevin Conway. (2023). Child Nutrition Program Operations During the COVID-19

Pandemic, March through September 2020: School Meals Operations Study (SMO) Year 1 Report. Prepared by Mathematica, Contract No. 12319819A0009/12319819F0162. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support.

meals to parents or guardians to maintain accountability and Program integrity through processes that ensured meals were only distributed to parents or guardians of eligible children and that duplicate meals were not provided.

During COVID-19 meal service operations, Program sponsors that used the parent and guardian pick-up waiver were required to ensure that duplicate meals were not provided to any child and that meals were distributed only to parents and guardians of children. To ensure this requirement was met, Program sponsors requested that parents and guardians provide their children's names or other identifying information when picking up meals.² Similar to multi-day meal issuance, during the listening sessions, stakeholders provided mixed feedback on this aspect of operations. While some stakeholders raised integrity concerns with the possibility of serving meals to non-participants and cited operational challenges during the pandemic, others expressed strong support for the option to allow a parent or guardian to pick up meals without children present. These respondents in support of the provision stated that the flexibility to provide or deliver a meal when children are not present is essential to both the purpose and efficacy of non-congregate service and found that this option was successfully implemented during the COVID-19 PHE. For example, multiple stakeholders reported the difficulty that many families in rural communities experience when required to commute long distances between work and home, noting that it is often more convenient for parents to pick up meals on their commute. On the other hand, some stakeholders reported concerns with oversight of unallowable or duplicate meal distribution to individuals on behalf of children. However, 13 non-State agency stakeholders suggested that sponsors know their rural communities (e.g., who has children and who does not) well enough to prevent individuals with the intent to defraud from receiving Program meals. USDA appreciates the attention paid by Program operators to this aspect of operations during the implementation of non-congregate meal service and recognizes the importance of ensuring Program integrity while providing Program access to children who reside in rural areas.

This rule codifies the option for sponsors in good standing to allow parents or guardians to pick up Program meals on behalf of eligible children. As noted above, State agencies have the discretion on a case-by-case basis to prohibit sponsors, regardless of sponsor

type, from using this option if the State agency determines that the sponsor cannot adequately ensure these requirements are met. Program integrity is vital to the success of non-congregate meal service; therefore, for State agency approval to operate sites that provide meal pick-up, sponsors opting to distribute meals to parents or guardians must have procedures in place that document, to a reasonable extent, that meals are only distributed to parents or guardians of eligible children, and that duplicate meals are not distributed to any child. These procedures must be included in the sponsor's application to participate in the Program. Examples of documented procedures may include, but are not limited to, using sign-in sheets (including the use of technology-based solutions which may streamline program participation and monitoring), or with State agency approval, other methods which result in accurate recording completed by Program sponsors that want to implement parent or guardian meal pick-up for children. State agencies may establish specific criteria or standards for what should be included in these procedures.

Although State agencies reported the prior use of these integrity measures among some sponsors during COVID-19 operations, USDA acknowledges that this type of meal duplication prevention effort may be new to some Program operators with the addition of the permanent non-congregate meal service option. USDA seeks to ensure that non-congregate meals are accessible to all eligible children while maintaining Program accountability and integrity. Permanent non-congregate meal service is a distinct approach to providing summer meals to children compared to the congregate meal service model, and thus, presents its own set of risks that Program sponsors must take reasonable steps to mitigate in order to maintain Program accountability and integrity.

USDA seeks public comments on effective approaches for balancing integrity and access priorities, while offering parent or guardian meal pick-up flexibility during summer non-congregate service. Commenters are specifically encouraged to provide input on:

- Successful and recommended procedures (ideally those informed by pandemic or summer 2023 implementation experience), for ensuring to a reasonable extent that meals are only distributed to parents or guardians of eligible children;
- Criteria, standards, or other requirements that may be established by State agencies to ensure consistency in

the approval of documented procedures to be implemented by sponsors;

- Minimizing burden on States, sponsors, and families while maintaining the integrity standards of the Program;
- The frequency and type of program integrity incidents witnessed during unannounced reviews, technical assistance visits, and scheduled reviews; and
- The desirability or appropriateness of USDA to establish further integrity controls in relation to parent or guardian meal pick-up through future guidance and/or rulemaking (including but not limited to restrictions based on sponsor experience, sponsor type, or site type).

Accordingly, this rule adds § 225.16(i)(2) to allow State agency approved sponsors to distribute meals to parents or guardians to provide to their children. Sponsors opting to distribute meals to parents or guardians must ensure through documented procedures, approved by their State agency, that meals are only distributed to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

3. Bulk Meal Items

Summer 2023 implementation guidance permitted State agencies to approve self-preparation sites to distribute bulk foods to eligible children to provide multiple days' worth of meals for multi-day meal issuance, if the foods provided met the component and quantity requirements for each meal service type (*i.e.*, breakfast, lunch/supper, snack). Additionally, the guidance required:

- Foods to be in the proper amounts for each reimbursable meal being served;
- Foods to be clearly identifiable as making up reimbursable meals;
- Menus to be provided with directions indicating which items are to be used for each meal as well as the correct portion sizes; and
- Minimal preparation is needed, including a prohibition on foods provided as ingredients for recipes that require chopping, mixing, or baking.

Through additional guidance, USDA also encouraged sponsors to consider several factors such as food safety risks, access to kitchen appliances and cooking tools, and availability of the parent or guardian to assist with meal preparation. USDA received varied feedback from stakeholders regarding bulk meal item issuance during the listening sessions. Similar to multi-day meal issuance, many comments focused on the difficulty of balancing Program

integrity with Program access. Stakeholders also expressed concerns about food safety or food quality, providers' and households' storage capabilities, the usability of bulk food items, and the challenges families experience putting the items together to make the meal. Many State agencies reported limiting the use of bulk meal items, while some State agencies reported prohibiting bulk foods entirely due to operational challenges experienced during the COVID-19 pandemic, such as the difficulty of food usage before spoilage when multiple days' worth of meals were provided at one time. Some State agencies noted that they allowed bulk meal item distribution only when provided with a food safety plan. Though several stakeholders expressed support for this flexibility, citing reasons including that it gives parents an opportunity to prepare and serve meals directly to their children, reduces packing waste, and potentially supports local economies and farmers.

This rule codifies the option for self-preparation sponsors approved to operate non-congregate meal service to provide bulk foods that meet the meal pattern requirements for each meal service type with added safeguards to ensure Program integrity and the health and safety of children while promoting access for rural areas. As discussed in section II. E. ii. 1. of this rulemaking, about 30 percent of State agencies reported that more than half of Program sponsors provided 2 to 3 days' worth of meals at one time. In addition, about one fourth of State agencies reported that more than half of these local Program sponsors provided a full week of meals at a time during COVID-19 operations. Since multi-day meal issuance and bulk food distribution flexibilities work collectively additional restrictions around this pairing will be codified through this rulemaking. State agencies must determine whether a sponsor's proposed distribution of bulk food items meets State and local health, safety, and sanitation standards. In addition, when a sponsor is approved to use this option, the sponsor must ensure that:

- Required food components for each reimbursable meal served meet the meal pattern requirements at § 225.16(d);
- All food items that contribute to a reimbursable meal are clearly identifiable;
- Menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal;
- Food preparation, such as heating or warming, is minimal. With State

agency and FNSRO approval, sponsors may offer food items that would require further preparation in circumstances where distribution of such food items is justified and appropriate; and

- The maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period (or less if the State agency established a shorter calendar day period on a case-by-case basis). However, a State agency can approve sponsors to provide up to 10 days' worth of bulk meals, also on a case-by-case basis, in appropriate circumstances such as extremely remote areas where more frequent distribution is impracticable. The approved time period may not exceed the time period for which the sponsor is approved for multi-day meal issuance.

As noted above, under this rule, USDA further codifies that bulk meal service may only be used by sponsors in good standing. State agencies have the discretion to limit bulk meal service for Program sponsors on a case-by-case basis. Additionally, State agencies can prohibit Program sponsors from using this flexibility, on a case-by-case basis without regard to sponsor type, if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites, such as if the State agency determines that the Program sponsor cannot adequately ensure the proper number of meals are distributed to each eligible child.

USDA encourages State agencies to place reasonable limits on the food items provided or types of food items provided as part of bulk meal service, dependent on sponsor experience. For this reason, USDA is seeking comments on best practices for providing bulk food menu items to inform future rulemaking.

Accordingly, this rule codifies the option to provide bulk meal items by adding a new § 225.16(i)(3).

iii. Offer Versus Serve

The NSLA in section 13(f)(7) [42 U.S.C. 1761(f)(7)] and Program regulations at § 225.16(f)(1)(ii) provide that an SFA participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to eat, under rules that the school uses for school meals under Program regulations in parts 210 and 220 (7 CFR 210.10(e) and 220.8(e), respectively). Since section 13(f)(7) of the NSLA only authorizes SFAs to use OVS, non-SFA sponsoring organizations are not permitted to use OVS.

For summer 2023, USDA issued guidance that allowed SFA sponsors operating non-congregate meal service to utilize OVS with State agency approval, as long as all meal components or food items were offered, and all participants had the opportunity to select a complete reimbursable meal. While OVS is potentially a useful tool for reducing food waste, many stakeholders expressed concerns about program integrity and meal quality associated with OVS when meals were mostly pre-packaged. Several State agencies reported observing improper implementation of OVS during COVID, stating that some Program sponsors used OVS exclusively for the milk component instead of offering any meal components or items as required in SFSP regulations § 225.16(f)(1)(ii). However, the goals of OVS are to simplify Program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meal that is served. Therefore, USDA reminds State agencies and SFA sponsors that when implementing OVS, a child or parent must be able to decline to accept any component offered.

Therefore, under this rulemaking, State agencies may only permit SFAs to operate OVS for non-congregate meal service as outlined in section 13(f)(7) of the NSLA and at Program regulations § 225.16(f)(1)(ii). USDA continues to limit OVS to SFA sponsors, who are experienced with OVS in the NSLP, to remain consistent with the statutory requirements of the NSLA and to promote Program integrity. USDA encourages SFAs that intend to use OVS to carefully consider how to best implement this flexibility while ensuring that all meal service requirements are met as outlined in § 225.16(f)(1)(2), and under parts 210 and 220 at §§ 210.10(e) and 220.8(e), respectively. Some possible strategies for ensuring Program integrity include providing a buffet style meal pick-up service or utilizing an online ordering system where children can choose their SFSP meal items prior to meal pick-up or delivery.

Accordingly, this rule does not make further changes to existing regulations § 225.16(f)(1)(ii), effectively allowing SFAs to use OVS when providing non-congregate meal service.

iv. Clarifications To Existing Meal Service Requirements—Meal Service Times and Offsite Consumption of Food Items

Meal Service Times

Program regulations at § 225.16(c) require meals served in the SFSP to

follow specific time requirements. Meal service times must be established by sponsors for each site, included in the sponsor's application, and approved by the State agency. Meal service time requirements also specify that breakfast meals be served at or close to the beginning of a child's day; all sites except residential camps must start the next meal service at least one hour after the end of the previous meal or snack; and meals served outside of the approved meal service times are not eligible for reimbursement. In addition, meal service requirements at § 225.16(c) provide instructions for meals not prepared on site. Specifically, meal deliveries must arrive before the approved meal service time and meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

USDA determined that some meal service time requirements continued to apply under the summer 2023 guidance. The guidance instructed that meal service times must be:

- Established for each site;
- Included in the sponsor's application and approved by the State agency; and
- Supported through State agency approved pick-up schedules or delivery plans with designated times for distribution.

The guidance also required that the State agency must approve any changes in meal service times. Finally, sponsors offering a non-congregate meal service were not required to serve breakfast in the morning or provide one hour between the end of one meal service and the start of the next.

Stakeholders did not provide feedback on meal service time requirements during listening sessions. However, USDA maintains that some meal service time requirements are necessary to provide sufficient control at the State agency and sponsor levels to allow for planned meal services that meet the needs of the community, consistent with the summer 2023 guidance. Therefore, through this rulemaking, USDA is codifying the summer 2023 guidance on meal service time restrictions for non-congregate meal service.

Accordingly, this rule adds a new § 225.16(b)(5)(iii) to establish that non-congregate meal service is subject to the time restrictions for meal service at § 225.16(c)(1), (4), and (5). This rule also amends § 225.16(c)(2), (3) and (6) to clarify that non-congregate meal service

is exempt from requiring that breakfast must be served at or close to the beginning of the child's day, that one hour must elapse between meal services, and that meals not prepared on site must be delivered within one hour of the approved meal service time for congregate meal service. Lastly, the rule makes further changes to the requirements under meal service times in accordance with monitoring requirements, as discussed in section II.F.i.b. of this rulemaking.

Offsite Consumption of Food Items

Program regulations at § 225.16(h) allow sponsors to permit a child to take one fruit, vegetable, or grain item off-site for later consumption without prior State agency approval if all applicable State and local health, safety, and sanitation standards are met. Sponsors should only allow an item to be taken off-site if the site has adequate staffing to properly administer and monitor the site. A State agency may prohibit individual sponsors on a case-by-case basis from using this option if the State agency determines that the sponsor's ability to provide adequate oversight is in question. The State agency's decision to prohibit a sponsor from utilizing this option is not an appealable action. With the establishment of the non-congregate option in eligible rural areas and for meals served to eligible children in non-rural areas, this option only applies for congregate meal service.

Accordingly, this rule amends § 225.16(h) to clarify that the provisional flexibility to allow children to take specific food items for off-site consumption only applies to congregate meal service.

F. Monitoring

Under the Act, the authorization of rural non-congregate meal service in SFSP expanded meal service options for participating sponsors and sites. This action changes meal service operations at sites that will provide non-congregate meals and thus requires compliance with new regulatory requirements. By conducting reviews of sponsors and sites, State agencies maintain oversight of Program compliance; sponsors are also responsible for ensuring that their sites correctly adhere to Program requirements.

Summer 2023 guidance provided that all existing monitoring requirements for State agencies and sponsors apply to non-congregate sponsors and sites. This included pre-approval visits, sponsor and site reviews, follow-up reviews, meal preparation facility review by State agencies as required in Program regulations at § 225.7, and site visits and

reviews conducted by sponsors as required in Program regulations at § 225.15.

USDA received significant feedback from stakeholders regarding monitoring and general Program integrity related to non-congregate meal service operations. Stakeholders reported isolated incidents of improper benefit distribution that occurred during the COVID-19 pandemic at non-congregate meal service operations, which were in place under temporary waiver authority. States reported incidents of meal duplication and inaccurate use of meal service flexibilities that resulted in improper benefit distribution during the pandemic. Additionally, a few stakeholders noted the delicate balance between ensuring Program integrity and ensuring Program access.

USDA understands that State agencies are best positioned to evaluate applicant sponsors and sites for non-congregate meal service operations. Under this rule, with two exceptions discussed below in section i. 2., the basic monitoring requirements for type, number, and frequency of reviews will not change. However, to ensure all Program operations, both congregate and non-congregate, are properly adhering to Program requirements, USDA is amending the regulations to incorporate operational changes concerning pre-approval visits and sponsor and site review that reflect the introduction of non-congregate meal service.

USDA seeks to improve Program integrity by assessing how State agencies, sponsors and sites can use data analysis to detect potential Program mismanagement in the SFSP. USDA will create guidance materials and technical assistance tools to leverage Program data to detect potential Program mismanagement. USDA is seeking comments on best practices for utilizing data analysis and trends to ascertain Program irregularities which may be indicative of potential Program mismanagement to inform future rulemaking.

i. State Agency Responsibilities

1. Pre-Approval Visits

Program regulations at § 225.7(d) require State agencies to conduct pre-approval visits of sponsors and sites to assess the applicant sponsor's or site's potential for successful Program operations. That includes all applicant sponsors that did not participate in the Program in the prior year, those that had operational problems noted in the prior year, and any sites that the State agency has determined need a pre-approval visit. Current regulations allow pre-

approval visits of SFA sponsors that had a review with no significant deficiencies in the preceding 12 months to be conducted at the discretion of the State agency. Under this rule, that regulation will be amended to include CACFP institutions. The addition of this flexibility will ease administrative burden at the State agency while allowing the State to provide oversight on sponsors with operational problems and those needing additional technical assistance.

Additionally, this rule will add a requirement that State agencies must establish a process to determine which sites need pre-approval visits. This process must consider characteristics of sites including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service, and existing sites that exhibited operational problems. This requirement will ensure that applicant sites have the capacity to operate the Program, including existing sites new to non-congregate meal service and existing sites that exhibited operational problems in the prior year. The importance of pre-approval visits was highlighted in the USDA Summer Food Service Program Integrity Study, which found that a majority of State directors believed the pre-approval visits were effective in spotting potential problems.⁷

Accordingly, this rule amends § 225.7(d) to allow pre-approval visits of sponsors which are a CACFP institution that had a review within the preceding 12 months and had no significant deficiencies to be conducted by the State agency at their discretion at paragraph (d)(2). Furthermore, this rule amends the State agency pre-approval site visit requirement at § 225.7(d) to include that State agencies must develop a site selection process that considers site characteristics, including whether an existing site is new to non-congregate meal service operations, by adding a new regulation at § 225.7(d)(4) and listing site characteristics at paragraph (d)(4)(i), (d)(4)(ii), and (d)(4)(iii). Lastly, the rule revises the paragraph structure at § 225.7(d) to improve the clarity of the regulations.

2. Sponsor and Site Reviews

Program regulations at § 225.7(e) require State agencies to review SFSP sponsors and sites to ensure compliance with Program regulations by determining an appropriate sample selection of sponsors and sites to review. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews. Additionally, Program regulations at § 210.18(e)(3)(ii) require State agencies during a school meals administrative review to review a minimum of one site if the SFA selected for review operates the SSO. Under this rule, USDA is requiring State agencies to include in the sample selection SFSP sponsors who operate either congregate or non-congregate sites, or both, per § 225.7(e)(2). This is to ensure that all meal service options are included in the sample selection. USDA is also requiring State agencies to review a minimum of one congregate and one non-congregate site during a school meals administrative review if the SFA operates both meal service models. If the SFA has one site that operates both congregate and non-congregate meal services, the State agency may review a minimum of one site and must observe both a congregate and non-congregate meal service at that one site.

Furthermore, regulations at § 225.7(e)(4) require State agencies to conduct a review of every new sponsor at least once during the first year of operations, annually review every sponsor that experienced operational problems in the prior year, review each sponsor at least once every 3 years, and conduct reviews of at least 10 percent of each reviewed sponsor's sites. This rule does not change any of these requirements, which require State agencies to provide adequate oversight of all SFSP sponsors, including those that are new or exhibit problems, and conduct site level reviews.

In addition to the above requirements, per current § 225.7(e)(4)(ii), State agencies must also ensure that they annually review several sponsors whose Program reimbursements, in the aggregate, account for at least one half of the total Program meal reimbursements in the State in the prior year. This provision requires States to review larger sponsors to meet the total reimbursement threshold. These sponsors are solely selected based on size, which means, in many States, that larger sponsors must be reviewed every

year to meet this requirement. These large sponsors, such as SFAs who operate CNPs on a year-round basis, are typically more familiar with Program requirements. Focusing critical oversight resources on these experienced sponsors limits the number of reviews that State agencies can conduct of sponsors who are small to mid-size and may be at risk for more serious operational challenges.

To provide State agencies the ability to target their resources on sponsors of all sizes and operational capacity, this IFR removes the requirement at § 225.7(e)(4)(ii). This will allow State agencies to adjust to any potential changes in the number of meals served due to new and existing sponsors operating the non-congregate meal service option. It will also facilitate the timely identification of issues that pose a risk to Program integrity. The elimination of this requirement provides State agencies the ability to review sponsors of various operational capacities who are not currently being reviewed with the same frequency as larger sponsors. This will allow State agencies to target resources on sponsors of all sizes who may pose a greater risk to Program integrity or need additional monitoring and technical assistance, by identifying a wider variety of issues based on criteria such as spikes and anomalies in meal claiming. This will ensure Program integrity across all SFSP Program operators.

In addition to providing State agencies the ability to focus resources on sponsor reviews that are not just related to the amount of Program reimbursements, USDA is also adding under § 225.7(e)(4) a provision that allows State agencies to more frequently review sponsors who require additional technical assistance. The addition of this provision at § 225.7(e)(4)(iv) further ensures integrity in the Program by allowing State agencies to review sponsors of all sizes more frequently than the current 3-year review cycle, if the State agency determines the sponsor needs additional oversight and technical assistance.

Additionally, USDA is including meal service models, both congregate and non-congregate, and meal distribution methods in the review sample under § 225.7(e)(4). The addition of this provision at § 225.7(e)(4)(v) ensures all types of meal service models and meal distribution methods are included in the 10 percent of sponsor's sites required to be reviewed. In terms of the number of sites each sponsor can be approved to operate, the State agency, per § 225.6(b)(6), must not approve any sponsor to operate more than 200 sites

⁷ Giesen, L., Gola, A.A., Gearing, M., Gabay, M., Baier, K., Bozzolo, C., and Mwombela, B. (2023). Summer Food Service Program Integrity Study Final Report. Prepared by Westat, Contract No. 12319818A0021; Order No. 12319818F0134. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Chan Chanhasasilpa. Available online at: www.fns.usda.gov/research-and-analysis.

or to serve more than an average of 50,000 children per day. However, if the sponsor can demonstrate that it has the capacity to manage and operate the Program larger than these limits, the State agency may approve exceptions. Regardless of the size of the sponsor's operation, the State agency must have the capacity to conduct reviews of at least 10 percent of the sponsor's sites per § 225.6(b)(6).

Accordingly, this rule amends § 225.7(e)(4) to remove § 225.7(e)(4)(ii), the one-half aggregate review requirement. The rule will also add a new § 225.7(e)(4)(iv) to include review of additional sponsors at the State agencies discretion and amend § 225.7(e)(4)(v) for the inclusion of all meal types in the 10 percent review sample. Additionally, this rule amends § 225.6(b)(6) to include the requirement that the State agency must have the capacity to conduct reviews of at least 10 percent of the sponsor's sites when the State agency approves a sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. The rule also revises the paragraph structure at § 225.6(b)(6) to improve the readability of the regulations. Lastly, this rule amends § 210.18(e)(3)(ii) to include the review of a non-congregate site for SFAs operating non-congregate meal service in the SSO.

Program regulations at § 225.7(e)(5) direct State agencies to develop criteria for site selection when selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v). This rule will include at § 225.7(e)(5)(i)(G) and (H) the type of meal service (*e.g.*, congregate or non-congregate); if non-congregate, the type of meal distribution method, in the characteristics used to determine sites selected as part of the sponsor's review. This provision will ensure the new meal service model type and meal distribution method is considered when selecting sites for review.

Accordingly, this rule amends § 225.7(e)(5) to include new non-congregate meal services at paragraph (e)(5)(i)(G) and (H).

Program regulations at § 225.7(j) require State agencies to develop and provide monitor review forms to all approved sponsors. The monitor review form must include, at a minimum, the time of the reviewer's arrival and departure, the site supervisor's printed name and signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor,

and the date of such actions. This rule will include whether the meal service is congregate or non-congregate on the monitor review form, which must be completed by sponsor monitors per § 225.7(j). This ensures that there is a differentiation between the congregate and non-congregate meal service at each site for each review.

Accordingly, this rule amends § 225.7(j) to include whether the meal service is congregate or non-congregate on the monitoring review form.

Program regulations at § 225.16(c)(1)(iii) require meal service times to be approved by the State agency. Under this rule, all meal service times approved by the State agency must be in accordance with the State agency or sponsor's capacity to monitor the full meal service during a review. This provision will ensure that the sponsor and State agency have enough resources and the capacity to review the full meal service.

Accordingly, this rule amends § 225.16(c)(1)(iii) to clarify that the approval of meal service times must be in accordance with the State agency or sponsor's capacity to monitor the full meal service during a review.

i. Sponsor Responsibilities

1. Training

Program regulations at § 225.15(d)(1) require sponsors to hold Program training sessions for its administrative and site personnel. These trainings must, at a minimum, include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and the duties of a monitor. This rule will include both congregate and non-congregate meal service in the required training conducted by the sponsor. This is to ensure that the proper meal service is operated and monitored by the sponsor's administrative and site personnel at each site.

Accordingly, this rule amends § 225.15(d)(1) to include the addition of congregate and non-congregate meal service in the sponsor Program training sessions for its administrative and site personnel prior to the operation of a site's first meal service.

2. Site Reviews

Through guidance, sponsors were required to conduct pre-operational visits for new sites and those that experienced operational problems in the previous year before a site operates the SFSP. This rule codifies the requirement for sponsors to conduct pre-operational visits for new sites and those that experienced operational problems in the

previous year before a site operates the Program per § 225.15(d). Similar to pre-approval visits conducted by the State agency, pre-operational visits conducted by the sponsor assist the sponsor in detecting potential operational issues prior to operation of the Program. USDA also supports the use of virtual monitoring as a tool to supplement the required on-site monitoring reviews. Providing technical assistance and training through virtual technologies may also allow them to be offered more frequently and increase access to trainings, thereby supporting Program integrity. In addition, this rule will codify that existing sites that are new to non-congregate meal service are considered new sites; and as such are also required to have a pre-operational visit. This is to ensure that a site has the facilities to provide meal service for the anticipated number of children that will receive non-congregate meals and the capability to conduct the proposed meal service.

Accordingly, this rule amends § 225.15(d) to include pre-operational site visits for new sites and those that experienced operational problems in the previous year, including existing sites switching to non-congregate meal service, to be conducted by the sponsor prior to a site operating the Program at paragraph (d)(2).

In this rule, current regulations at § 225.15(d)(2), which require sponsors to visit each of their sites at least once during the first two weeks of Program operations for all new sites and sites determined by the sponsor to need a visit based on criteria established by the State agency, is now moved to paragraph (d)(3); additionally, paragraph (d)(3) will include the requirement for sponsors to conduct site visits for all existing sites that are new to non-congregate meal service within the first two weeks of operation. This ensures that the food service operation is operating smoothly and to verify information such as the site address, storage, holding and preparation facilities, meal distribution method, and service capacity of non-congregate meal services.

Accordingly, this rule amends § 225.15(d) to include all existing sites that are new to non-congregate meal service as sites needing a site visit conducted by the sponsor within the first two weeks of Program operations at paragraph (d)(3).

Current regulations at § 225.15(d)(3) require sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations. This rule will move this provision from

paragraph (d)(3) to paragraph (d)(4). There are no changes to this provision; however, a full review of food service operations at each site includes non-congregate rural meal services.

Accordingly, this rule amends the requirement at § 225.15(d) that sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations and will be located at paragraph (d)(4).

G. Miscellaneous

i. Collection of Summer Meal Site Location Data

Section 26(d) of the NSLA (42 U.S.C. 1769g(d)) mandates that the USDA enter into a contract with a non-governmental organization to establish and maintain an information clearinghouse (named “USDA National Hunger Clearinghouse” or “Clearinghouse”) of groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. The Clearinghouse includes a database of non-governmental, grassroots organizations in the areas of hunger and nutrition, along with a mailing list to communicate with these organizations. The Clearinghouse also operates the USDA National Hunger Hotline, through which assistance is provided via phone or text message. Local level antihunger organizations enter their information into the database, and Clearinghouse staff use that information to provide the public with information about where they can get food assistance. SFSP and SSO meal sites are a component of this assistance.

USDA works closely with State agencies to ensure that children who receive free or reduced price school meals continue to receive the nutrition they need when schools are closed—whether during summer break or unexpected closures during the school year. Through USDA’s summer meal programs, approved sites in communities across the country can serve meals to children up to age 18 at no cost. During the summer operational period (May through September), USDA collects summer meal site information from State agencies via the Summer Food Site Locator form (FNS–905). Unlike other resources in the Clearinghouse, this form is specific to the summer meals programs and may only be completed by State agencies. The data collected populates the Clearinghouse database with summer meals site information and locations. Data are also integrated into public-facing web tools. One such tool is the Summer Meals Site Finder (Site Finder).

This mapping tool was developed by USDA to help children, parents, and others quickly and easily find summer meal sites near them. The Site Finder, available for use at no charge, is a web-based application that also works on tablets, smartphones, and other mobile devices without the need to download software or other data. The mapping tool allows users to enter an address, city, State, or zip code to find up to 50 nearby site locations, along with their addresses, hours of operation, and contact information, and directions. State agencies provide data to FNS to be mapped on the tool and update the data throughout the summer to include operational changes and new site locations.

The form FNS–905, which may only be completed by State agencies, collects details about each site such as times, days, and dates of operation, location, types of meals served, contact information, and if the site is open to the public. Sponsors provide this information to their State agencies during the sponsor and site application process as required by Program regulations at § 225.6. Currently, completing the FNS–905 is voluntary, though USDA requests those State agencies that choose to participate to complete the form at least once per the summer operational period, and submit weekly updates, as needed, during summer operations. As of summer 2022, most State agencies submitted FNS–905 forms at least once per summer.

Other interested parties have used the data collected on the FNS–905 in the creation of mobile applications and texting services. The data has also been used by State agencies to plan summer site visits, by Program sponsors to strategically plan for future years’ summer feeding operations, and by researchers in academic institutions. In addition to members of the general public, other interested parties may include nutrition or health education professionals, State or local government health officials, nutrition councils, public interest advocates, private foundations, and corporate officials.

USDA has also used these data collected from the FNS–905 to improve integrity and to analyze policy proposals, as well as to report to executive agency officials and Congress real-time results that cannot be ascertained through other reporting methods. The Clearinghouse also supports the USDA National Hunger Hotline and texting service, which refers people in need anywhere in the U.S. to food pantries, soup kitchens, grassroots organizations and, in this case specifically, approved open summer

meal sites. The data collected using the FNS–905 is updated by USDA once per week during the summer meal programs’ operating period and posted on an open data platform that is always accessible to the public.

The introduction of the rural non-congregate meal service option provides USDA and Program operators with a new opportunity to expand access to the summer meal programs. The value and far-ranging use of summer meal site data demonstrates the need for timely, accurate, and complete data to be available for the public. In addition, this is the only public resource that provides detailed meal site information across all States and territories, which emphasizes the need to collect this data and share it with families searching for summer meal sites in their area. In line with these changes, USDA will require State agencies to submit summer meal site data to FNS via the FNS–905.

As stated previously, nearly all States and territories already provide this data to USDA on a voluntary basis during the summer season, though USDA recognizes the potential administrative burden and systems changes associated with introducing a new, mandatory reporting requirement for State agencies. Further, USDA understands the need to provide sufficient time to update current systems to accommodate this change. Therefore, USDA will delay implementation of the reporting requirement until one year after the publication of this IFR. USDA is also seeking to modernize data submission and processing, and the Site Finder tool. As such, USDA seeks comments from State agencies on the implementation of mandatory reporting requirements, including form and procedural changes:

- When is the earliest that your State submits the initial site information to USDA? Are there factors that impact when you are ready to submit this information to USDA, such as application deadline and processing?
- How frequently does your State submit to USDA updates on summer meal sites during the Site Finder operational period?
- How often do operations (*e.g.*, hours/locations, type of site) of existing sites change, or how often during the summer are new sites added?
- What would be the optimal reporting schedule for summer meal site data submissions?
- How does your State agency assess the accuracy of summer meal site data at the State level, and ensure accuracy of site information at the sponsor and site level?
- What are best practices to solicit from sponsors timely and accurate

updates to site information such as meal service type, times, days, and meal types, and to ensure operational changes are reflected in the State's system and the site data that is reported to FNS?

USDA also welcomes comments from stakeholders and the general public on how summer meal site data and USDA's Site Finder mapping tool can be made more usable and useful.

Accordingly, this rule adds a new § 225.8(e) to require States agencies submit to FNS a list of open site locations and their operational details via the Summer Food Site Locator form (FNS-905) by June 30 of each year, or a later date approved by the FNSRO, and provide a minimum of two updates during the summer operational period. However, State agencies are encouraged to submit weekly updates if there are any changes to the State agency's data, to ensure families have the most up-to-date site information. These amendments are effective December 30, 2024.

ii. Reimbursements

The NSLA was amended to establish the non-congregate meal service option for rural areas with no congregate meal service for sites that are located in areas in which poor economic conditions exist. It also establishes an option for meals served to children certified as being eligible for free or reduced price meals under the NSLP and the SBP who reside in rural areas that are not documented as areas in which poor economic conditions exist, which is codified as a "conditional non-congregate site" under this rule at § 225.2. For this reason, all meals served at an approved rural site implementing non-congregate service are eligible for SFSP or SSO reimbursement. SFSP sponsors are eligible to receive the rural or self-preparation site reimbursement rate for each meal served to participating children at rural sites (7 CFR 225.9(d)(7)). However, as previously discussed in this rulemaking, sponsors of conditional non-congregate sites may only claim meals served to children who meet the Program's income standards. Section II.D.iii. (*Responsibilities of Sponsors*) of this IFR also discusses a change to § 225.14(d)(7) clarifying that if the sponsor operates a conditional non-congregate site, it must certify that it will collect information to determine children's Program eligibility to support its claim for reimbursement. Furthermore, section II.D.ii. (*Responsibilities of Sponsors*) of this IFR discusses the change at § 225.15(b)(4) to limit reimbursement of second meals to congregate meal service. Therefore, this rule also makes changes in § 225.9

regarding Program assistance to sponsors reflecting these clarifications.

Accordingly, this rule adds a new § 225.9(d)(11) to require that sponsors of conditional non-congregate sites are reimbursed only for meals served to children whose eligibility for Program meals is documented. In addition, this rule amends § 225.9(f) to clarify the State agency must ensure that reimbursements for second meals are limited to the percentage tolerance established when reviewing a sponsor's claim for congregate meals served.

iii. SSO Non-Congregate Provisions

The Act amends the NSLA and instructs USDA to promulgate regulations to carry out the new provisions under section 13 of the NSLA, establishing an option to provide non-congregate summer meal service in rural areas with no congregate meal service. Consistent with long-standing summer meal service program administration, USDA interpreted this statutory authority as extending to the SSO, which is similarly authorized under section 13 of the NSLA. Therefore, through this IFR, USDA is codifying the availability of rural non-congregate meal service through the SSO. Under this rulemaking, an SSO site in a rural area may be approved to offer a non-congregate meal service consistent with the requirements under part 225. SFAs approved to offer a non-congregate meal service must comply with the non-congregate meal service provisions set forth at § 225.16(b)(5)(i) and (iv) by this IFR (section II.E.i.) and may use the non-congregate meal service options described in § 225.16(i) under this IFR (section II.E.ii.). In addition, this rule defines the SSO under parts 210 and 220 to mean that the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

As part of this IFR, USDA invites public comments on these new provisions affecting SSO, specifically whether additional requirements should be codified to facilitate and provide clarity on the provision of rural non-congregate service through the SSO.

Accordingly, this IFR adds a new definition of the SSO in §§ 210.2 and 220.2 and adds new §§ 210.34 and

220.23 which will set forth the rural non-congregate provisions for the SSO.

iv. Annual Update To Approved Rural Data Sources

As discussed in section II. A. ii., under this IFR, USDA is expanding the definition of "rural" in § 225.2 to allow the use of multiple recognized Federal classification schemes to designate areas as rural. The amended definition of "rural" will also provide discretion to USDA for any potential updates or changes to classification schemes at a future date. Although these recognized Federal classification schemes are updated with each decennial census and periodically based on annual census surveys, though this rulemaking, USDA is making a commitment to issue updates by January 1 of each year, or as soon as is practicable, in order to have an established effective date for new data or updates to be used by State agencies and program operators for rural designations in that Program year. USDA will also make this data available and update the FNS Rural Designation Map to provide this information in a simplified format. Accordingly, this IFR adds a new § 225.18(l) to establish an annual effective date by which USDA will issue updates to the approved rural data sources to be used for designations in that program year. USDA will make this information available and referenceable in a simplified format.

H. Technical Amendments

USDA is removing obsolete provisions from the Code of Federal Regulations (CFR) in 7 CFR part 225. Section 225.14(d)(4) references requirements specific to sponsors that administer homeless feeding sites. The Child Nutrition Reauthorization Act of 1998 eliminated homeless sites in SFSP. Accordingly, these requirements are removed from the regulations.

This rule also includes amendments to correct several technical errors found in 7 CFR part 225. USDA will make technical changes to the designation of paragraphs to comply with current paragraph structure requirements for the CFR, where errors appear in the subsections of part 225 that are amended by this rule. This rule also makes several additional technical changes to fix a small number of obsolete terms of usage and punctuation. Finally, the Department will also make non-substantive technical changes to existing language to provide consistency and improve readability of regulations in subsections of part 225 that are amended by this rule. None of the technical changes will effect a substantive change in the Program.

Accordingly, this rule amends Program regulations to:

- Replace the term “handicapped” with the term “disabled” in the definition of “children” at § 225.2;
- Correct the numbering of the subordinate paragraphs in the definitions of “Children,” “Operating Costs,” and “Rural,” and in paragraphs (d) and (j) in § 225.7, and paragraph (d) in § 225.11;
- Correct the punctuation in §§ 225.6(i) and 225.7(j);
- Replace reference to the Food Stamp benefit, renamed the Supplemental Nutrition Assistance Program (SNAP) benefit, that appears under § 225.15(f)(3);
- Improve the readability of regulations at §§ 225.6(a)(2), (b)(6), 225.9(d)(9), and 225.15(b)(3);
- Replace the word “believes” with the word “determines” in §§ 225.6(g)(1)(vii)(C), (g)(1)(ix)(C), (g)(2)(iv)(C), (g)(2)(v)(C), and 225.16(e)(4);
- Replace the term “shall” with the term “must” where it appears in the subsections of part 225 that are amended by this rule; and
- Revise the language that appears under §§ 225.6(f)(1)(iii)(F), 225.7(n)(1), and 225.15(e) to reflect the current federally protected bases for the CNPs.

I. Severability

The statutory enhancement of the USDA SFSP and SSO to include the option for rural operators to use alternate service models, including the non-congregate rural option, that are tailored to the needs of the communities they serve is essential for ensuring that all children receive nutritious meals during the summer months when school is not in session. As directed by statute, USDA implemented the SFSP and SSO rural non-congregate option in Summer 2023, with careful attention to meeting the needs of rural communities, while protecting program integrity. Based on the statutory requirement to expand the SFSP and SSO for Summer 2024, USDA has determined that its authority to implement the regulation through this interim final rule is well-supported in law and practice and should be upheld in any legal challenge. Further, USDA has determined that its exercise of its authority reflects sound policy. However, in the event that any portion of the rule is declared invalid, USDA intends that the various aspects of the use of alternate service models be severable. For example, if a court were to find any provision unlawful, such as (1) the definition of “rural” for program purposes, (2) the State agency’s authority to approve a sponsor’s request

for a rural designation, (3) the provision of both congregate and non-congregate meals at a single site, or (4) some other aspect of this rule, USDA intends that all other provisions in the rule will remain in effect to ensure effective implementation of the rural non-congregate option. USDA has concluded that it is in the interests of both rural communities and the children who reside in them for nutritious meals to be provided using alternate service models during the summer months when school is not in session. Furthermore, in the event any part or the entirety of the non-congregate rural option established by this rulemaking were declared invalid, such option is severable and does not prevent the Summer EBT program, discussed below, from proceeding since the non-congregate rural option and Summer EBT program function independently.

III. Discussion of the Interim Final Rule—Summer EBT

Subpart A—General

i. General Purpose and Scope

This rulemaking establishes the regulations through which the Secretary of Agriculture will administer the Summer EBT Program. Section 13A of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1762, authorizes the Secretary to establish a program under which States, as well as Indian Tribal Organizations that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program must, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits. As provided for in section 13A(a), the Summer EBT Program was established “for the purpose of providing nutrition assistance. . . during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.”

Accordingly, this program’s purpose and scope are codified in a new 7 CFR 292.1.

i. Definitions

Implementation of the Summer EBT Program will necessitate new systems and processes, and with them, new definitions. Some of the definitions in this rulemaking are identical to, or adapted from, definitions in Child Nutrition Program, SNAP, or WIC regulations. Other definitions have been created in this rulemaking to clarify specific functions and terms essential to

the Summer EBT Program and are entirely new.

1. Existing Definitions

The following existing definitions from elsewhere in USDA regulations are codified in this rule without change:

Act; Acquisition; Advance Planning Document for project planning or Planning APD (APD or PAPD) Advance Planning Document Update (APDU); Commercial Off-the-Shelf (COTS); Continuous school calendar; Current income; Department; Electronic Benefit Transfer (EBT) account; Electronic Benefit Transfer (EBT) card; Electronic Benefit Transfer (EBT) contractor or vendor; Electronic Benefit Transfer (EBT) system; Enhancement; FNS; FNSRO; Firm; Information System (IS); LEA;OIG; Project; Request for Proposal (RFP); SNAP; Secretary; State; Territories; and WIC.

2. Modified Definitions

The following definitions from elsewhere in USDA regulations were adapted to reflect the unique needs of the Summer EBT Program.

2 CFR part 200. Minor modification from 7 CFR part 210, which includes the following: (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the NSLP).

Administrative costs. This definition was modified from 7 CFR 225.2 to refer to the Summer EBT program instead of the Summer Food Service Program.

Adult. Modified from 7 CFR 245.2 to clarify that the need for the definition itself is for application purposes, and to change from 21 to 18.

Categorically eligible. Modified from 7 CFR 245.2 to refer to Summer EBT rather than free meals or milk.

Disclosure. Modified from 7 CFR 245.2 to refer to Summer EBT eligibility rather than free and reduced price meal eligibility.

Enrolled students. Modified from 7 CFR 245.9 to refer to students who are enrolled in and attending NSLP/SBP schools who have access to a meal service (breakfast or lunch) on a regular basis.

Household. At 7 CFR 245.2 “Household” means “family.” And at 7 CFR 245.2 “Family” means a group of related or unrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.” Summer EBT does not use the term family, so household is defined and used throughout.

Implementation Advance Planning Document or Implementation APD (IAPD). Modified from 7 CFR 277.18 to

conform with Summer EBT requirements and processes.

Income eligibility guidelines.

Modified to specify the programs for which the Income Eligibility Guidelines apply.

Indian Tribal Organization (ITO).

Adapted from other definitions of ITO used by USDA programs and modified to reflect that only ITOs that administer WIC are eligible to administer Summer EBT.

SNAP Eligible foods. This definition is the same as the definition of “Eligible foods” at 7 CFR 271.2. It is modified here to specify that these are SNAP eligible foods.

SNAP Retail food store. This definition is the same as the definition of “Retail food store” at 7 CFR 271.2. It is modified here to specify that these are SNAP retail food stores.

Vendor. Modified from 7 CFR 271.2 to reference Summer EBT instead of SNAP.

Verification. Modified from 7 CFR 245.2 to reference Summer EBT instead of NSLP/SBP and to state that direct verification is required rather than optional.

Verification for cause. Modified from 7 CFR 245.6a(c)(7) to reference Summer EBT agencies.

3. New Definitions

The following new definitions were developed specifically for the Summer EBT Program.

Cash-Value Benefit (CVB) this term relates to the type of benefit that is a fixed-dollar amount used to obtain supplemental foods by participants served by an ITO for purposes of the Summer EBT program. It is an option for ITO benefit delivery.

Dual participation. This term was developed to describe a prohibited situation in which a child is receiving multiple Summer EBT benefits simultaneously.

Eligible child. This definition was developed to describe the unique population of children who are eligible for the newly created Summer EBT Program.

Eligible household. This definition was created in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) for the purposes of Summer EBT.

Expungement. This term describes removal of Summer-EBT benefits and was not previously defined in regulations at 7 CFR 274.2 or other USDA regulations.

Direct verification. Direct verification is conducted in the NSLP/SBP; however, this term was not previously defined in regulations at 7 CFR 245.6a.

Food instrument. This term is applicable to ITOs administering the

Summer EBT program, with the same meaning as the definition set forth in regulations at 7 CFR 246.2.

Instructional year. This definition is included to reflect language introduced in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

ITO Service Area. This definition was developed to describe the geographic area served by an ITO Summer EBT agency.

NSLP/SBP. This term was not previously defined in 7 CFR 245.2 or other USDA regulations.

NSLP/SBP application. Distinct from the definition at 7 CFR 245.2 for “Household application,” this term specifically refers to NSLP/SBP household income applications.

Period of eligibility. This definition was created to describe the time period in which a child may be deemed eligible for Summer EBT benefits.

Program. This definition was created to reference the new Summer EBT program that is codified in 7 CFR part 292.

Rolling verification. This definition was created to describe the process by which verification may be conducted for Summer EBT applications on a rolling basis.

School aged. This definition was created to describe a subset of the population which is the appropriate age to be in school in a State or ITO.

Special Provision school. This definition was created to efficiently describe a school that elects Provision 1, Provision 2, Provision 3, or the Community Eligibility Provision to operate the National School Lunch and/or School Breakfast Programs and that does not conduct annual, individual eligibility determinations for all students.

Streamlined certification. This definition describes a process specific to the Summer EBT program where eligible children may be issued benefits without needing to submit a Summer EBT application, and benefits may be issued without confirmation of school enrollment data.

Summer EBT application. This definition describes an application that can be used to establish eligibility for Summer EBT benefits.

Summer EBT agency. This definition describes the entities which enter into a written agreement with FNS to administer Summer EBT including State agencies and ITOs.

Summer operational period. This definition was created to describe the period for which Summer EBT benefits will be issued.

Supplemental foods. This definition was created in section 13A(h)(4) of the

NSLA. The definition is applicable to ITOs administering the Summer EBT program.

Accordingly, these definitions are codified in a new 7 CFR 292.2.

i. Administration

1. Delegation of Responsibilities

Since 2010, USDA, States, and ITOs have worked together to implement and evaluate the provision of EBT benefits in the summer to ensure kids can get the nutrition they need when school is not in session, including through SEBTC demonstration projects and, more recently, P-EBT. Thanks to the dedication and perseverance of our State and ITO partners, USDA has been able to overcome many obstacles and challenges to standing up these programs and have also learned valuable lessons about successful Program implementation. In establishing P-EBT, Child Nutrition and SNAP State agencies collaborated and committed to helping children and their families in times of need. This same level of commitment and collaboration will be critical to the success of the Summer EBT Program as well. It is important for State agencies administering SNAP and/or Child Nutrition Programs to work together in a collaborative way to determine the appropriate roles and responsibilities of each to ensure successful program implementation and a positive customer experience. While USDA expects that most ITOs administering WIC will administer Summer EBT through just the WIC agency, ITOs might also find that an agency partnership is appropriate. USDA also urges States and ITOs to work with their legislatures and/or Tribal leadership to determine any changes in State or Tribal law needed to support effective Program implementation, and to identify State or Tribal funds to cover the State or ITO portion of Summer EBT administrative costs.

USDA has delegated administration of the Summer EBT Program to FNS and FNS will act on behalf of the Department to administer the Program. See 7 CFR part 2, subpart I (Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services). In turn, FNS will delegate administration of Summer EBT to States and ITOs approved to operate the Program pursuant to a written agreement. The Governor or other appropriate executive or legislative authority of each State or ITO will designate one or more Summer EBT agencies to be responsible for the administration of the Summer EBT

program within the State or ITO. Each administering agency will enter into a written Federal-State agreement with USDA for the administration of the Program and will be known as a "Summer EBT agency." If more than one Summer EBT agency is named within a State or ITO, a *coordinating* Summer EBT agency must also be named and all other agencies with an agreement with USDA will be *partnering* Summer EBT agencies. Although USDA expects that agencies within a State or ITO will partner effectively in the administration of the Program, USDA has determined that it will be beneficial for each State or ITO with more than one Summer EBT agency to designate a coordinating agency. If only one agency within the State or ITO will be responsible for administering the Program, designation of partnering agencies is not applicable. USDA will work with States to ensure it is appropriate to designate only one agency while still meeting all Summer EBT regulations and requirements. Each State or ITO will decide how Summer EBT responsibilities will be delegated across their administering agencies. To ensure clear roles and responsibilities, the Summer EBT agencies within a State or ITO must enter into an inter-agency written agreement that defines the roles and responsibilities of each, as well as the administrative structure and lines of authority. USDA suggests that States and ITOs evaluate their resources and capabilities, and consider administrative and cost efficiency, the customer experience, program integrity, and their previous Summer EBT and/or P-EBT experiences when determining how to structure their program's administration. For the purpose of this interim final rule and Summer EBT regulations codified at 7 CFR part 292, the term 'Summer EBT agency' refers to all agencies within the State or ITO that have an agreement with USDA to administer the program unless the coordinating or partnering agency is specified. For example, § 292.13(a) requires the Summer EBT agency to make a Summer EBT application available to households with children enrolled in NSLP or SBP-participating schools. The regulations require that this activity is completed, and the coordinating and partnering Summer EBT agencies will determine how the responsibility is delegated within the State or ITO.

Coordinating Summer EBT agencies will be the primary point of contact for the State or ITO's Summer EBT program. There may be situations in which USDA communicates directly

with designated contacts at the partnering agency on issues more relevant to that agency. Nevertheless, the coordinating agency will be USDA's first point of contact for most issues and should be included on all communications between USDA and the partnering agency. It is the State or ITO's discretion whether the partnering agency must be included on communications between USDA and the coordinating agency. The coordinating agency will also be responsible for the complete and timely submission of any required plans, forms, or reports for the Program as a whole including, but not limited to, interim and final plans for operations and management, notices of intent, and routine reporting to FNS. The coordinating agency does not need to complete or submit all required submissions directly to USDA. In some cases, it may be more efficient for the partnering agency to send a report it generates directly to USDA, and such an arrangement would be acceptable. The role of the coordinating agency with regard to reporting is to track the State or ITO's progress to ensure plans, forms, and reports are submitted timely and accurately, or communicate with USDA to request technical assistance or negotiate an alternative timeline for submission. The coordinating and partnering Summer EBT agency are each responsible for their respective activities as outlined in the written agreement with FNS, as well as the effective and efficient administration of the Program in accordance with all program requirements.

Accordingly, this delegation of responsibilities is codified at 7 CFR 292.3

2. Authority To Waive Statute and Regulations

Section 12(l) of the NSLA, 42 U.S.C 1760(l), provides the Secretary with the authority to waive program requirements for States or eligible service providers if it is determined that the waiver would facilitate the ability of the States or eligible service provider to carry out the purpose of the Program, and the waiver will not increase the overall cost of the Program to the Federal Government. This waiver authority applies to statutory requirements under the NSLA or the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) and any regulations issued under either Act. The Secretary does not have the authority to waive certain requirements including, but not limited to, the nutritional content of the meals served, Federal reimbursement rates, or the enforcement of any statutory right of any individual. In

addition, the Secretary may not waive program requirements that originate in other laws such as the Civil Rights Act of 1964.

The waiver authority at section 12(l) of the NSLA, 42 U.S.C 1760(l), does not provide the Secretary with the authority to waive program requirements for ITOs. To provide flexibility for ITO Summer EBT Agencies, this rule establishes that the Secretary may waive or modify specific regulatory provisions for the ITO Summer EBT Agency.

Accordingly, this rulemaking codifies USDA's authority to waive statutory and regulatory requirements for State Summer EBT Agencies at 7 CFR 292.3(f) and regulatory requirements for ITO Summer EBT Agencies at 7 CFR 292.3(g).

Subpart B—Participant Eligibility

i. General Purpose and Scope

Summer EBT is intended to reduce hunger and food insecurity among eligible children who lose access to meals during the summer when school is not in session. Eligibility is addressed in the NSLA at sections 13A(c)(1), 13A(h)(2), and 13A(f)(4), but in general, children are eligible for Summer EBT benefits if they are determined to be income-eligible for free or reduced price meals based on annual income eligibility guidelines for school meal programs published in the **Federal Register** and are enrolled at an NSLP/SBP school, or if they are categorically eligible, as defined in this IFR, and school aged, as defined by State law.

This IFR establishes a new subpart B in 7 CFR part 292 that codifies eligibility requirements for participants. The provisions in this subpart apply to States and ITOs unless otherwise noted.

ii. Eligibility

Children eligible for Summer EBT include those who, at any point during the *period of eligibility*, are:

- School aged as defined by State or ITO law and *categorically eligible*; or
- Enrolled in an NSLP/SBP-participating school, other than a special provision school, and
 - *Categorically eligible*;
 - Meet the requirements to receive free or reduced price meals, as determined through an NSLP/SBP application;
 - Otherwise determined eligible to receive a free or reduced price meal; or
 - Determined eligible through a Summer EBT application.
- Enrolled in a special provision school, and
 - *Categorically eligible*;
 - Meet the requirements to receive free or reduced price meals, as

determined through an NSLP/SBP application; or

- Determined eligible through a Summer EBT application.

Accordingly, this rulemaking codifies 7 CFR 292.6 which establishes the requirements for eligibility for children for Summer EBT.

iii. Period To Establish Eligibility

Broadly, eligibility for Summer EBT is based on the income eligibility guidelines for free or reduced price meals. Local education agency (LEAs) that operate the NSLP/SBP can begin the process of certifying student eligibility for free or reduced price school meals on or after July 1 of each school year. Therefore, Summer EBT eligibility can also be established from July 1 of the prior instructional year through the last day of the summer operational period. The income eligibility guidelines are updated annually on July 1 and income guidelines applicable at the time the application is submitted will be used to determine eligibility. NSLP and SBP regulations also stipulate that eligibility determinations for free or reduced price school meals are effective from the date the eligibility is established through the last day of the school year. Once a child is deemed eligible for school meals through direct certification or an application, they may receive free or reduced price meals for the entire school year. Children that had an individual eligibility determination for school meal benefits during the immediately preceding instructional year will have their eligibility automatically carried forward into the summer operational period and no further action is required for families to receive Summer EBT benefits. In other words, for Summer 2024, a child who meets the eligibility criteria anytime from July 1, 2023, through the end of a State or ITO's Summer operational period in 2024, is eligible for benefits. For example, if a child was enrolled in SNAP early in the instructional year (e.g., in October 2023), that child would be eligible for Summer EBT during the summer of 2024. Another example is if a household is deemed eligible by application in August, the child may receive full benefits for that summer. This reduces paperwork for families and ensures children are offered critical nutrition assistance year-round.

Eligibility determinations made during the immediately preceding instructional year for school meals result in Summer EBT eligibility and no further action is required for families. This reduces paperwork for families and ensures children are offered critical

nutrition assistance year-round. Consistent with policy for the NSLP and SBP, households are not required to report changes in circumstances during the instructional year or summer operational period, but a household may voluntarily contact the Summer EBT agency or LEA to report any changes in income, household composition, or program participation that would change eligibility for Summer EBT.

Accordingly, this rulemaking codifies 7 CFR 292.7 which establishes the period to establish eligibility for the Summer EBT Program.

Subpart C—Requirements of Summer EBT Agencies

This IFR establishes a new subpart C in 7 CFR part 292 that codifies requirements for Summer EBT agencies. These requirements apply to State and ITO Summer EBT agencies unless otherwise specified.

i. Program Plan for Operations and Management

The NSLA requires each State or ITO desiring to participate in Summer EBT to notify USDA through the appropriate regional office by January 1 of each year of its intent to administer the Program and, by February 15, to submit for approval a management and administration plan for Summer EBT. ITOs will follow the same requirements as States, except when differences in program administration require different planning for operations and management. For example, as explained below, ITO Summer EBT agencies will need to include information about supplemental foods in their plans.

The statute requiring management and administration plans applies to Summer EBT and the SFSP. In the SFSP, this plan is commonly referred to by the acronym MAP. For the purposes of Summer EBT, this plan will be called a Plan for Operations and Management (POM). The POM must address the State or ITO's Summer EBT Program as a whole, even if more than one agency participates in program administration. Although POM requirements for Summer EBT are codified in the same provision of the NSLA as SFSP MAP requirements, Summer EBT plans require coordination between administering agencies, which could make it difficult to also coordinate development of a single plan with the SFSP-administering agency. To ease plan development, States are not obligated to coordinate their POM and MAP submissions and may submit a POM that is specific to Summer EBT.

A POM is a planning tool that provides the opportunity for USDA to

work with Summer EBT agencies on planning, funding training, technical assistance, and monitoring. The POM is also an opportunity for State Summer EBT agencies and ITO Summer EBT agencies to solidify their plans for coordination regarding benefit issuance and the detection and prevention of dual participation, as further described in 7 CFR 292.9 and 292.15(d). POMs detail how the State or ITO will structure its program to make the best use of State, ITO, or local-level resources. The POM also broadly describes a State or ITO's administration of the program including: an administrative budget; a copy of the written agreement detailing the roles and responsibilities of each partnering agency, if applicable; plans for cooperation between State-administered and ITO-administered programs, if applicable; participation estimates; details on enrollment processes and the issuance process and cycle; program integrity controls; and plans for customer service support. For both States and ITOs, the POM will serve as an essential tool to lay out plans and procedures to enroll eligible children and to detect and prevent dual participation, including children receiving multiple allotments from the same State or ITO-administered program, and children receiving benefits from more than one State or ITO-administered program.

Some States and ITOs have indicated that January 1 and February 15 are too late in the Summer EBT planning and implementation process for these activities to occur without negatively impacting Program operations. Summer EBT agencies may need to begin planning for Summer EBT as early as the preceding summer and would benefit from early POM approval. In addition, USDA will use POMs to forecast the amount of funding needed to cover benefit and administrative costs for the program year. Accordingly, USDA is modifying the timing of plan submissions to facilitate the Summer EBT agency's ability to enact its plans in a timely manner and support USDA's budgeting process. Therefore, this rule requires Summer EBT agencies, working cooperatively when more than one agency will administer the Program within a State, to provide notification and submit an interim POM to their respective regional office by August 15 of each year for the following program year. The interim POM must include the Summer EBT agency's forecasted program participation, anticipated administrative funding needs as part of an expenditure plan and other

programmatic information required in the POM to the extent that such information has been determined at the time of submission. USDA is aware that Summer EBT agencies may not yet have final participation numbers or budget estimates at that time; therefore, the information included in the interim POM should be the Summer EBT agency's best estimates and are subject to revision as more information becomes available. Approval of an interim POM is prerequisite for a Summer EBT agency to draw down Federal funds to cover USDA's fifty percent share of administrative costs. An approved interim POM also provides information to aid USDA's budget process and offers an opportunity for the regional office to provide technical assistance on the development of a final POM, if needed.

Summer EBT agencies must submit a final POM to their respective regional offices by February 15 of each year. The final POM must address all POM requirements, as detailed in § 292.8(e) and (f), if applicable, and described above, and should reflect the State or ITO's final plans for that summer's operations. Approval of a final POM is prerequisite for a Summer EBT agency to draw down Federal food benefit funds. USDA understands that some Summer EBT agencies may want to submit and receive approval for their final POM earlier than February 15. A final POM may be submitted in lieu of an interim POM by the August 15 deadline for interim POM submissions.

USDA will provide a response to each interim or final POM within 30 calendar days of receipt. If the POM submitted is not approved, the Summer EBT agency and USDA will collaborate to ensure changes to the POM, in the form of revisions or amendments, are submitted so the interim or final POM can be approved as expeditiously as possible following the initial submission. At any time after approval, the Summer EBT agency may amend an initial or final POM to reflect changes in its program operations. To do this, the Summer EBT agency must submit to USDA for approval revisions or amendments signed by the State or ITO-designated official responsible for ensuring the Program is operated in accordance with the POM. USDA recognizes that it will take time for States and ITOs to develop and refine their POMs in the initial years of implementation. The Department will work with Summer EBT agencies to develop plans that meet the respective submission dates and finalize those plans after those dates, if necessary.

The POM is the avenue through which Summer EBT agencies will

annually submit their administrative budget and information sufficient for USDA to estimate benefit costs for the coming year. This administrative budget will identify all costs that will be allocated among the Summer EBT agencies, as appropriate. The coordinating Summer EBT agency and any partnering Summer EBT agencies may submit separate requests for 50 percent funding for administrative expenses, as described in 7 CFR 292.20, for the convenience of receiving funds without the need to transfer money between Summer EBT agencies. However, the budget submissions must be coordinated and submitted together in a single interim and final POM (with one expenditure plan for each agency that requests administrative funds from USDA) to ensure the budgets are consistent with overall program operations and the required cost allocations are maintained. Summer EBT agencies will submit an expenditure plan along with the POM for State expenditure planning. Once the POM is approved, Summer EBT agencies will report their incurred administrative expenses on a financial status report and draw 50 percent of Federal administrative funding accordingly, on a quarterly basis.

Because Summer EBT benefit funds will be provided as a grant, USDA will need to know the amount each Summer EBT agency expects to spend in order to provide sufficient funds on a letter of credit for the Summer EBT agency that will receive the benefit funds. USDA will use the projected participation included in the interim POM to calculate the amount of benefit funding needed. USDA anticipates that more accurate participation estimates will be included in the final POM. However, participation estimates in the initial years of implementation may differ from actual participation as Summer EBT agencies hone their programs. In the event that participation exceeds estimates, Summer EBT agencies may work with their respective regional offices to request an increase in their grants to cover all benefit expenses.

The POM is also the vehicle for Summer EBT agencies to tell USDA about their plans for benefit issuance. In the POM, Summer EBT agencies must provide the start and end dates of their summer operational periods, the dates on which benefits will be issued and when benefits will be expunged, and other information about the timing and process for providing benefits to eligible households.

Summer EBT agencies will also use the POM to describe their customer service plans. Although Summer EBT

Program implementation will be a partnership between agencies in most cases, Summer EBT must be a unified program from the perspective of participants. USDA heard from stakeholders that households participating in P-EBT lacked a clear understanding of how the program was administered and where to turn for assistance, which was frustrating for households and a barrier to access for eligible children. To correct this problem, all Summer EBT customer service plans must include a single point of contact for all customer service information and inquiries, including a telephone hotline and website. In addition, the customer service plan must communicate how households can opt out of participating in the Program.

The Summer EBT demonstration projects provide insight on how States and ITOs may meet this customer service requirement. All grantees that administered the Summer EBT demonstrations provided households with a help desk phone number to call with questions about Summer EBT. Some grantees hired temporary staff for their help desk, while others contracted out their help desk services. Grantees often made changes to their help desk operations to better suit the needs of participants. For example, some grantees had Community Based Organizations or familiar local liaisons run their help desks. Other grantees expanded the hours of availability for their help desk.⁸

ITO Summer EBT agencies will be required to provide information in their POMs about program administration that is specific to their model of operating the Program and issuing benefits. Each ITO Summer EBT agency must include their service area, including a map or other visual reference aid in their POM. For purposes of Summer EBT, *ITO Service Area* refers to the geographic area served by an ITO Summer EBT agency. In WIC and the Food Distribution Program on Indian Reservations (FDPIR), ITO service areas have typically included reservations, or specific Tribal lands in Oklahoma. FNS expects that ITOs will continue to use existing Tribal service areas for the purposes of Summer EBT. However, if an ITO wishes to serve children in areas beyond typical WIC or FDPIR service areas, potentially including other Tribal areas, FNS will work with the ITO to modify the service area, as appropriate and only applicable to Summer EBT. The POM will also

⁸ Abt Associates, (2020). Summer Electronic Benefit Transfer for Children, 2015–2018 (expected in early 2024).

address the ITO's plans and procedure for identifying and enrolling eligible children.

An ITO Summer EBT agency's POM must also include a description of the benefit delivery model to be used (*i.e.*, a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model) and must also provide the list of supplemental foods which participants can purchase upon enrollment in the Summer EBT Program. Specifications for supplemental foods are included in 7 CFR 292.19(a)(3). Because WIC vendors are authorized by WIC agencies, the POM must also address how the ITO Summer EBT agency will support and monitor WIC vendors, so they are able to support Summer EBT purchases.

USDA's intent is for the POM to be an operational blueprint to secure funding, document programmatic administrative decisions, provide participation and funding projections, and strategize for how to strengthen program integrity. It will also be an opportunity for Summer EBT agencies and USDA to collaborate to identify innovations and address programmatic challenges or improvements. USDA invites comments on the extent to which the POM requirements codified in this rulemaking are meaningful and useful, and if there are other operational aspects that should be addressed in the POM. USDA also requests comments on the deadline for submitting the POM to USDA, recognizing that early POM submission is needed for Federal financial planning, but the submission date must also be practical for Summer EBT agencies.

Accordingly, this rulemaking codifies 7 CFR 292.8 which establishes the requirements for Summer EBT agency submission of the plan for operations and management (POM) for Summer EBT.

ii. Coordination Between State-Administered and ITO-Administered Summer EBT Programs

While State and ITO-operated Summer EBT programs will differ operationally, the programs may operate in close geographic proximity. Accordingly, this IFR details how State and ITO-operated Summer EBT programs must coordinate and communicate to ensure efficient and timely service to eligible individuals, and prevent duplicative issuance of benefits.

The ITO Summer EBT agency must receive priority consideration to serve eligible children within its service area, as identified in its FNS-approved POM. This means that children from the ITO's

service area who can be enrolled through streamlined certification (as described in section C iv of this preamble) will automatically be enrolled in the ITO-administered Summer EBT Program, to the maximum extent practicable. However, children from ITO service areas may opt to participate in the State-operated program and opt out of the ITO-operated program if they so choose. This approach ensures that ITO-administered Summer EBT Programs are the default choice for households in their communities. Because the majority of children will be enrolled through streamlined certification as described in 7 CFR 292.12(d) and no action will be required on the part of the household, ITOs would have a significant disadvantage if children in their service areas were automatically enrolled in the State-administered Summer EBT Program. ITOs would need to expend significant time and resources educating households about their benefit and how to opt into the ITO's Program. This burden runs contrary to the simplified implementation achieved through streamlined certification. Providing priority consideration to ITO Summer EBT agencies will allow them to serve their communities with minimal burden while also providing households the choice to opt into the State-administered Program if that is their preference.

An ITO and a State Summer EBT agency serving proximate geographic areas must generally ensure the coordination of Summer EBT program services, and this coordination may include a written agreement between both parties. In the event that the geographic State is not yet operating a Summer EBT Program, the ITO will coordinate with the State's designee. If an ITO's service area crosses geographic State boundaries, the ITO and each applicable Summer EBT agency, or designee of a State covering the geographic area(s) served by the ITO, must coordinate services. A key part of State and ITO coordination relates to the timely transfer of student eligibility information from the State Summer EBT agency to the ITO Summer EBT agency. The State Summer EBT agency must share student data with the ITO, including student eligibility status and contact information of children deemed eligible within the ITO's service area. The State Summer EBT agency must provide this information in a manner and timeframe that will allow the ITO Summer EBT agency to issue benefits timely. The Summer EBT agency must ensure the confidentiality of all student

data exchanged that is applicable to Summer EBT program eligibility and dual participation; and data must only be used for program purposes consistent with 7 CFR 292.12(c)(2).

Another key part of State and ITO coordination relates to program choice for eligible children in ITO service areas. While the ITO Summer EBT agency will receive priority consideration to serve eligible children within its service area, eligible households may choose the Summer EBT program (ITO or State-operated) in which they will participate. To facilitate choice, the ITO Summer EBT agency and the State Summer EBT agency must notify eligible children or households that they may choose to receive Summer EBT program benefits from *either* the State or the ITO Summer EBT agency. Both agencies must also provide referral information to the alternative program upon a child or household's request, thereby facilitating household choice. Households in the ITO's service area must be informed of the different ITO and geographic State programs and should be encouraged to fill out a Summer EBT application either through the ITO or geographic State, depending on their choice, or a jointly-offered application that allows the household to indicate which program is preferred. Regardless of which program an eligible household opts into (State-administered or ITO-administered), the household must opt into that program for the *entire* summer operational period and may not switch programs mid-summer.

With individual and household choice in place, children living in or near an ITO service area could erroneously receive benefits from the State and ITO-administered program, which would constitute dual participation and is prohibited. Thus, State and ITO Summer EBT agencies must coordinate to detect and prevent dual participation in the same summer operational period where service areas overlap. Additional information on dual participation is located in 7 CFR 292.15(d).

USDA seeks public comments on how the Department can facilitate the coordination and agreement process with ITOs and State agencies.

iii. State Systems Advance Planning Document Process

The Handbook 901 Advance Planning Document (APD) process is a series of successive steps through which SNAP and WIC State agencies obtain prior Federal approval of and Federal financial participation (FFP) in automation projects supporting FNS programs. This generally includes all

eligibility system and Electronic Benefit Transfer (EBT) projects. FNS' primary focus in its oversight of State systems is to ensure the responsible stewardship of Federal funds used to carry out the mission of increasing food security through its domestic nutrition assistance programs.

For the purposes of Summer EBT, this rulemaking requires States and ITOs to adhere to the APD process for EBT projects. To implement Summer EBT, States and ITOs will likely need to build new or modify existing eligibility systems. Although SNAP agencies and WIC ITOs may need to make some modifications to their eligibility systems to support Summer EBT, it is expected Child Nutrition Program (CNP) agencies will need to make more significant system changes in order to collect and manage data not currently collected at the State level in Child Nutrition Programs. FNS has not historically used the APD process for CNP eligibility systems and the Agency has determined that adding APD requirements for CNP agencies would take more time and planning than is available. Therefore, the APD process for Summer EBT will only apply to EBT systems development, and Summer EBT eligibility systems that are part of existing SNAP or WIC eligibility systems currently subject to the APD process. USDA will consider extending the APD process to CNP systems if it is determined that the APD process will support effective and efficient CNP systems development. USDA invites comments on the APD process for Summer EBT and the benefits and challenges of adding APD requirements for CNP agencies.

As noted in the definitions section of this preamble [subpart A of this rulemaking], this rulemaking codifies several definitions related to the APD process including: Advance Planning Document for project planning or Planning APD (APD or PAPD), Advance Planning Document Update (APDU), Enhancement, and Implementation Advance Planning Document or Implementation APD (IAPD). These definitions largely match how these terms are defined in SNAP regulations with the exception that they are modified to limit the applicability of Summer EBT APD requirements to EBT systems. Recognizing that ITOs are more familiar with the APD process that exists for WIC EBT and Management Information systems (MIS), the APD section includes language for ITOs that is more aligned with the WIC regulations.

In accordance with these new requirements, Summer EBT agencies

must adhere to the APD process as prescribed by appropriate FNS directives and guidance (e.g., FNS Handbook 901) and in this Part as a condition for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of Information System (IS) equipment and services used in the administration of the Summer EBT Program. APD requirements for Summer EBT may be included in existing APDs developed for SNAP or WIC EBT services or may be a separate APD specific to Summer EBT services.

Accordingly, this rulemaking establishes 7 CFR 292.11 which extends the APD process to Summer EBT agencies to for the development of EBT and eligibility systems operated by SNAP agencies and WIC ITOs.

iv. Enrolling Eligible Children

Broadly speaking, children eligible for Summer EBT are those who are eligible for free or reduced price school meals. See subpart B of this preamble for the definition and a discussion of Summer EBT eligibility. The statute includes specific requirements related to how State Summer EBT agencies must enroll children who are eligible for Summer EBT benefits, which are codified in subpart C of this rulemaking. Consistent with the statute, USDA can work with ITO Summer EBT agencies to modify enrollment requirements, if needed, to enable an ITO to meet the requirements to the maximum extent practicable, as indicated in 7 CFR 292.12. USDA has identified elements of the enrollment process that could pose challenges for ITOs and, as necessary, USDA will work with ITOs on a case-by-case basis to approve alternative implementation approaches that will achieve the same or similar outcome as the corresponding regulation. These elements are noted in their respective sections below.

The statute specifies that Summer EBT agencies must enroll children automatically, without further application when they are able to be directly certified, are an identified student, or otherwise determined by the SFA to be eligible for free or reduced price meals. This type of automatic enrollment (*i.e.*, enrollment that does not require a household to actively apply for benefits) will reduce burden on households of children who may be identified as eligible using existing administrative data. For the purposes of Summer EBT, means-tested program data for streamlined certification does not need to be matched with school records so long as the child was of

school-age during the *period of eligibility*, as defined in 7 CFR 292.2. The result is a simplified process that allows the Summer EBT agency to issue benefits to children based on their individual certification for free or reduced price school meals from the immediately preceding school year, or income eligibility and age, without the need for matching with school records. This process is detailed below in Subsection 2, *Streamlined certification*. The following text of subpart C applies to State and ITO-administered Programs. Eligibility for Programs administered by a Territory is discussed in subpart B.

v. Database for NSLP/SBP Enrollment

During USDA-hosted listening sessions with State SNAP and Child Nutrition agencies, and at the School Nutrition Association's Annual National Conference, agencies and stakeholders provided feedback that a State or ITO-level database with school meal enrollment data would help to facilitate the data sharing and enrollment processes. In addition, a State or ITO-level database could be used to detect and prevent duplicate benefit issuance and increase data integrity across the Summer EBT program. However, without a Federal requirement, Summer EBT agencies may have difficulty implementing such a database on their own. Therefore, by 2025, Summer EBT agencies will be required to establish and maintain a State- or ITO-wide database of children who are enrolled in NSLP- or SBP-participating schools within the State or ITO service area, as applicable, for the purposes of enrolling eligible children for Summer EBT efficiently and with integrity. This delay in implementation until 2025 gives Summer EBT agencies time to acquire the funding and for database development; however, USDA welcomes comments on the implementation timeline. Also, USDA recognizes that many States already have statewide databases that they can repurpose. For States that will need to build one, FNS is exploring possible funding sources to help cover the costs of these initial investments. USDA is also prepared to provide technical assistance and support, as needed, and help States and ITOs develop low-tech and/or low-cost solutions that work within the State or ITO's budget and capabilities. ITOs may have different resources or needs that prevent them from establishing an ITO-wide database or that make a database impracticable or not needed for effective program administration. If an ITO, in consultation with USDA, determines

that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children, the ITO may submit for USDA approval alternate plans for how to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance.

The database will include, at a minimum, a child's name, date of birth, school or district where they are enrolled, mailing address, their individual free or reduced price eligibility status (as applicable),⁹ and any other information needed to issue benefits timely. Summer EBT agencies must ensure the confidentiality of all such data, and the data must be used only for the purposes of the Summer EBT Program, or for the purpose of use or disclosure to provide other social service benefits to eligible children. Additionally, State Summer EBT agencies must make the data available to any applicable ITO Summer EBT agencies for children within an ITO's service area in a timeframe that allows the ITO Summer EBT agency to issue timely benefits.

USDA invites comments on the minimum data elements that are necessary to confirm NSLP/SBP enrollment, and to detect and prevent duplicate benefit issuance within and across States and ITOs. Additionally, USDA invites comments on the timing of database updates and file transfer to the EBT processors in order to issue benefits on time.

Accordingly, the requirement for Summer EBT agencies to establish and maintain a State or ITO-wide database is codified in 7 CFR 292.12(c).

vi. Streamlined Certification

To support efficient enrollment of eligible children, the statute establishes a process that requires Summer EBT agencies to provide benefits to children who already have an individual eligibility determination for the school meal programs under the procedures at 7 CFR 245.6 or who can be identified as income-eligible through administrative data at the State level without the need for further data matching. The statute refers to the latter group as children who are "able to be directly certified." In the school meal programs, under 7 CFR 245.2, direct certification means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local

agency or individuals authorized to certify that the child is a member of a household receiving assistance under SNAP, as defined in this section; is a member of a household receiving assistance under FDPIR or under the TANF program, as defined in § 245.2 is a Foster child, Homeless child, a Migrant child, a Head Start child and a Runaway child, as defined in § 245.2.

The process used to certify these children as eligible for free or reduced price school meals involves data sharing between State and/or local agencies administering those assistance programs with the State and/or local agencies administering the school meal programs. This information is then matched against NSLP-participating school enrollment lists. Positive matches confer student-level eligibility for free or reduced price school meals.

For Summer EBT, a similar process will be used and will be referred to as "streamlined certification" or "SC". Each State's SC process will look different based on their unique operations. The following steps describe one possible method by which SC may be implemented.

1. State or local agencies that administer the school meal programs will share a list of all students who have an individual eligibility determination¹⁰ for free or reduced price meals with the Summer EBT agency that will issue the EBT benefits. Sources of this data include applications for free or reduced price meals that were processed by the LEA, direct certification, or categorical eligibility determinations made at the LEA level. The eligibility database discussed in the previous section will help facilitate the sharing of information for purposes of Summer EBT participation only.

2. The EBT issuing agency will then take participation lists from SNAP and other programs used for directly certifying children for school meals, such as TANF and FDPIR, as well as other means-tested programs that are approved by the Secretary for use in Summer EBT,¹¹ and remove children who are not school aged. School aged is defined as the compulsory age of school

attendance in that State and will be discussed further below.

3. Those lists from Step 2, along with the list of students that have an individual eligibility determination for free or reduced price meals from Step 1 will then be merged, and duplicate entries will be removed.

4. This list of streamlined certified children will be issued Summer EBT benefits without the need to apply.

Consistent with the statute, children who are identified through streamlined certification do not need to be matched against an NSLP/SBP enrollment list prior to issuance if they are school age or already certified for free or reduced price meals in the NSLP/SBP. As a result, some children who are school-age and categorically eligible, as defined in this IFR, but are not enrolled in a school that participates in the NSLP or SBP, will be issued Summer EBT benefits. These children are eligible for Summer EBT benefits as long as they are school-aged during the period of eligibility. USDA anticipates that this will be a very small percentage of eligible children.¹²

The compulsory age of school attendance aligns with individual State or ITO requirements for school enrollment. Issuing benefits to all children of compulsory school age who can be streamline certified aims to simplify the identification of students who are school aged. However, eligible children younger or older than the compulsory age of attendance who attend an NSLP/SBP school will still be enrolled in Summer EBT through school-level data or, if their eligibility for Summer EBT has not already been established, using a Summer EBT application. USDA recognizes that there may be other effective methods of identifying eligible children through streamlined certification using means-tested program data available at the State or ITO-level. USDA invites comments on other approaches to define the age range for children who can be streamline certified using State or ITO-level data. Specifically, how many eligible children attend NSLP/SBP schools who are below or above the compulsory age of school attendance? Are there specific technical barriers that prevent these children from being enrolled in Summer EBT using school-level data or Summer EBT applications? What is the actual age range for NSLP/SBP school attendance in a State or ITO? How many children in that range

¹⁰ The free or reduced price status must be for the instructional year immediately preceding the summer operational period.

¹¹ Summer EBT agencies that would like to use additional programs, such as Medicaid, to identify and issue benefits to eligible children through SC must include them in the POM, along with a detailed justification for how the program's eligibility standards and certification processes provide assurance that participating children also meet the school meal eligibility standards.

¹² Ranalli, Dennis, Templin, Joe, & Applebaum, Maggie, (2021). Direct Certification in the National School Lunch Program, State Implementation Progress Report to Congress, School Year 2017–2018 & School Year 2018–2019.

⁹ The free or reduced price status must be for the instructional year immediately preceding the summer operational period.

do not attend an NSLP/SBP school? Do these children attend other institutions operating year-round, such as year-round childcare programs?

In summary, through the SC process, States and ITOs will be able to issue benefits to a significant portion of eligible children using only data that are already available at the LEA, State, or ITO level. USDA anticipates the SC process will reduce burden on States and ITOs and make the process of enrolling children more efficient.

As noted above, ITOs participating in Summer EBT must, to the maximum extent practicable, meet the requirements of this section. If an ITO, in consultation with USDA, determines that any element of automatic enrollment with streamlined certification is not feasible or is unnecessary based on available resources, the ITO may submit for USDA approval alternate plans for how to efficiently enroll children with minimal burden for households.

Accordingly, this subsection codifies requirements for the streamlined certification process at § 292.12(d).

2. Applications

The statute requires Summer EBT agencies to make an application available to children enrolled in NSLP and/or SBP-participating schools who have not been certified through the SC process. In other words, children enrolled in an NSLP/SBP school who do not have individual eligibility determinations during the period of eligibility for Summer EBT must submit a Summer EBT application and be determined eligible in order to participate in the Program.

Summer EBT applications are ultimately the Summer EBT agency's responsibility. Recognizing that Summer EBT agencies may need operational flexibilities as they launch their programs, in Summer 2024 only, Summer EBT agencies may compel LEAs to process Summer EBT applications; however, any costs incurred by LEAs attributable specifically to processing Summer EBT applications must be fully reimbursed by the Summer EBT agency. Starting in 2025, Summer EBT agencies may not delegate to LEAs the responsibility of making a Summer EBT application available. However, a Summer EBT agency may contract with another entity into order to fulfill this requirement, including with LEAs. USDA recognizes that States and ITOs do not currently handle school meal applications and will not immediately have the systems and processes needed to process Summer EBT applications. Therefore,

the State or ITO-level application will not be required until 2025, allowing time for States and ITOs to develop an application. To also provide relief in the initial year of Summer EBT implementation, USDA is allowing flexibility in the contents of the application for Summer EBT, which is discussed in detail below. Additionally, the Summer EBT agency may establish a system for executing household applications electronically and using electronic signatures provided that the electronic application meets the same requirements as paper applications. If the application is made available electronically, a paper version must also be available.

Since Summer EBT applications could be accepted and processed by an entity other than the LEA where the child is enrolled, they must be matched against an NSLP/SBP enrollment list prior to benefits being issued to ensure the child is eligible as defined in 7 CFR 292.5 and 292.6. Matching against NSLP/SBP enrollment lists is not required for children who were approved for school meal benefits with an NSLP/SBP application. These children are streamline certified for Summer EBT benefits and do not need to be matched against an NSLP/SBP enrollment list prior to issuance, as their eligibility determination originated from the NSLP/SBP participating school where they are enrolled. In the case of households that move mid-summer, those children may have already been issued benefits in their previous State through streamlined certification. If they are a household that needs to apply through a Summer EBT application, they should apply in the State where they finished the prior school year because Summer EBT agencies are required to match against prior school year NSLP/SBP enrollment lists before issuing benefits. An application submitted in a State where the household recently moved would come up negative in a school enrollment check. SNAP benefits are interoperable, which means they can be used in any SNAP-authorized retailer in the United States regardless of where they were issued, so households can use the benefits issued by their previous State of residence. States must communicate to households in their Program materials informing them that, if they plan to move or have recently moved, they will be issued benefits in the State where their child(ren) completed the most recent school year. In order to minimize duplicate participation, the self-attestation statement on the Summer EBT application must include language

affirming that the applicant is not already receiving Summer EBT benefits in another State or ITO. FNS will work with ITOs to determine the best way to convey eligibility and use of benefits for children enrolled in an ITO program who move during the summer.

The statutory requirement to provide an application for children who are not otherwise certified is in reference to children enrolled in an NSLP/SBP school, *e.g.*, children enrolled at standard counting and claiming NSLP/SBP schools who have not completed an NSLP application and are not directly certified, and children enrolled at special provision schools who are not directly certified. Therefore, applications are limited to children enrolled in NSLP/SBP schools. Summer EBT applications cannot be used as a means of establishing Summer EBT eligibility for children not enrolled in an NSLP/SBP school.

Further, Summer EBT applications must be available to households of children enrolled in NSLP/SBP schools during the entire summer operational period. Children enrolled in an NSLP/SBP school who become eligible during the summer or failed to apply before the end of the school year, must have an opportunity to establish their eligibility by completing an application. Summer EBT agencies are permitted to encourage applications to be submitted before the last day of the summer operational period. For example, in communications to households, Summer EBT agencies would be permitted to say, "In order to receive Summer EBT benefits for this summer, please submit your application no later than August 1st." However, eligible households that submit applications on or before the last day of the summer operational period, must be issued Summer EBT benefits no later than 15 operational days after submission. USDA recognizes that, in these limited cases, benefits will be issued after the summer operational period has ended. Households will not be permitted to apply, and therefore will not be approved for benefits, after the last day of the summer operational period.

Given that the income eligibility criteria for Summer EBT is the same as for school meal programs, applications for Summer EBT will largely need to collect the same information as applications for those programs. Summer EBT applications should be clear and simple in design, but must meet a minimum set of standards, as outlined below.

Per 7 CFR 292.13(i), all Summer EBT applications must:

- Be in an understandable and uniform format and to the maximum extent practicable, in a language that parents and guardians can understand;
- Require the income received by each household member identified by source of income;
- Require applicants to provide the names of all household members for whom application is made, including children;
- Contain space for applicants to indicate a categorical eligibility status or provide existing case numbers associated with participation in other Federal programs (SNAP, TANF, FDPIR, etc.);
- Be signed by an adult member of the household;
- Require the name of the school where the child(ren) is/are enrolled;
- Contain space for the household's mailing address;
- Contain the use of information statement, categorical eligibility statement, and information disclosure statement;
- Contain space for the adult household member signing the form to attest that the information is true and accurate;
- Contain the USDA nondiscrimination statement; *and*
- Contain space for optional collection of information on race and ethnicity of applicants.

The requirements above reflect most of the basic requirements for NSLP/SBP applications at 7 CFR 245.6(a)(6), *with the exception of the Social Security Number requirement*. Per section 9(d)(1) of the NSLA, households that complete NSLP/SBP applications are required to provide the last four digits of the Social Security Number of an adult member of the household or an indication that the adult does not have one. However, the statutory provision at 9(d)(1) does not apply to Summer EBT applications. Therefore, it will not be required for Summer EBT applications. An application must also be accepted and processed as complete even if the address field was not completed by the applicant. In the event that no address or an incomplete address is provided, the Summer EBT agency should work with the LEA or other relevant agencies to obtain current contact information for the child and place the card in the mail or arrange another method of delivering the card (e.g., through a school social worker). In addition, Summer EBT agencies are prohibited from requiring documentation from households at the time of application. Documentation of income is only required during the verification process, which is detailed in the next section.

USDA recognizes that many LEAs with special provision schools have identified the need for the type of income information that was formerly collected through NSLP/SBP applications. To meet this need, some LEAs collect alternative income applications. Data collected through alternative income applications serves the same function as NSLP/SBP application data in many special provision schools and is used for purposes not related to the school meal programs, such as determining education funding allocations, and other student benefits. These applications are familiar to households and, in many cases, collect enough information to determine whether the household is at or below the NSLP/SBP reduced price income threshold. States and LEAs that utilize alternative income applications may have already started the application preparation and distribution process for school year 2023–2024, and there may not be sufficient time to modify alternative income applications to accommodate the Summer EBT applications requirements listed above or create a new Summer EBT-compliant application. Therefore, to provide administrative flexibility, in Summer 2024 only, alternative income applications that are currently used in some special provision schools may be used to confer eligibility for Summer EBT if the application allows a Summer EBT agency or LEA to determine whether the household is income eligible. USDA provided early implementation guidance on the use of alternative income applications in 2024 in *SEBT 03–2023, Summer EBT Eligibility, Certification, and Verification*, July 31, 2023. States and LEAs are not required to use their alternative income applications for Summer EBT in 2024 and may utilize existing NSLP/SBP applications, including the USDA Prototype Application for Free and Reduced Price School Meals.¹³ USDA anticipates that providing this flexibility for 2024 will ease implementation burden for those LEAs that have already issued alternative income applications and would otherwise need to ask households to submit an additional application for 2024 Summer EBT benefits. In many cases, LEAs developed and used alternative income applications for purposes other than Summer EBT and the data from those already-collected forms may be used to establish eligibility for Summer EBT in 2024. Therefore, Summer EBT agencies

are not required to reimburse LEAs for expenses routinely incurred in the processing of alternative income forms; the Summer EBT agency is only responsible for new administrative costs that were incurred for the purposes of Summer EBT eligibility. USDA recognizes that the application requirement for children attending CEP schools for children who are not streamlined certified may be challenging for Summer EBT agencies. USDA stands ready to support Summer EBT agencies in the implementation of this requirement, as CEP expansion has continued to be pursued through recent rulemaking.

USDA invites comments on the application requirements of this IFR. Specifically, what challenges will there be with administering the Summer EBT application at the Summer EBT agency level? What are the benefits of processing Summer EBT applications at the Summer EBT agency level?

Consistent with current regulations for the school meal programs, Summer EBT agencies must comply with requirements for the handling of child data including who is authorized to receive eligibility information, and disclosure of eligibility information for Program purposes. This rulemaking also establishes penalties for unauthorized disclosure or misuse of such information.

Accordingly, this rulemaking established requirements for the provision and use of Summer EBT applications at 7 CFR 292.13.

3. Verification

In order to ensure program quality and integrity, Summer EBT agencies must have adequate processes in place to correctly determine the eligibility of children for Summer EBT benefits. Verification of Summer EBT applications will be required as a method to maximize program integrity.

For the purpose of Summer EBT, verification is the process through which applicants using a Summer EBT application are confirmed eligible for Summer EBT benefits by first matching against administrative data, and if not able to be confirmed, by then examining information provided by the applicant. However, as discussed above, the majority of Summer EBT participants will be enrolled through the streamlined certification process and will not be subject to the Summer EBT application verification requirements.

For Summer EBT applications, the verification process will align with the NSLP/SBP approach to verification, which is conducted after the initial eligibility determination of a self-

¹³ Applying for Free and Reduced Price School Meals | Food and Nutrition Service ([usda.gov](https://www.usda.gov))

attested income application. USDA heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State Agencies that implemented P-EBT that the requirement to verify all applications before P-EBT benefits could be issued (often referred to as up-front verification or documentation at time of application) was burdensome for both program administrators and households. Up-front verification requiring household contact and documentation is time-consuming and may delay the issuance of benefits which may result in children not receiving benefits during the Summer. Child Nutrition Programs, like NSLP/SBP and the Child and Adult Care Food Program, do not require up-front household income verification. Rather they require verification of a subset of applications *after* certification. For Summer EBT, Summer EBT agencies will be required to verify three percent of applications, chosen at random after an initial eligibility determination is made. A three-percent sample size for Summer EBT aligns with the sample size required for NSLP/SBP. Although applications that are subject to verification will be processed and an eligibility determination will be made before verification occurs, households selected for verification may not be issued Summer EBT benefits until the verification process is complete and household eligibility is confirmed. This approach strikes a balance by not requiring up-front verification, while also promoting Program integrity by reviewing a sample of applications and delaying release of Program benefits until eligibility is confirmed. If, as a result of verification for cause, a child who has already been issued benefits is determined ineligible for the Program, the Summer EBT agency must stop further benefit issuances, in cases where the Summer EBT agency has chosen to issue benefits in multiple issuances.

For the random, three-percent sample, Summer EBT agencies must base the calculation on the number of approved applications on file as of April 1 during the instructional year immediately preceding the summer operational period. However, Summer EBT agencies are allowed, and encouraged, to conduct verification on a rolling basis. *Rolling verification*, as defined in § 292.14(c), is an operational flexibility also used by LEAs to conduct verification for school meal applications. Rolling verification involves selecting more than one sample, however the last sample must still be selected on April 1, and be equal to 3% of total approved applications received up to April 1. Applications

submitted after April 1 will still be subject to verification for cause, as applicable, but will not be subject to random selection. Summer EBT agencies are strongly encouraged to communicate an application deadline prior to April 1 in order to maximize program integrity, while also limiting administrative burden during the summer months, however as described above, households must not be prevented from applying at any point during the period of eligibility. A letter communicating this to households could say, "In order to receive Summer EBT benefits prior to the start of summer, please submit your application no later than March 1."

Rolling verification is encouraged for Summer EBT because of the longer period of time between when households will likely complete a Summer EBT application (late summer or fall) and when the benefits will be issued (the following summer). Summer EBT agencies that reach out to households selected for verification may be more likely to reach them if the contact is made closer to the date of application when the household's contact information or mailing address is more recent. Additionally, rolling verification may ease the administrative burden associated with the verification process by distributing tasks and responsibilities over a longer period of time. In practice, conducting verification on a rolling basis (e.g., weekly or monthly) helps mitigate a possible rush of document processing and follow-up communications that may occur when sampling and household outreach occur at a single point in time.

In lieu of selecting a three-percent random verification sample, Summer EBT agencies may propose alternative methods for verification that strengthen program integrity and preserve participant access. Alternative approaches must still comply with all other provisions related to applications and verification, including the provisions at 7 CFR 292.14(f) related to procedures and assistance to households, and the restriction at 7 CFR 292.12(e)(4) that prohibits Summer EBT agencies from requiring up front documentation. Summer EBT agencies that intend to propose alternative procedures must include a detailed description of their plan in their POM submission, and proposals are subject to USDA approval.

Additionally, Summer EBT applications (or alternative income applications for Summer 2024) will be subject to verification for cause, a process through which questionable

applications are verified on a case-by-case basis. Questionable applications might include those with conflicting or inconsistent information. For example, if a household submits two separate applications with different information, a Summer EBT agency may choose to verify that application for cause on the basis that the household submitted inconsistent or conflicting information. Also, applications may be verified for cause after the initial application processing, such as when a Summer EBT agency becomes aware of a questionable application after the application is certified. Summer EBT agencies must ensure that verification efforts are applied without regard to race, sex (including gender identity and sexual orientation), color, national origin, age, or disability. Verification for cause is defined in 7 CFR 292.2 and is described in detail in 7 CFR 292.14.

USDA recognizes that getting households to respond to verification requests will be challenging for Summer EBT staff. If households do not respond, they lose their benefits regardless of their true eligibility, and, in subsequent years non-respondents will also need to submit documentation at the time of application in order to be approved for Summer EBT benefits. The Summer EBT agency may, on a case-by-case basis, replace up to ten percent of applications that are randomly selected as part of the verification sample if the Summer EBT agency has knowledge of the applicant that they would be unlikely or unable to satisfactorily respond to the verification request. For example, if a Summer EBT agency has current, reliable data confirming that a household that was selected for verification is experiencing homelessness, they may randomly select a different application to verify instead.

Further, to better capture eligible children and reduce burden associated with verification, Summer EBT agencies must conduct direct verification, as defined in 7 CFR 292.2, prior to contacting the households that are selected as part of the random three (3) percent verification sample. Summer EBT agencies must conduct direct verification activities with the eligible programs defined for the purposes of streamlined certification at 7 CFR 292.12(d) and must also use other sources of administrative data such as State Income and Eligibility Verification Systems (IEVS) data, tax records, wage databases, or other sources available to the Summer EBT agency if approved by the Secretary. Depending on the data source, records may be used to verify income and/or program participation. Data sources that the Summer EBT

agency intends to use for direct verification, along with the description of the process, must be included in the annual POM submission. Applications that are confirmed through the direct verification process should not be contacted for verification.

If an application cannot be confirmed through direct verification, households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number to contact for assistance, and any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. The notice must include a description the type of acceptable information or documents, as well as the date by which they need to respond, and that they may instead request that the Summer EBT agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway. Households must also be informed that failure to cooperate with verification efforts will result in the termination of benefits.

During the verification process, the Summer EBT agency must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, email, or mail, and must be documented. A household will be considered a non-respondent if there was no response, or an incomplete or ambiguous response that does not permit the Summer EBT agency to resolve the child's eligibility for Summer EBT benefits.

Households must also be notified if as a result of verification, they are determined to be ineligible. The notice must include the reason(s) for the determination, notification of the right to appeal and when the appeal must be filed, instructions for how to appeal, and notification of the right to reapply at any time.

For the purposes of both regular verification and direct verification, documentation may indicate participation in an applicable program or income at any point during the period of eligibility. The information provided only needs to indicate eligibility at a single point in time during the period of eligibility, not that the child was eligible at the time of application or verification. Such documentation may include written evidence, information from individuals outside of the child's household who can verify the child's circumstances,

and systems of records. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the Summer EBT agency may use individuals outside of the child's household who can verify the child's circumstances including but not limited to: employers, social service agencies, school officials, and migrant agencies. The Summer EBT agency may also accept a statement from an adult member of the child's household when other forms of documentation are not available. In such a situation, the Summer EBT agency shall annotate the application for such child documenting the basis of verifying the child's eligibility.

USDA stands ready to support Summer EBT agencies in implementing verification procedures so as to limit the number of eligible families that might not receive a Summer EBT benefit as a result of the verification process. Additionally, USDA developed a Verification Toolkit for use by LEAs in the NSLP that may also be useful to Summer EBT agencies conducting verification of Summer EBT applications. The Toolkit contains a collection of resources that LEAs can use in their efforts to improve verification response rates and the overall efficiency of the process. Information on direct verification, including a description of types of direct verification, timing, and guidance on follow up activities is included the Eligibility Manual for School Meals Determining and Verifying Eligibility.

States and ITOs must establish procedures to carry out verification as described in this section and include those procedures in their annual POM submission, as described in 7 CFR 292.8(d)(8). Although ITOs do not currently conduct verification unless they also operate NSLP/SBP schools, USDA has determined that it is appropriate for ITOs to complete the full verification process for Summer EBT. Verification plays a critical role in promoting program integrity and provides information that can help program operators improve their certification process. Many of the steps in the verification process are designed to prevent eligible participants from being denied benefits. As such, ITO-operated Summer EBT programs and program participants will benefit from the ITO Summer EBT agency completing the verification process as prescribed in these regulations. However, USDA recognizes that ITO

Summer EBT agencies will need support conducting verification, particularly in the early years of implementation. The Department will work with ITO Summer EBT agencies to train staff on the verification process, provide guidance materials that are clear and easy to follow, resources to help explain the process to families, and provide ongoing technical assistance to ITO Summer EBT agencies as they develop their verification processes. NSLP schools in the Territories that conduct NSLP verification should continue to do so; there will not be a separate or additional verification requirement for NSLP applications used for eligibility for Summer EBT.

USDA invites comments on the verification requirements of this IFR. Specifically:

- What are the considerations around staffing that USDA should be aware of?
- Is April 1 the best time to select a sample and start verification, both in terms of the timing of when most applications are received, and the process of preparing to issue benefits?
- Are there additional data sources that could be used to conduct direct verification that could limit outreach to households and limit administrative burden?
- Are there alternative approaches to verification that appropriately balance burden and program integrity?
- Does rolling verification increase household response rates?
- Does rolling verification help alleviate administrative burden?
- Should there be different timeframes or requirements for verification, the follow-up activities, and benefit issuance?
- What are the specific criteria that should be used for targeting high-risk applications, and should Summer EBT agencies be required to verify certain high-risk applications for cause?
- How can Summer EBT agencies ensure verification efforts are applied without regard to race, sex (including gender identity and sexual orientation), color, national origin, age, or disability.
- What are the challenges and benefits of verifying applications at the Summer EBT agency level?

4. Notification of Eligibility, Denial, Appeal Rights, and the Ability to Opt-Out

The Summer EBT agency must notify the household of a child's eligibility status. Households with children whose eligibility is established through SC must be notified, in writing, that their children are eligible for Summer EBT and that no application is required. For agencies that administer the school meal

programs, this will be similar to the *Notice of Direct Certification*. Households that establish eligibility through an application must be notified of the child's eligibility determination (or notification must be placed in the mail) by the Summer EBT agency within 15 operational days of receiving a complete application. Summer EBT agencies must also develop a process to enable anyone who has been determined to be eligible for Summer EBT benefits to see that they are eligible and unenroll, or opt-out, of the Program if they prefer. Therefore, the notice of eligibility and enrollment must inform the household how to opt-out if they do not want their child(ren) to receive Summer EBT benefits. Children from households that notify the Summer EBT agency that they do not want Summer EBT benefits should not be issued benefits or must have their benefits discontinued as soon as possible if already issued. Any notification from the household declining benefits must be documented and maintained on file, as required under 7 CFR 292.23, to substantiate any change in benefits. Households that opt out of the Program may contact their Summer EBT agency at any time before the end of the summer operational period to request reenrollment.

The Summer EBT agency must provide written notification to a household denied because their application is not complete or does not meet the eligibility criteria for Summer EBT benefits within 15 operational days of receiving a complete application. At a minimum, the notice to families must include the reason for the denial of benefits, notification of the household's right to appeal the decision, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time. The Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application.

A household wanting to appeal a denied application may do so in accordance with the procedures established by the Summer EBT agency as required by 7 CFR 292.26. Prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

Lastly, Summer EBT agencies must also comply with minimum information requirements for applicants and recipients by informing them of their Program rights and responsibilities. This can be accomplished through whatever means the Summer EBT agencies deem appropriate. All Program informational material must be available in languages other than English, as necessary, including the USDA nondiscrimination statement, and should be provided in alternate formats for individuals with disabilities, as practicable.

Accordingly, this rulemaking establishes 7 CFR 292.12 which outlines the Summer EBT agency's responsibilities for enrolling eligible children, maintaining an enrollment database, certification, applications, verification, notification to households, and appeal rights for households denied benefits.

Subpart D—Issuance and Use of Program Benefits

In this subpart, USDA addresses issuance of Summer EBT benefits by Summer EBT agencies and the use of Program benefits by Program participants. In developing requirements for the issuance and use of Summer EBT benefits, USDA's overall objective is to leverage existing systems and processes, to the greatest extent possible, in order to streamline implementation for Summer EBT agencies and take advantage of proven implementation strategies. However, Summer EBT is different from SNAP, WIC, and school meal programs, and requires unique approaches to implementation, as described below. Sections that specifically apply to ITOs or do not apply to ITOs are so indicated.

i. General Standards

Consistent with section 13A(b)(4)(A), this IFR establishes that Summer EBT benefits may only be issued for use during the summer months, when school is not in session. Summer EBT agencies must receive approval from USDA for any alternative plans for the periods during which Summer EBT benefits may be issued and used by children who are attending a school operating on a continuous school calendar. Summer EBT agencies must include their plans to serve schools operating on a continuous calendar as part of their POM. Timeliness of benefit issuance is addressed in more detail in § 292.15(c)(1)(i) of this rulemaking.

Accordingly, this program's standards for the timing of benefit issuance are codified at 7 CFR 292.15(a) through (c).

1. Benefit Issuance

Summer EBT is a seasonal program that is designed to provide benefits to eligible children during a specific window of time annually. In order to meet the nutritional needs of children when they are out of school, Summer EBT agencies must be able to provide benefits prior to the summer operational period. If a State or ITO chooses to provide all benefits for the summer in a single issuance, the benefits must be available for households to spend before the first day of the summer operational period; when a State or ITO opts for multiple benefit issuances (*e.g.*, monthly), the first issuance must occur before the start of the summer operational period. More information on benefit issuance schedules is included in the *benefit amount* section of this preamble. This is different from P–EBT, where benefits were issued retroactively at the end of eligible periods. The Summer EBT authorizing statute is a part of USDA's permanent operating authority, and USDA and Summer EBT agencies have the opportunity to build this Program from the ground up, allowing time to establish systems and processes that will support timely issuance of summer benefits to children annually. Therefore, USDA expects that Summer EBT agencies will be able to implement Summer EBT timely and with integrity, delivering benefits to children before the first day of the summer operational period so that benefits are available to spend during the summer months when the recipients are not in school and are unable to access school meals. However, if a child's Summer EBT application is selected for verification, that child may not be issued benefits until after verification is complete and eligibility is confirmed.

The Summer EBT agency must establish the date on which benefits will be issued to households within the State or ITO and inform households of this date. Recognizing that students may face food insecurity as soon as school lets out, benefits must be issued and available for participants to spend at least seven calendar days and not more than 14 calendar days before the start of the summer operational period. In other words, Summer EBT agencies should issue and activate cards so benefits are available to spend at least one week before the start of the summer operational period, allowing households sufficient time to purchase food for their children so it will be available to eat on the first day of the summer operational period. Accordingly, this rulemaking includes a requirement that benefits be

issued before the start of the summer operational period. If the Summer EBT agency issues benefits after the summer operational period, a corrective action plan outlining the reasons benefits were not issued in a timely manner and steps the Summer EBT agency will take to ensure timely issuance in the future will need to be submitted to FNS.

USDA understands that some participants will be difficult to reach for a variety of reasons including, but not limited to, outdated contact information, mail to the household is returned as undeliverable, or changes in the child's custody during the summer operational period. Summer EBT agencies should plan their issuance activities to allow enough time to resolve difficult cases and issue benefits to these children timely, to the maximum extent practicable, and work to resolve outstanding cases and issue participant benefits as expeditiously as possible. If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future. However, consistent with § 292.7(a) households have until the last day of the summer operational period to apply for benefits. The Summer EBT agency must process applications and issue benefits within 15 operational days of receipt of the application, as detailed in § 292.12(f)(1). Therefore, Summer EBT agencies are not subject to corrective actions for benefits issued after the end of the summer operational period but within the 15 day window in these instances.

For eligible children who apply too late to be included in the Summer EBT agency's initial benefit issuance, the agency must issue benefits as quickly as possible but not later than 15 operational days after a complete application is received by the Summer EBT agency so that recipients have the opportunity to use their benefits to purchase food in the summer. This means EBT cards and PINs, if applicable, must be placed in the mail before the end of the 15th operational day. USDA recognizes that this is a shorter timeline than the 30 day issuance requirement in SNAP; however, Summer EBT benefits have a shorter period during which they can be spent, and Summer EBT applications do not require income verification before issuance which means they can be processed faster than SNAP applications. USDA will work with Summer EBT agencies to develop and

implement systems and processes that will reliably deliver benefits timely.

Summer EBT agencies are responsible for assisting children who do not live in a permanent dwelling or a fixed mailing address so they may obtain the Summer EBT benefits. This can be accomplished by assisting such households in finding an authorized representative who can act on their behalf, or through other appropriate means. Vulnerable populations such as these may need benefits quickly to meet an acute need. These standards require the administering agency to identify eligible households and make benefits available.

Use of EBT cards is the industry standard for SNAP and WIC, and USDA expects that Summer EBT agencies will issue Program benefits on EBT cards in a similar manner to SNAP or WIC. However, section 13A(b)(2)(B) allows benefits to be issued through another electronic means, as determined by the Secretary. In the event that a Summer EBT agency wants to adopt a new method of Summer EBT payment, such as payment with a mobile phone, USDA will work with the Summer EBT agency to determine whether and how this can best be executed while still meeting other program requirements. Some Territories operating the Nutrition Assistance Program (NAP), including American Samoa and the Commonwealth of the Northern Mariana Islands, do not currently issue program benefits electronically. For these agencies, Summer EBT benefits may be issued in the same manner as NAP benefits.

Accordingly, this rulemaking codified requirements for Summer EBT benefit issuance at 7 CFR 292.15(c).

2. Dual Participation

Dual participation in Summer EBT in the same summer operational period is not allowed. This means that, in each summer, children may not receive multiple benefit allotments from the same State or ITO-administered program, and children may not receive benefits from more than one State or ITO-administered program each summer. For example, a child who moves in the spring may not receive a benefit from the State they left *and* from the State to which they moved. (Note: as stated above in section iv.3. (*Applications*), SNAP benefits are interoperable, which means they can be used in any SNAP-authorized retailer in the United States, regardless of where they were issued. Therefore, households that move can use the benefits issued by their previous State of residence in the State to which they moved.) Likewise, a child living within an ITO Summer EBT

agency's service area (as described in § 292.9) may not receive benefits from the ITO-administered program *and* a State-administered program that operates in a proximate geographic area, nor may they receive benefits from two ITO-administered programs. (Note: also stated above, benefits issued by ITO-administered programs are not interoperable. FNS will work with ITOs to determine the best way to convey eligibility and use of benefits for children enrolled in an ITO program who move during the summer.) That same child also may not receive duplicative Summer EBT benefits from the same source, *i.e.*, multiple Summer EBT benefit allotments from a State Summer EBT agency which total in excess of \$40 per month for that child, as adjusted annually. Households engaged in dual participation may be subject to a claim by the Summer EBT agency as described in 292.27.

State and ITO Summer EBT agencies must work together to prevent dual participation, particularly in border areas and around ITO service areas, and must establish detection and prevention procedures in their POMs. Summer EBT agencies could choose to adapt systems already in place for their SNAP or WIC program, or propose an alternative approach. USDA seeks comment on best practices for collaboration across States and ITOs to detect and prevent dual participation.

Accordingly, 7 CFR 292.15(d) promulgates regulations on requirements for prevention of dual participation in the Summer EBT Program.

3. Benefit Amount

As established in the NSLA, the monthly value of the Summer EBT benefit will be \$40 in 2024, and will be adjusted annually starting in 2025 to reflect changes to the Thrifty Food Plan, which is a plan developed by USDA to estimate the cost of a low-cost, healthy diet.¹⁴ The statute defines a benefit rate per month, as opposed to a daily or weekly rate, and allows States and ITOs to streamline program administration by establishing a single summer operational period. Therefore, Summer EBT agencies may not prorate benefits for partial months and must issue the full summer benefit to each eligible child. In general, summer break spans all or part of three months, with the May to September period being the most common months of summer break. Accordingly, USDA considers the summer operational period to constitute three months, meaning that Summer

¹⁴ <https://www.fns.usda.gov/taxonomy/term/415>.

EBT agencies must issue a full three months of benefits, even if the benefit issuance does not align with calendar months. In summer 2024, the benefits level is \$40 per child per month and so each participating child will receive a \$120 benefit, issued at the intervals described the Summer EBT agency's POM. Children who are certified as eligible for the Program *during* the summer must be issued the full summer benefit as well.

Consistent with other USDA programs, the Agency will publish a notice in January of each year in the **Federal Register** to announce the monthly benefit level for that year. This notice will also include details on how the benefit was calculated. Annual benefit adjustments will be consistent across programs operated by States and ITOs. Due to a higher cost of living in areas outside the contiguous United States, the statute allows USDA to adjust the monthly benefit for Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. Rates for these areas will also be included in an annual **Federal Register** notice.

Summer EBT agencies have the flexibility to establish an issuance schedule, which does not need to align with the start of calendar months, and may include a single benefit issuance before the start of the summer operational period, or periodic issuances during the Summer. Benefits provided as a single issuance must be issued prior to the start of the summer operational period. If multiple issuances are provided, the first issuance must occur before the start of the summer operational period. Summer EBT agencies may also stagger throughout the month. Staggering means that a State is issuing benefits to eligible households on multiple days within a given month. In this case, a staggered issuance means that not every household in the State gets receives their benefit on the exact same day, which can help State agencies administer the program. Pro-rated benefits, which are prohibited under this rulemaking, is where participants would only receive a part of their benefits. Once established, the Summer EBT agency must inform households of the first day they will be able to access benefits and the schedule for expunging benefits. USDA urges Summer EBT agencies to consider the needs of eligible households and their benefit usage patterns when establishing an issuance schedule. Regardless of the issuance schedule used, the Summer EBT agency must adhere to the reporting requirements and benefit

issuance requirements established in this rulemaking. These standards are designed to be consistent with SNAP regulations at § 274.2(a) and (b), except that, instead of the 30-day standard described in § 274.2, Summer EBT agencies must adhere to the 15-day issuance standard described above.

Accordingly, this program's requirements for related to the value of benefits that may be issued and the manner of issuance are promulgated in 7 CFR 292.15(e)(f).

4. Participant Support

Clear and consistent communication with the public will be central to successful implementation of Summer EBT in a State or ITO. Summer EBT is a new program, which means stakeholders at all levels need information that clearly explains what the Program is, who is eligible, and how benefits can be accessed and redeemed. Because P-EBT similarly provided EBT benefits to children who lost access to free or reduced price school meals, USDA anticipates that some eligible households and stakeholders will be confused about the difference between Summer EBT and P-EBT. Summer EBT agencies will need to provide information to clarify differences between Summer EBT and P-EBT. A key difference is that, in P-EBT, all children attending special provision schools, where every student is served meals at no charge, were eligible to receive the P-EBT benefit. However, Summer EBT is only available to children at special provision schools who have been determined to be income eligible for free or reduced price meals through existing administrative data or a Summer EBT application, as required by the statute. Communications with households of children attending special provision schools will need to clearly explain that, unlike P-EBT, households must submit a Summer EBT application if their child(ren) cannot be identified as eligible through streamlined certification, and that children attending special provision schools who received P-EBT are not eligible to receive Summer EBT if they are not determined to be income eligible. Similarly, Summer EBT is a program for school-age children while the statute authorizing P-EBT explicitly extended eligibility to children from birth to age 6 who were members of SNAP households whose covered child care facility was closed or operating with reduced hours or attendance. Families will need to know that their children are only eligible for Summer EBT if they are income eligible and attend an NSLP or SBP-participating

school or are school-age and identified through existing administrative data.

In addition, Summer EBT benefits will be issued for the summer operational period while P-EBT also included the school year. Families of eligible children will need materials that explain when the benefit will be made available and the period of time, they have to use their benefits before the benefits are no longer available to spend.

Summer EBT agencies must provide written materials to each household prior to Summer EBT issuance and as needed during ongoing operation of the Summer EBT program. At a minimum, the household materials must provide information including, but not limited to: where benefits can be used, what foods are eligible for purchase, unallowable uses of benefits, and penalties for misuse, use of security Personal Identification Numbers (PINs), how families may access customer service supports during non-business hours, the eligibility criteria for benefits, and disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where and how to dispute an adjustment and request a fair hearing. All materials must include the USDA statement of non-discrimination and be prepared at an educational reading level suitable for participant households. These standards are a minimum, and USDA highly encourages Summer EBT agencies to maintain more frequent contact with eligible households to ensure they have the information they need to access program benefits. Examples include providing information through the schools before the end of the school year, robo-calls and texts to families to remind them that they have benefits available to spend, and social media ads. Summer EBT agencies should consider how they can incorporate outreach throughout the summer period in a manner that is inclusive of individuals with disabilities or limited English proficiency, and people who are unhoused, or generally are not well connected with community services or media.

This subsection also addresses requirements for EBT cards and PINs, adjustments to posted benefits, and providing replacement EBT cards or PINs. To ease program implementation, these requirements largely mirror SNAP and WIC regulations on these issues.

In the event benefits are erroneously posted or adjustments are needed to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a

result of a system error, the Summer EBT agency may adjust benefits posted to household accounts. The Summer EBT agency must also ensure a duplicate account is not established which would permit households to access more than one account in the system.

The Summer EBT agency must implement a reporting system which is continually operative. Once a household reports their EBT card has been lost or stolen, the Summer EBT agency must assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. An immediate hold must be placed on Summer EBT accounts at the time notice is received from a household regarding the need for card or PIN replacement in order to limit agency liability in the event the card is used for additional purchases after a card or PIN replacement request is received. The Summer EBT agency or its agent must maintain a record showing the date and time of all reports by households of a lost or stolen card. Finally, the Summer EBT agency must make replacement EBT benefits available to households when the household reports food purchased with Summer EBT benefits was destroyed in a household misfortune or disaster. FNS is interested in comments on the challenges associated with providing replacement Summer EBT benefits or not providing replacement Summer EBT benefits.

Accordingly, this program's requirements for participant support are codified at 7 CFR 292.15(g).

5. Expungement

Summer EBT benefits are intended to be available for households to spend when children are not receiving school meals during the summer. Accordingly, the NSLA places limits on how long benefits may remain available for households to spend after the summer operational period ends. As discussed in subpart B, Summer EBT agencies have the discretion to establish a summer operational period that generally reflects the start and end dates of local summer vacations. In order to allow a reasonable amount of time after the end of the summer operational period for households to finish spending their benefits, Summer EBT benefits must be expunged four months after issuance, which, for the purpose of Summer EBT, will be 122 calendar days. Once expunged, benefits may not be reinstated. This approach may be new for ITO Summer EBT agencies as WIC benefits are not available to spend beyond the month for which they were

issued. In the SEBTC demonstration projects, a few grantees that were WIC-administering agencies and used WIC infrastructure issued benefits that were available to spend throughout the entire summer period and they found that this increased benefit redemption and was appealing to participating households. Summer EBT agencies must also provide notice to the household that benefits in their EBT account are approaching expungement not less than 30 days before benefit expungement is scheduled to begin. This approach is consistent with statutory limits on benefit availability included in the Food and Nutrition Act of 2008, while also allowing flexibility for families to use their benefits. In the SEBTC demonstrations, grantees determined that frequent contact with households throughout the summer was a best practice for providing timely technical assistance and encouraging benefit use.

Summer EBT agencies must establish procedures to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account funds, or to remove benefits from inactive accounts for expungement. Whenever benefits are expunged, the Summer EBT agency must document the date and amount of the benefits in the household case file and issuance reports must reflect the adjustment to the Summer EBT agency issuance totals to comply with reporting requirements in 7 CFR 292.23.

Some State Summer EBT agencies may choose to load Summer EBT benefits on existing SNAP cards for households that participate in both programs. Because Summer EBT benefits have a shorter expungement period than SNAP benefits, Summer EBT agencies that load Summer EBT benefits onto existing SNAP accounts must ensure Summer EBT benefits are drawn down prior to SNAP benefits so they are used prior to expungement period.

Accordingly, this program's benefit expungement requirements are codified at 7 CFR 292.15(h) and (i).

ii. Issuance and Adjustment Requirements Specific to States That Administer SNAP

This section details benefit issuance requirements that are specific to all States that operate SNAP. This section does not apply to Territories that administer the Nutrition Assistance Program (NAP). As previously stated, USDA's aim in promulgating these regulations is to streamline operations and reduce burden to the greatest extent possible by adopting systems and

processes that Summer EBT agencies are already accustomed to using. To that end, this rulemaking establishes a framework that includes certain SNAP requirements for effective and responsible administration of the Summer EBT Program by State Summer EBT agencies.

These requirements are:

- Basic issuance requirements including the establishment of issuance and accountability systems consistent with § 274.1.
- Requirements and restrictions regarding general SNAP terms and conditions consistent with § 272.1.
- Automation and computerization of State Summer EBT operations and data management systems for obtaining, maintaining, utilizing and transmitting information concerning Summer EBT consistent with § 292.16(c).
- Requirements regarding internal controls consistent with § 272.4(c)(1), court suit reporting consistent with § 272.4(d), Summer EBT agency monitoring of duplication consistent with § 272.4(e), and hours of operations consistent with § 272.4(f).
- Program informational activities that convey information about the Program, including household rights and responsibilities, through means such as publications, telephone hotlines, and face-to-face contacts, consistent with § 272.5(b).
- Procedures for program administration in Alaska. To achieve the efficient and effective administration of SNAP in rural areas of Alaska, USDA has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. USDA is applying the regulations established at § 272.7 for SNAP implementation in Alaska to Summer EBT implementation in Alaska.
- Procedures for household disqualification consistent with 273.16 .
- Requirements that Summer EBT benefits may only be used to purchase eligible foods from retail food stores approved for participation in SNAP.
- Requirement that SNAP retailers to also accept Summer EBT benefits, subject to the participation requirements for SNAP.
- Requirement that the State Summer EBT agency to maintain issuance, inventory, reconciliation, and other accountability records consistent with § 274.5.
- Requirements for standards regarding benefit redemption by eligible households consistent with § 274.7.
- State Summer EBT agency assurance that its EBT system is capable

of performing necessary functional requirements, including interoperability and portability requirements, consistent with the regulations at § 274.8.

- State Summer EBT agencies must account for all issuance through a reconciliation process as described by USDA.

Accordingly, this subsection codifies issuance and adjustment requirements for State Summer EBT agencies at 7 CFR 292.16.

iii. Retailer Integrity Requirements Specific to States, Including Territories That Administer SNAP

As required by section 13A of the NSLA, Summer EBT benefits are subject to certain integrity requirements found in the Food and Nutrition Act of 2008. Specifically, Summer EBT agencies must comply with section 12, *Civil penalties and disqualification of retail food stores and wholesale food concerns*; section 14, *Administrative and judicial review*; and section 15 *Violations and enforcement* (7 U.S.C. 2021, 2023, 2024). As these requirements were established in the Food and Nutrition Act for SNAP, USDA has already promulgated regulations that implement each requirement. These SNAP regulations were informed by real-world experience and were developed through notice and comment rulemaking, so they have the benefit of practical knowledge and public input. USDA has determined that many aspects of the SNAP regulations implementing sections 12, 14, and 15 of the Food and Nutrition Act are also appropriate for Summer EBT, and adopting these same requirements is preferable to developing different requirements for Summer EBT. This approach is also the least burdensome for administering agencies because it does not require agencies to develop new implementation approaches to meeting the requirements in sections 12, 14, and 15 of the Food and Nutrition Act for Summer EBT.

Specifically, this rulemaking applies the following SNAP requirements to the Summer EBT Program:

- Participation of retail food stores and wholesale food concerns, and redemption of
- Summer EBT benefits requirements at §§ 278.2, 278.3, and 278.4.
- Firm eligibility standards found in parts 271, 278, and 279.
- Penalties for firms that commit certain violations described in part 278.
- Claims standards for retail food stores and wholesale food concerns described at § 278.7.
- Administrative and Judicial review. Firms aggrieved by administrative

action under sections 271, 278, and 279 may request administrative review of the administrative action with USDA in accordance with part 279, subpart A, of this chapter. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

Accordingly, this section codifies retailer integrity requirements for State, including territories that administer SNAP, in 7 CFR 292.17.

iv. Requirements Specific to States That Administer Nutrition Assistance Programs (NAP)

In lieu of SNAP, section 19 of the Food and Nutrition Grant [42 U.S.C. 2028] authorizes Nutrition Assistance Program (NAP) block grants for food assistance to low-income households in the U.S. Territories of the Commonwealth of Puerto Rico and American Samoa. Pursuant to authority at 48 U.S.C. 1469d, FNS has also extended a NAP grant in lieu of SNAP to the Commonwealth of the Northern Mariana Islands.

This rulemaking codifies section 13A(b)(1)(A) of the NSLA, which requires that Summer EBT benefits issued by a Territory administering NAP may only be used by the eligible household to purchase NAP-eligible foods from retail food stores that have been approved for participation in NAP. In addition, States that administer NAP shall establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.

Accordingly, this rulemaking codified requirements for States that administer NAP at 7 CFR 292.18.

v. Requirements Specific to ITO Summer EBT Agencies

This section of the IFR provides ITO-specific responsibilities related to the issuance of Summer EBT program benefits, in addition to the general standards set forth in this subsection. The ITO Summer EBT agency must ensure that Summer EBT program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from Summer EBT-enrolled vendors that have been approved for participation in the WIC Program.

ITO Summer EBT agency procedures and operations related to basic issuance requirements, reconciliation, benefit redemption, and functional and technical EBT system requirements, should be consistent with WIC regulations at 7 CFR part 246.12 as applicable to the benefit delivery model

used, to the extent such requirements do not conflict with the requirements set forth for ITO Summer EBT agencies in this part.

The Department learned from participating ITOs through the Summer EBT demonstration projects the importance of providing flexibility in how benefits may be offered to participants. To promote maximum flexibility, ITO Summer EBT agencies may choose to pursue a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The ITO Summer EBT agency must use the same benefit model for all participants throughout its service area, in accordance with its POM.

For ITOs using solely a CVB model, the ITO Summer EBT agency must issue a benefit level equal to the amount set forth in 7 CFR 292.15(e). For 2024, the monthly benefit level will equal \$40, and USDA will adjust the benefit level amount in subsequent years pursuant to statutory and regulatory requirements. For ITOs choosing to use a food package model, a combination CVB/food package model, or alternate model, the benefit level may not exceed that set forth in 7 CFR 292.15(e). The ITO Summer EBT agency is not required to restrict CVB to the purchase of fruits and vegetables and may expand their Summer EBT-eligible foods to include other items that meet the definition of a supplemental food as described below. USDA is open to innovative benefit issuance solutions, and will work with ITO Summer EBT agencies to identify which model best fits the unique needs of each community.

In addition, pursuant to statute, this section requires ITO Summer EBT agencies to provide supplemental foods that: contain nutrients determined by nutritional research to be lacking in the diets of children and promote the health of the population served by the program, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns or allow for different cultural eating patterns than foods described in such subparagraph. Supplemental food that can be purchased with WIC benefits have similar nutritional requirements; thus, an ITO Summer EBT agency may consider supplemental foods authorized in its WIC Program to meet the requirements to be a Summer EBT-authorized product. However, infant formula and infant foods are excluded from use in Summer EBT program, consistent with the statutory definition of *supplemental food* in section 13(A)(h)(4) of the NSLA and Summer EBT program regulations at 7 CFR

292.19 even if they are approved for the ITO's WIC program. ITO Summer EBT agencies may tailor the benefit to specific student age groups as long as the monthly benefit level equals that set forth in 7 CFR 292.15 9(e).

Further, ITO Summer EBT agencies must ensure that vendors charge prices for eligible food items which are reasonable for the area(s) served and are at the current price or less than the current price charged to other customers. Vendors may not charge Summer EBT participants more for an item than the price in the retail environment for all other customers. This section also requires ITO Summer EBT agencies to ensure vendor integrity, in accordance with existing WIC regulations. However, ITO Summer EBT agencies may also set forth an alternate system to ensure effective vendor management and vendor integrity.

Accordingly, this rulemaking codifies requirements specific to ITO Summer EBT agencies at 7 CFR 292.19.

Subpart E—General Administrative Requirements

i. Payments to Summer EBT Agencies and Use of Administrative Program Funds

The language in this section applies to States, territories, and ITOs unless otherwise specified.

1. Benefit Funds

Summer EBT is a permanent program that will provide benefits to children each summer. This permanence and stability will afford Summer EBT agencies the opportunity to plan, prepare, and invest in program infrastructure to deliver Summer EBT benefits in a manner that is efficient, effective, and supports high levels of program integrity.

Establishing systems to keep Summer EBT benefits fully separate from other benefit streams is critical to the integrity of the Program. For P-EBT, USDA permitted States to issue food benefits through the Account Management Agent (AMA), using the same account through which the State's SNAP benefits are issued. As a result, P-EBT and SNAP benefits are generally indistinguishable throughout the issuance and redemption process. This has made it very challenging for USDA to separately track SNAP and P-EBT funds and undermines USDA's oversight and integrity efforts. Despite these significant drawbacks, States were permitted to use this approach for P-EBT so that the Program could be implemented quickly during a national emergency, delivering timely benefits to

millions of children who had suddenly lost access to school meals because of the COVID-19 pandemic. USDA has identified a better approach to providing Summer EBT benefit funds that Summer EBT agencies will have the time and stability to implement.

To help Summer EBT agencies meet the statutory integrity requirements discussed in subpart D of this rule, USDA will obligate 100 percent of Summer EBT benefit funds to Summer EBT agencies as a grant. Summer EBT agencies, in partnership with their EBT processors, will need to manage the Summer EBT benefit funds in a manner similar to WIC, State-funded food assistance programs, and cash programs. At the point of redemption, the Summer EBT agency will draw funds from the USDA-provided Summer EBT benefit grant through the associated Automated Standard Application for Payments (ASAP) account. This account will be accessed and managed by the Summer EBT agency. This approach will enable Summer EBT agencies to more effectively track Summer EBT benefits separately from SNAP benefits, WIC benefits, or other benefit types, allowing them to apply the same oversight, restrictions and requirements as SNAP and WIC benefits. ITOs will be familiar with this process as it is the method used to fund WIC. Territories that administer NAP will issue Summer EBT benefits in the same manner they issue NAP benefits.

2. State Administrative Funds

USDA is authorized to pay each Summer EBT agency an amount equal to 50 percent of the administrative expenses incurred by the Summer EBT agency in operating the program under this section, including the administrative expenses of LEAs and other agencies in each State or ITO relating to the operation of their Summer EBT Program. This means that Summer EBT agencies will need to cover the balance of their administrative costs, *i.e.*, their "match," with non-Federal funds. As previously discussed, Summer EBT agencies must include an administrative budget as part of the annual POM. In States or ITOs operating Summer EBT through more than one agency, each Summer EBT agency may include separate administrative funding requests in their POM for the administrative convenience of receiving funds without the need to transfer money between Summer EBT agencies. However, the coordinating Summer EBT agency and partnering Summer EBT agency requests must be coordinated to ensure the requests are consistent with overall program operations and the

required cost allocations are maintained.

The Child Nutrition Programs, SNAP, and WIC are distinct programs from Summer EBT. Therefore, States and ITOs, generally may not use Federal Child Nutrition, SNAP, or WIC administrative funds in the administration of Summer EBT. If a Summer EBT agency conducts activities that will benefit the administration of more than one Federal program, the agency must appropriately allocate administrative costs to each affected program. In addition, the Summer EBT agency may generally not use other Federal program funds as part of their Summer EBT match.

The Summer EBT agency may use the following resources to pay their 50% share of administrative funding:

- project costs financed with cash contributed or donated to the Summer EBT, and
- project costs represented by services and real or personal property donated to the Summer EBT agency (*i.e.*, in kind contributions).

Project costs may be reported on either a cash or accrual basis by the Summer EBT agency.

Cash or in-kind contributions, as described above, are generally allowable if they are verifiable, allowable, necessary, in the agency's approved budget, and not related to any other Federal program costs unless specifically provided in regulations. The value of services rendered by volunteers is not an allowable in-kind contribution.

USDA received feedback from State agencies and ITOs that there are barriers and challenges to securing Summer EBT funding, designing and planning the program, and coordinating across agencies in time to implement benefit issuance in summer 2024. To address this, States and ITOs may receive administrative funding for a "planning year" if needed in 2024. States and ITOs will still be required to provide the 50% State or ITO match and submit and interim POM, but Summer EBT agencies will not be required to issue benefits in 2024. While this option is in place, USDA highly encourages States in a position to issue benefits in 2024 to do so. States and ITOs taking advantage of this option must have a plan to issue benefits by summer 2025 in order to receive administrative funding in 2024.

USDA will recover any administrative funds which are in excess of obligations reported at the end of each fiscal year through an adjustment in the Summer EBT agency's Letter of Credit. Each Summer EBT agency must maintain Program records to support

administrative costs and retain these records for a period of 3 years, or as otherwise specified.

Accordingly, payments to Summer EBT agencies and use of administrative program funds requirements are codified at 7 CFR 292.20.

ii. Methods of Payment

Summer EBT agencies will receive benefit funds and administrative funds through separate letters of credit (LOC). Each Summer EBT agency that wants to receive administrative funds directly from USDA will do so through its own LOC. If a State or ITO requests funds through only one LOC, the Summer EBT agency that is responsible for that LOC will also be responsible for distributing administrative funds across partnering agencies, as appropriate. The Summer EBT agency that administers the EBT benefit issuance will receive the benefit grant.

The LOC is the document by which an official of FNS authorizes a Summer EBT agency to draw funds from the United States Treasury. Summer EBT agencies will request payment(s) by submitting a request to the appropriate Treasury Regional Disbursing Office with a copy to FNS. If a Summer EBT agency cannot meet the requirements for the LOC method of payment, it will be provided funds by Treasury check in accordance with Treasury requirements.

Accordingly, methods of payment are codified at 7 CFR 292.20.

iii. Standards for Financial Management Systems

Summer EBT agencies are subject to the same standards for financial management systems as agencies administering other USDA programs. These standards also apply to all Summer EBT agencies and their respective subagencies or contractors.

Financial management systems for a Summer EBT agency's program funds must be able to provide accurate, current, and complete financial records, identify Federal awards received and expended and the Federal programs under which they were received, and include an audit trail to support any costs claimed for reimbursement. These systems must also be able to provide effective controls and accountability to safeguard Federal funds and minimize the time it takes for the agency to disburse funds for program costs. In addition, system procedures are needed to determine the reasonableness, allowability, and allocability of costs.

Periodic audits of Summer EBT agency financial management systems, consistent with 2 CFR part 200, subpart F, are required. The financial systems

must support agency resolution of audit findings, recommendations, and follow up on corrective or preventive actions.

Accordingly, standards for financial management systems are codified at 7 CFR 292.21.

iv. Performance Criteria

This rulemaking establishes four performance criteria for Summer EBT in order to promote program access, a high standard of customer service, and program integrity. USDA adopted a similar approach with direct certification in 7 CFR 245.13. Performance benchmarks for direct certification are tied to a State's ability to directly certify each child who can be directly certified through SNAP in order to promote program accuracy, reduce paperwork for States and households, and increase eligible children's access to school meals. States that do not meet the NSLP direct certification benchmarks are required to submit a continuous improvement plan (CIP) which USDA supports with technical assistance during plan development and implementation. USDA data show that State direct certification rates are trending upward,¹⁵ a finding which suggests that enhanced data collection, matching, and technical assistance associated with these benchmarks have supported program improvement over time.

The performance criteria for Summer EBT established in this rule making are directly linked to the effectiveness of the Program and must be monitored and documented by the Summer EBT agency. USDA does not expect that Summer EBT agencies will reach 100% on each of these benchmarks at the onset of the Program. Rather, the purpose of monitoring and documenting these criteria in the immediate term is to establish a reasonable baseline for each. If it is determined that these criteria are meaningful and can be accurately measured, USDA will consider adding numeric targets for each criterion to encourage continued Programmatic improvement. Similar to direct certification, if a target is not met, USDA would work with the Summer EBT agency to develop a continuous improvement plan (CIP) and provide technical assistance to help the Summer EBT agency achieve that target. USDA is interested in comments on the concept of having performance criteria, the

benefits and challenges of linking numeric targets to a CIP, the value of each criteria as a meaningful and measurable assessment of performance, and if there are other metrics that are meaningful and measurable, such as the percent of benefits issued that are redeemed.

USDA will provide guidance on how to evaluate and document each of these criteria:

Performance Criteria 1—Percentage of children eligible for Summer EBT benefits who participated by using their benefits at least once.

This metric measures the Summer EBT agency's ability to identify, enroll, issue benefits to the correct location, and provide customer support to all children eligible for the program.

Performance Criteria 2—Percentage of Summer EBT benefits that are erroneously issued to children not eligible for Summer EBT, or erroneously not issued to children who are eligible.

This metric measures the Summer EBT agency's ability to correctly identify which children are eligible (or ineligible) and to prevent improper payments.

Performance Criteria 3—Percentage of children issued benefits who receive their first issuance before the start of the summer operational period.

This metric measures the Summer EBT agency's ability to enroll eligible children timely, obtain correct addresses for households of eligible children, and issue EBT cards (or other benefit instruments) in advance of the last day of school so that benefits are available to spend immediately when school lets out. P—EBT benefits were not issued timely for a variety of reasons, and this benchmark is intended to aid USDA and States in identifying why lags occur and develop strategies to prevent late issuances.

Performance Criteria 4—Percentage of eligible children who can be identified through streamlined certification who are enrolled without further application.

This metric measures the effectiveness of the Summer EBT agency's systems and processes to enroll children using existing administrative data without additional burden on families.

Accordingly, this IFR codified performance criteria at 7 CFR 292.22.

v. Records and Reports

Consistent with other USDA programs, Summer EBT agencies and LEAs must retain records for a period of 3 years after submission of the certification data for the fiscal year. If audit findings have not been resolved, the records must be retained beyond the

¹⁵ U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Direct Certification in the National Lunch Program: State Implementation Progress, School Year 2015–2016 and School Year 2016–2017, by Dennis Ranalli, Joe Templin and Maggie Applebaum, Alexandria, VA: October 2018.

3-year period as long as required for the resolution of the issues raised by the audit. Records may be retained in their original form or electronic form.

Accordingly, record retention and reporting requirements are codified at 7 CFR 292.23.

vi. Audits and Management Control Evaluations

1. Audits

Summer EBT agencies must arrange for audits of their own operations in accordance with uniform administrative requirements, cost principle, and audit requirement for Federal awards.

Agencies must also provide USDA's Office of the Inspector General with full opportunity to audit the Summer EBT agency and LEAs.

2. Management Control Evaluations

Summer EBT agencies must provide USDA with full opportunity to conduct management control evaluations of all operations of the Summer EBT agency. The Summer EBT agency must make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by USDA.

vii. Investigations

In order to improve Program performance, Summer EBT agencies must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and take appropriate action to correct any irregularities. The Summer EBT agency must maintain on file all evidence relating to such investigations and actions. The Summer EBT agency must also inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds and USDA may make investigations at the request of the Summer EBT agency, or where it determines investigations are appropriate.

Accordingly, this IFR codifies investigation procedures for Summer EBT at 7 CFR 292.25.

viii. Hearing Procedure for Families and Summer EBT Agencies

Each Summer EBT agency must establish a hearing procedure allowing households to appeal decisions made with respect to a Summer EBT application they submitted and allowing Summer EBT agencies to challenge continued eligibility of a child. Because the process to establish eligibility for Summer EBT is rooted in the NSLP/SBP eligibility process, these requirements are largely the same as those included

in NSLP/SBP regulations. As a result, a household's experience will be consistent if it requests a hearing in the NSLP, SBP, or Summer EBT. In order to provide for fair treatment of all parties involved in the hearing process, the regulations detail required hearing procedures including notices and written records, timeframes for action, the rights of participants to legal counsel and to present and view evidence, the right to refute any testimony or evidence, and requirements for hearing officials.

Accordingly, hearing procedures are codified at 7 CFR 292.26.

ix. Claims

Summer EBT agencies are responsible to ensure that program benefits are provided only to eligible children in the correct amount, and that no child receives duplicate benefits, in accordance with program regulations. USDA may hold Summer EBT agencies liable for erroneous payments and pursue claims against the State in the aggregate when merited, based on the nature of the error that gave rise to the erroneous payment, the size of the error, and whether such action would advance program purposes.

In turn, Summer EBT agencies must develop a process to manage cases of erroneous issuances and pursue claims against a household, as appropriate. Summer EBT agencies have the discretion to determine when to pursue a claim when erroneous issuances are discovered based on cost effectiveness or the individual circumstances. Most children who receive Summer EBT benefits will be enrolled through streamlined certification with no action on the part of the household required. Therefore, a child enrolled through streamlined certification might unknowingly use benefits that were issued in error, including a situation where the child's household applies for duplicate benefits because they are not aware of their automatic enrollment. It may be a significant burden on low-income households to pay back benefits already spent, especially when they were unaware of the error and do not have sufficient funds on hand to pay the claim. To the maximum extent practicable, Summer EBT agencies should limit claims against households to situations where there is evidence that the household knowingly obtained benefits through fraudulent activities. To limit risk of unintentional use of erroneous benefits, Summer EBT agencies have the responsibility to communicate eligibility determinations to households and provide sufficient information for households to determine

their eligibility status and the amount they should be issued. In addition, Summer EBT agencies may not reclaim Summer EBT benefits by reducing a household's SNAP or WIC benefit. Summer EBT agencies must also develop a process to allow households to submit a claim for benefits that were not issued or issued in the incorrect amount.

To inform future rulemaking, USDA is interested in comments on Summer EBT claims including: the most common reasons for erroneous issuances, the frequency of erroneous issuances, how such issuances are detected, the feasibility of successfully pursuing a claim against a household, and the resources required to pursue a claim.

Accordingly, claims procedures are codified at 7 CFR 292.27.

x. Procurement Standards

1. General

In general, Summer EBT is subject to Federal procurement requirements for Summer EBT agency and local agency costs paid with Federal funds, including costs associated with eligibility systems. Consistent with other USDA programs, such purchases must comply with Federal procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

As discussed in 7 CFR 292.11, Summer EBT is subject to the Advance Planning Document (APD) process, which is a series of successive steps through which agencies administering USDA programs obtain Federal prior approval and financial participation in automation projects supporting USDA programs. This generally includes all SNAP and WIC eligibility system and EBT projects. APD procurement requirements take the place of standard procurement rules for costs associated with projects subject to the APD process. Therefore, any costs associated with EBT projects for a Summer EBT program will follow APD rules and will not follow standard procurement rules.

Although the APD process usually applies to eligibility system projects, USDA is not requiring Summer EBT agencies that also operate Child Nutrition Programs to follow the APD process at this time. As detailed in 7 CFR 292.11, USDA has not historically used the APD process for CNP eligibility systems, which are the eligibility systems most likely to need changes to implement Summer EBT. The agency has determined that adding APD requirements for CNP agencies would take more time and planning than is available at this time, so they will

remain subject to standard procurement rules.

Accordingly, procurement requirements are codified at 7 CFR 292.27.

2. Contractual Responsibilities

The standards contained in this part, 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 415, as applicable, do not relieve any Summer EBT agency or local agency of any contractual responsibilities under its contracts. The Summer EBT agency or local agency is the responsible authority, without recourse to USDA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, ITO, or Federal authority that has proper jurisdiction.

Accordingly, contractual responsibilities are codified at 7 CFR 292.27(c).

3. Procedures

The Summer EBT agency may elect to follow either the State or ITO laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 200.326. Regardless of the option selected, Summer EBT agencies must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements in 2 CFR 200.236 and 2 CFR part 200, appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award, are followed.

Accordingly, additional procurement procedures are codified at 7 CFR 292.27(d).

xi. Miscellaneous Administrative Provisions

1. Civil Rights

In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. Summer EBT agencies and LEAs must comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations

on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113–1.

2. Program Evaluations

Summer EBT agencies, LEAs, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department that are related to programs authorized under the NSLA and the Child Nutrition Act of 1966.

3. General Responsibilities

The criminal penalties and provisions established in section 12(g) of the NSLA, (42 U.S.C. 1760(g)), state substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property for personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud must, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, must be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Accordingly, this IFR codifies civil right requirements at 7 CFR 292.28(a), requirements for cooperation with Program evaluations at 7 CFR 292.28(b), and general responsibilities of Summer EBT agencies at 7 CFR 292.28(c).

xii. Information Collection/Recordkeeping—OMB Assigned Control Numbers

F. Severability

The statutory enhancement of the USDA summer meals programs for children through establishment of the Summer Electronic Benefits Transfer Program for Children providing States and covered Indian Tribal Organizations nutrition assistance through electronic benefit transfer or similar methods, which may be used to purchase food from approved retail stores is essential for ensuring that all children receive nutritious meals during the summer months when school is not in session. The benefits will be used to purchase food during the summer months. As directed by statute, USDA is establishing the Summer EBT program

beginning in Summer 2024 through this rulemaking, in partnership with States and covered Indian Tribal Organizations which choose to participate. Based on the statutory requirement to establish the Summer EBT program beginning in 2024, USDA has determined that its authority to implement the regulation is well-supported in law as well as in practice, based on USDA's administration of demonstration projects and similar programs over the past decade. Accordingly, USDA has determined that this exercise of its statutory authority reflects sound policy and should be upheld in any legal challenge. However, if any portion of the rule is declared invalid, USDA intends the various aspects of this rule to be severable. For example, if a court were to find any provision unlawful, such as (1) student eligibility determination protocols, (2) the expungement timeframes, or (3) some other aspect of this rule, USDA intends that all other provisions in the rule will remain in effect so that States and covered Indian Tribal Organizations can implement the Summer EBT program beginning in 2024. USDA has concluded that it is in the interests of our Nation's children for electronic benefits to be provided to families so they may purchase food during the summer months when school is not in session. Furthermore, in the event any part or the entirety of the Summer EBT program established by this rulemaking were declared invalid, Summer EBT is severable and does not prevent the non-congregate rural option, discussed above, from proceeding since the non-congregate rural option and Summer EBT program function independently.

IV. Coordinated Services Plan

The creation of the permanent Summer EBT Program, as well as the establishment of the Summer rural non-congregate meal service option, create together a fundamental shift in how summer nutrition can be provided to children across the country. As part of that fundamental shift, it is important to consider how these two Programs can complement one another, but also how other Federal, State, Tribal, and local programs can join efforts to increase children's access to food in the summer, as well as access to other important services.

Therefore, beginning in 2025, each State will be required to submit to FNS (and update at least every three years thereafter) a single Coordinated Services Plan (CSP). Any significant changes must be updated on an annual basis. States must also notify the public of their CSP and make it readily available

on their website. The intent of the CSP is for each State to craft a coordinated approach to reaching children with various human services programs in the summertime, with a focus on summer nutrition. If more than one State or Summer EBT agency administers these Programs within a respective State, they must work together to develop and implement the CSP. Indian Tribal Organizations that administer Summer EBT may create their own CSP to the maximum extent practicable. In addition, States are strongly encouraged to coordinate services across other governmental and non-governmental programs in partnership with community organizations that directly administer the program and/or support its operation (e.g., libraries that operate as sites and provide summer reading programs, community organizations that operate sites and provide funding or enrichment activities, etc.).

In order to ensure that CSPs remain up to date, they will be required to be submitted annually when there are significant updates, or at least once every three years. For both the initial CSP submission as well as the subsequent significant annual and/or triennial updates, States must consult with FNS to receive technical assistance and recommendations of additional avenues to ensure access for eligible children.

FNS plans to issue a CSP template following publication of this rule which will include a suggested format and examples of the kind of information to include in the Plans. FNS will provide technical assistance and share best practices to assist States and ITOs in drafting their Plans along with the release of the template in 2024.

USDA seeks public comments on all aspects of the Coordinated Services Plan. Commenters are especially encouraged to provide input on the following:

- Types of information that FNS should consider including in a Coordinated Services Plan template.
- Recommendations about what metrics States are able to collect in relation to all summer nutrition programs (for example, metrics capturing the expansion of non-congregate meal service into previously under-served areas, metrics related to community engagement and support for families to access summer nutrition options).
- Recommendations on how often Plans should be updated and resubmitted.
- Recommendations on partnerships with other Federal, State, Tribal, and local agencies, as well as organizations

involved in the administration of nutrition and human services programs, participants, and other stakeholders that States may want to consider consulting with for the creation of their Plans.

- Specific recommendations on the steps States and ITOs could take to fully and substantively implement their plans.

Accordingly, this rule establishes a new § 225.3(e) in part 225 and a new § 292.10 in part 292 to require States to submit a Coordinated Services Plan to require States to submit a Coordinated Services Plan.

V. Procedural Matters

Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim final rule has been determined to be significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required by Executive Order 12866, (as amended by Executive Order 14094), a Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this rule as an appendix. The following summarizes the conclusions of the regulatory impact analysis: In total, the 10-year cost of the interim final rule is estimated at \$40.3 billion, with \$7.4 billion attributed to non-congregate meal option implementation (\$7.35 billion for program meal reimbursements and \$43.2 million for provision administration) and \$32.9 billion in costs attributed to Summer EBT implementation (\$28.0 billion for program benefits and \$5.0 billion for program implementation and administration). These costs represent the operation of both provisions over a ten-year period between Fiscal Years (FY) 2023 and 2032. It should be noted that Summer EBT will not be implemented until 2024 and therefore all analyses pertaining to Summer EBT represent only nine years of program

operation. Though some States may have already incurred costs in FY 2023 preparing for the implementation of Summer EBT in FY 2024, it is assumed that the costs estimated in FY 2024 are representative of the total cost of program implementation occurring either during or prior to Summer EBT rollout.

The non-congregate meal provision is expected to increase participation among eligible populations in rural sites by 4.25 million children by 2027 (Year 5) with annual costs for associated meal reimbursements of just over \$1 billion once peak participation is reached. Annual administrative burden to households add only marginally to these costs—between \$0.2 million and \$4.7 million annually, for a total of \$29.3 million over ten years. The analysis also accounts for one-time costs associated with modifying operating systems to accommodate non-congregate meal service, which has been estimated at \$250,000 per State agency, totaling \$14.0 million across all 56 State agencies in 2023.

It is expected that 25.0 million children out of approximately 30.1 million eligible children will receive Summer EBT benefits, resulting in between \$2.8 and \$3.4 billion in benefits distributed each summer. Program implementation and administration costs, which include initial start-up costs equal to 30% of benefits administered and ongoing administrative costs equal to 7% of benefits administered, are expected to peak at \$1 billion in 2024 and level off at \$366 million by 2028. This includes expected administrative burden for Summer EBT retailers due to reporting and recordkeeping at \$8.9 million, while the expected household burden of administrative tasks required for program participation (e.g., applications) for children not already certified as Free and Reduced-Price eligible is estimated at \$149 million. The retailer costs are expected to be incurred primarily in Year 1 (2024). Total annual costs for Summer EBT benefits and administration are estimated at between \$3.5 and \$3.8 billion annually for a total nine-year cost of \$32.9 billion.

This rule is expected to yield substantial public benefit, including improvements in nutrition security and diet quality and economic growth via retail transactions.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives

that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this interim final rule would not have a significant impact on a substantial number of small entities. The provisions of this interim final rule are intended to reflect the needs of program operators of all sizes. No specific additional burdens are placed on small program operators seeking to operate summer nutrition programs. Additionally, non-congregate meal service and Summer EBT are optional provisions, and there is no requirement for States, Tribes, and/or sponsors to participate.

Congressional Review Act and Administrative Procedure Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2). In addition, pursuant to 5 U.S.C. 808(2), USDA has for good cause determined that the provisions of this interim final rule shall take effect immediately. A statutory requirement at 42 U.S.C. 1762(a) establishes a new program and specifies that it must begin in Summer 2024. Statutory requirements established at 42 U.S.C. 1761(a)(13)(F) and 42 U.S.C. 1762(f) further specify that the promulgation of regulations (to include interim final regulations) must occur not later than December 29, 2023. In accord with congressional direction to issue these provisions through interim final regulations, USDA finds that notice and public procedure thereon are unnecessary and that, for good cause, this rule will take effect immediately under 5 U.S.C. 808(2).

Furthermore, because this rule does not compel immediate action but rather provides the certainty that program stakeholders need to timely implement these regulatory provisions in support of Summer 2024 program operations and provide nutritious meals to children when school is not in session, all of which is consistent with congressional direction, there is no need for affected parties to have lead time to adjust their behavior before this rule takes effect. For these reasons USDA finds good cause for this rule to take effect immediately under 5 U.S.C. 553(d)(3).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 the UMRA, USDA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of \$177 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of \$177 million or more in any one year. Thus, the 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 Number 10.559. The Summer Electronic Benefit Transfer Program for Children is listed in the Catalog of Federal Domestic Assistance under Number 10.646. The National School Lunch Program (which includes the Seamless Summer Option) is listed in the Catalog of Federal Domestic Assistance under Number 10.555. They are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's

considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

USDA has determined that this rule has Federalism implications.

1. Prior Consultation with State and Local Agencies: FNS has gathered extensive input from national, State, and local community partners through a variety of public engagement activities. These include, but are not limited to, webinars, over 40 listening sessions with a diverse array of program stakeholders, and town hall style meetings. These activities have helped FNS monitor program operations, identify best practices, and take into consideration requests from States and local program operators. In addition, since Child Nutrition Programs are State administered, federally-funded programs, and FNS Regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance.

2. Nature of Concerns and the Need to Issue this Rulemaking: Publication of this interim final rule is required under the provisions of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328). Program stakeholders expressed concerns related to the length of the implementation timeframe in advance of summer 2023 and 2024 operations, possible start-up and implementation costs, as well as the need for additional guidance and technical assistance from FNS to assist with implementation activities.

3. Extent to Which We Meet These Concerns: FNS has made every effort to address these concerns, balancing the goal of meeting statutory requirements established around the publication of this interim final rule against the need to minimize administrative burden and provide necessary implementation support. This final rule takes into account and is responsive, where feasible, to public input received during the stakeholder consultation process to ensure the provisions of this interim final rule are implemented efficiently and in a manner that is least burdensome. In addition, FNS will solicit robust feedback through public comment rulemaking with the publication of this interim final rule, and will assess and respond to such public comments when promulgating a final rule.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule is not 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 and timely implementation.

Civil Rights Impact Analysis

USDA has reviewed this rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex (including gender identity and sexual orientation) or disability.

USDA believes that this rule will impact State agencies and local Program operators by increasing summer nutrition assistance for children between the introduction of both non-congregate meal service for rural areas and the establishment of the newly authorized Summer EBT Program. State agencies and Program operators will also be impacted by increased emphasis on accountability and strengthening monitoring efforts. However, mitigation strategies such as providing ample technical assistance and training to State agencies and Program operators will assist them with complying with the revised and newly established program requirements while also alleviating impacts that may result from the implementation of this rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. What follows is a summary of Tribal implications that are present and consultation/coordination taken to date:

This rule has potential Tribal implications. FNS provided an opportunity for consultation on this issue on May 23, 2023. During the consultation, participating Tribal representatives expressed enthusiasm for the permanent availability of rural non-congregate meal service during the summer. Some concerns raised by attendees included operating under State-wide limitations on meal service options (one respondent specifically highlighted limitations on multi-day meal distribution), the inability to serve

members of their Tribe that live outside their service area, and concern about the rural definition. In response to these issues, this interim final rule only permits State agencies to limit multi-meal issuance on a case-by-case basis for an individual sponsor, based on specific concerns regarding a sponsor's ability to ensure Program integrity, food safety, and meal quality. In addition, this interim final rule expands the previously established definition of rural in response to Tribal and other stakeholder concerns.

In regard to Summer EBT, participating Tribal representatives also indicated excitement and interest in administering this program in the future, noting the significant potential health benefits for participants. However, concerns were raised regarding: the 50% administrative funding match requirement; the need to develop an MIS system to support program administration; the timeline to stand up a new program; ensuring ITOs are able to serve children in their jurisdictions; accessing data on children eligible for free and reduced-price school meals; and empowering Tribes to determine what foods may be purchased with Summer EBT benefits. In response to these concerns, the interim final rule clearly specifies the types of cash and in-kind contributions that ITO Summer EBT agencies may use to pay their 50% share of administrative funding, consistent with Federal administrative requirements. To address concerns about the timeline for developing a new program, the IFR will allow ITO Summer EBT agencies to receive administrative funding for a “planning year” if needed in 2024, in anticipation of launching their program in 2025. The IFR will also provide ITO Summer EBT agencies with priority consideration to serve eligible children in their service areas while also allowing households of eligible children the option to participate in a State-administered Summer EBT Program. This approach ensures that ITO-administered Summer EBT Programs are the default choice for households in their communities, rather than automatically enrolling these children in the State-administered Summer EBT Program through streamlined certification. With regard to accessing student data, the interim final rule requires that an ITO and a State Summer EBT agency serving proximate geographic areas must ensure the coordination of Summer EBT program services, including the timely transfer of student eligibility information from the State Summer EBT agency to the ITO Summer EBT agency, as applicable.

Finally, the interim final rule provides significant flexibility for ITO Summer EBT agencies to select which foods may be purchased through their Summer EBT Programs. As described in the rule, each ITO Summer EBT agency will propose its benefit delivery model [*i.e.*, a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model] and will provide the list of supplemental foods which participants can purchase upon enrollment in the Summer EBT Program.

If further consultation on the provisions of this final rule is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that provides State agencies operating the Summer Food Service Program (SFSP) the option to provide non-congregate meal service in rural areas with no congregate meal service and establishes a permanent summer electronic benefits transfer for children program (Summer EBT). As a result, the changes to SFSP meal delivery would provide flexibilities to program operators, including home delivery and parent pick-up meal service options, that would increase opportunities to rural children and families to benefit from SFSP. Likewise, the Summer EBT Program will ensure continued access to food when school is not in session for the summer.

In accordance with the Paperwork Reduction Act of 1995, this interim final rule revises existing information collection requirements and contains new information collection requirements, which are subject to review and approval by OMB. The existing requirements are currently approved under OMB Control Number 0584–0280 7 CFR part 225 Summer Food Service Program, expiration date September 30, 2025. This interim final rule also introduces new information collection requirements into OMB Control Number 0584–0280. Furthermore, the interim final rule will add additional new information

collection requirements that extend the non-congregate meal service option to SFAs utilizing the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP). Existing requirements for the SSO are currently approved under OMB Control Number 0584–0006, 7 CFR part 210 *National School Lunch Program*, expiration date September 30, 2026. This interim final rule adds new information requirements and a new respondent group into OMB Control Number 0584–0006. In addition, this interim final rule is introducing new information collection requirements associated with the Summer EBT Program. This rulemaking revises existing and sets out new reporting and public disclosure requirements for State agencies, local sponsoring organizations, and non-profit private institutions and camps that administer the Summer Food Service Program (SFSP), as well as households that participate in the Program. This interim final rule also sets out new reporting, recordkeeping, and public disclosure requirements for Summer EBT agencies, Summer EBT Authorized Retailers, and households that will administer and participate in the Summer EBT Program.

FNS is submitting for public comment the revisions to OMB Control Number 0584–0280, 7 CFR part 225, *Summer Food Service Program*, that will result from the adoption of this interim final rule. FNS is also submitting for public comment the revisions to OMB Control Number 0584–0006, 7 CFR part 210 *National School Lunch Program*, that will result from the adoption of this interim final rule. In addition, FNS is requesting an OMB control number for a new information collection to contain the new reporting, recordkeeping, and public disclosure information collection requirements for the Summer EBT Program in 7 CFR part 292 that will result from this rulemaking and is also seeking public comment on this collection. Since this rule impacts three separate information collections, three separate PRA sections have been included to capture the burden impact that this interim final rule is estimated to have on these collections. The establishment of the information collection requirements and their associated burden are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection request is approved, the Department will publish a separate notice in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this interim final rule must be received by February 27, 2024.

Comments may be sent to: J. Kevin Maskornick, Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to <https://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR part 210, National School Lunch Program.

Form Number: None.

OMB Control Number: 0584–0006.

Expiration Date: 09/30/2026.

Type of Request: Revision.

Abstract: This is a revision adding new information collection requirements to the existing information collection approved under OMB Control Number 0584–0006, as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting requirements for State agencies, school food authorities, and households that are being impacted by this rule.

The interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that establish rural non-congregate service options in the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP). In current regulations, there is not an option for rural schools to provide non-congregate meal service. The interim final rule allows schools, in an area designated as rural, to have the option to enroll as non-congregate schools for the summer operating period.

This interim final rule will amend regulations 7 CFR 210.18(e) and 210.34(a) to extend the non-congregate service option to SSO and require that

State agencies conduct at least two site reviews of a school food authority (SFA) that chooses to operate non-congregate meal service through SSO.

Reporting

State Agencies and School Food Authorities

The changes in this interim rule will add new reporting requirements to those that are currently approved under OMB Control Number 0584–0006 for State agencies and School Food Authorities (SFAs).

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 210.18(e)(3)(ii) that the State agency must review the Seamless Summer Option (SSO), if the school food authority (SFA) operates congregate and non-congregate meal service, at a minimum of two sites, one congregate and one non-congregate. USDA estimates that the 56 State agencies will review 338 schools that operate non-congregate meal service through SSO and that it takes approximately 2 hours to complete this reporting requirement for each record, which is estimated to add a total of 37,895 annual burden hours and 18,947 responses to the inventory.

USDA estimates that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA operating the SSO in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225 of this chapter. USDA estimates that the 1,997 school food authorities each will approve 3,111 meals consistent with non-congregate meal service during the summer operational period and that it takes approximately 5 minutes (0.0835 hours) to complete this requirement, which is estimated to add a total of 518,698 annual burden hours and 6,211,948 responses into OMB's information collection inventory. Of the 6,211,948 meals being served, USDA estimates that 5% of non-congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that this requirement will also have \$1,537,457.13 (6,211,948 meals * .05 * \$4.95) in mailing costs.

USDA expects that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA must comply with the non-congregate meals service provisions set forth at § 225.16(b)(5)(i) to obtain prior

parental consent, if meals are to be delivered to a child's home. USDA expects that the 1,997 school food authorities will obtain 3 adult consent forms annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add a total of 5,647 annual burden hours and 5,647 responses into OMB's information collection inventory.

USDA estimates that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA must comply with the non-congregate meals service provisions set forth at § 225.16(b)(5)(iv) to claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA estimates that the 1,997 school food authorities will report reimbursement claims for 55 days during the summer operating period annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add a total of 109,835 annual burden hours and 109,835 responses into OMB's information collection inventory.

USDA expects that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA may use the non-congregate meal service options contained in § 225.16(i). SFAs electing to operate non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA expects that the 1,997 school food authorities will have a system in place to ensure that the proper number of meals are distributed to each eligible child annually and that it takes approximately 5 hours to complete this requirement, which adds a total of 9,985 annual burden hours and 1,997 responses into OMB's information collection inventory.

USDA estimates that 1,997 school food authorities will be required to

fulfill the requirement at 7 CFR 210.34(a) that an SFA may use the non-congregate meal service options contained in § 225.16(i) of this chapter. USDA estimates that the 1,997 school food authorities will have procedures in place to ensure that bulk meal components meet the requirements annually and that it takes approximately 2 hours to complete this requirement, which adds a total of 3,994 annual burden hours and 1,997 responses into OMB's information collection inventory.

Households

The changes to be implemented in this rule will add households, and reporting requirements for those households, to the types of respondents and information collection requirements that are currently approved under OMB Control Number 0584–0006. Currently, households are not part of the respondents currently covered under this collection.

USDA estimates that 5,647 households will be required to fulfill the requirement at 7 CFR 210.34(a) that households provide written consent to participate in the Program at a rural site that utilizes the home delivery option. USDA estimates that 5,647 households will submit a parental consent form annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add a total of 1,412 annual burden hours, 5,647 responses, and 5,647 respondents into OMB's information collection inventory.

USDA expects that 5,647 households will be required to fulfill the requirement at 7 CFR 210.34(a) that households travel to the parent or guardian pick-up site to take meals home to their children. USDA expects that the 5,647 households will travel to the pick-up site once a week for a total of 11 weeks during the summer operational period annually, and that it takes approximately 2 hours to complete this requirement, which is estimated to add a total of 124,239 annual burden hours, 62,119 responses, and 5,647

respondents into OMB's information collection inventory.

As a result of this interim final rule, USDA estimates that the burden for this existing information collection will increase to a total of 127,229 respondents, 54,050,134 responses, and 10,620,405 burden hours, which is an increase of 13,347 respondents, 6,418,138 responses, 811,704 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection request (ICR) for the final rule is approved, USDA estimates that the burden for OMB Control Number 0584–0006 will increase by 6,418,138 responses, 811,704 burden hours, 11,294 respondents, and \$1,537,457.13 in total costs.

For NSLP, USDA estimates a cost of \$769.88 per school food authority in mailing costs to provide home delivered meals to households in areas designated as rural due to this interim final rule. Therefore, as a result of what's outlined in this interim final rule, USDA estimates that this collection is expected to have \$1,537,457.13 in costs related to the provision of home delivered meals that will be added to the currently approved burden for NSLP under OMB Control Number 0584–0006.

Reporting

Respondents (Affected Public): Households and State, local, and Tribal government. The respondent groups identified include households, school food authorities, and State agencies.

Estimated Number of Respondents: 13,347 respondents.

Estimated Number of Responses per Respondent: 481 responses.

Estimated Total Annual Responses: 6,418,138 responses.

Estimated Time per Response: 0.1 hours.

Estimated Total Annual Burden on Respondents: 811,704 hours.

BILLING CODE 3410–30–P

Reporting										
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Hours	Current OMB Approved Burden Hours	Hours Due to Program Adjustment	Hours Due to Program Change Due to Authoring Statute	Total Difference in Hours
State Agencies										
SA must review the Seamless Summer Option (SSO), if the SFA operates congregate and non-congregate meal service, a minimum of two sites, one congregate and one non-congregate site.	210.18(c)(3)(ii)	56	338	18,947	2	37,895	0	0	37,895	37,895
State Agencies Total		56	338	18,947	2	37,895	0	0	37,895	37,895
School Food Authorities/Local Education Agencies										
SFA operating the SSO in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225.	210.34(a)	1,997	3,111	6,211,948	0.08	518,698	0	0	12,875,555	12,875,555
SFAs must comply with the non-congregate meals service provisions set forth at §225.16(b)(5)(i) to obtain prior parental consent, if meals are to be delivered to a child's home.	210.34(a)	1,997	3	5,647	1	5,647	0	0	5,647	5,647

SFAs must comply with the non-congregate meals service provisions set forth at §225.16(b)(5)(iv) to claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in §225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.	210.34(a)	1,997	55	109,835	1	109,835	0	0	109,835	109,835
SFAs may use the non-congregate meal service options contained in §225.16(i) of this chapter. SFAs electing to operate non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child.	210.34(a)	1,997	1	1,997	5	9,985	0	0	9,985	9,985
SFAs may use the non-congregate meal service options contained in §225.16(i). SFAs electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of §225.16; all food items that contribute to a reimbursable meal are clearly identifiable; menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal; food preparation, such as heating or warming, is minimal; and the maximum number of reimbursable meals provided to a child does	210.34(a)	1,997	1	1,997	2	3,994	0	0	3,994	3,994

not exceed the number of meals that could be provided over a 5-calendar day period.										
School Food Authorities/Local Education Agencies Total		1,997	3,170	6,331,424	0.1	648,159	0	0	648,159	648,159
Households										
Households provide written consent to participate in the Program at a rural site that utilizes the home delivery option	210.34(a)	5,647	1	5,647	0.25	1,412	0	0	1,412	1,412
Households travel to the parent or guardian pick-up site to take meals home to their children.	210.34(a)	5,647	11	62,119	2	124,239	0	0	124,239	124,239
Households Total		11,294	6	67,767	1.85	125,641	0	0	125,651	125,651
Total Reporting Burden		13,347	481	6,418,138	0.13	811,704	0	0	811,704	811,704

SUMMARY OF BURDEN
[OMB #0584–0006]

Total No. Respondents	127,229
Average No. Responses per Respondent	425
Total Annual Responses	54,050,134
Average Hours per Response ..	0.19
Total Burden Hours	10,620,405
Current OMB Approved Burden Hours	9,808,701
Adjustments	0
Program Changes	811,704
Total Difference in Burden	811,704

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

Form Number: FNS–905, approved in OMB Control # 0584–0649, expiration date, December 31st, 2025.

OMB Control Number: 0584–0280.

Expiration Date: 09/30/2025.

Type of Request: Revision.

Abstract: This is a revision which introduces new information collection requirements and revises existing information collection requirements into the information collection currently approved under OMB Control Number 0584–0280, as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting and public disclosure requirements for the State/local/Tribal agencies, non-profit institutions, camps, and participating households that are being impacted by this rule.

The interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that establish rural non-congregate meal service options in SFSP. In current regulations, there is not an option for rural sites to provide non-congregate meal service. The interim final rule allows sites, in an area designated as rural, to have the option to enroll as non-congregate sites for the summer operating period.

Currently, the regulations define “rural” as any areas in a county which is not a part of a Metropolitan Statistical Area or any “pocket” within a Metropolitan Statistical Area which is determined to be geographically isolated from urban areas. The interim final rule will expand the “rural” definition to also include any census tract classified as a non-metropolitan area based on Rural-Urban Commuting Area codes, areas of a Metropolitan Statistical Area which is not part of a Census Bureau-defined urban area, and areas of a State which are not part of an urban area as determined by the Secretary. These revisions will expand access to SFSP by increasing the defined total rural service area. This will provide more program

operators with an additional option for offering no-cost meals to children in rural areas.

This interim final rule will amend 7 CFR 225.16(b)(5) and (i) to define non-congregate meal service and the options available under the new meal service provisions. The revisions will establish the sponsors eligible for the new meal service options and the requirements for rural non-congregate participation.

Reporting

State/Local/Tribal Governments

The changes in this rule will introduce new reporting requirements and impact existing ones in the information collection currently approved under OMB Control Number 0584–0280 for State/local/Tribal governments.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.3(e)(1) that State agencies must establish, and update annually as needed, a coordinated services plan to coordinate the statewide availability of services offered through the Summer Food Service Program described in this part and the Summer EBT program established in 7 CFR part 292. USDA estimates that the 53 State agencies will be required to submit a coordinated services plan annually and that it takes approximately 1 hour to complete this reporting requirement for the plans. This new requirement will add 53 hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(7) that State agencies must develop a plan for ensuring compliance with the food service management company procurement requirements set forth at § 225.6(l). USDA estimates that the 53 State agencies will be required to develop a compliance plan annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(8) that State agencies must provide an estimate of the State’s need for monies available to pay for the cost of conducting health inspections and meal quality tests. USDA estimates that the 53 State agencies will be required to conduct a budget estimate for conducting health and meal quality inspections annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual

burden hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(9) that State agencies must include in the Program Management Administration Plan (MAP) a plan to provide a reasonable opportunity for children to access meals across all areas of the State. USDA estimates that the 53 State agencies will be required to include a plan to provide a reasonable opportunity for children to access meals across all areas of the State as a part of their MAP annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(10) that State agencies must include in the Program Management Administration Plan (MAP) a plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State’s plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service. USDA expects that the 53 State agencies will be required to submit the Program delivery plan annually as a part of their MAP and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(a)(2) that State agencies must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals in those areas. USDA expects that 53 State agencies will be required to identify rural areas within their State annually and that it will take approximately 5 hours to complete this rural identification, which is estimated to add 265 hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(b)(6) that State agencies may approve exceptions for any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day, if the applicant demonstrates it has the capability of managing a program larger than these limits, and the SA has the capacity to conduct reviews of at least 10 percent of the sponsor’s sites, as described in § 225.7(e)(4)(v). USDA estimates that the 53 State agencies will

each approve exceptions for at least 1 sponsor annually for a total of 76 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 76 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(c)(2) that State agencies must review applications submitted by new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems, for the provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA expects that the 53 State agencies will each review 20 applications annually for a total of 1,066 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 1,066 annual burden hours and responses to the collection.

USDA estimates that 640 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(c)(2)(ix) that new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that 640 local government sponsors will each provide information on their procedures to document meals annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 640 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that State agencies must review applications submitted by experienced sponsors and experienced sites and review provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA expects that the 53 State

agencies will review provided information from 84 sponsors for a total of 4,458 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 4,458 annual burden hours and responses to the collection.

USDA estimates that 2,675 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that experienced sponsors and experienced sites must provide information on the procedures that document that meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is elected to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that 2,675 local government sponsors will be required to provide information annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,675 annual burden hours and responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(f)(1)(iii) that sponsors must submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application. USDA expects that the 567 local government sponsors will need to submit the policy statement annually with its application and that it takes approximately 1 hour to complete the requirement, which is estimated to add 567 total annual burden hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that State agencies must review the site information sheet submitted by sponsors, for new sites where non-congregate meal service is proposed for the first time. USDA estimates that the 53 State agencies will review at least 1 site information sheet annually for a total of 53 responses and that it will take approximately 1 hour to complete the requirement, which is estimated to add 53 annual burden hours and responses to the collection.

USDA expects that 38 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that sponsors must submit documentation, for new sites where non-congregate meals service is proposed for the first time, once every five years, or earlier if the State agency determines that an area's rural status has changed significantly since the last

designation, on the site information sheet. USDA expects that the 38 local government sponsors will submit documentation once every five years for a total 8 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 8 annual burden hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(g)(2) that State agencies must review the site information sheet submitted by sponsors, for experienced sites where non-congregate meal service is proposed for the first time. USDA estimates that the 53 State agencies will review 3 site information sheets annually for a total of 177 annual responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 177 annual burden hours and responses to the collection.

USDA expects that 529 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(g)(2) that sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA expects that the 529 local government sponsors will submit documentation once every five years for a total of 106 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 106 annual burden hours and responses to the collection.

USDA expects that 53 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(h)(3) and (4) that State agencies must ensure that sites applying for non-congregate meal service, or sites applying for both congregate and non-congregate meal service, meet the requirements for non-congregate meal service. USDA estimates that 53 State agencies will submit 18 responses annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 946 hours and responses to the collection.

USDA estimates that 53 local government sponsors will be required to fulfill the requirement at 7 CFR 225.7(d) that State agencies must review sponsors and sites to ensure compliance with Program regulations, including all applicant sponsors that did not participate in the prior year, all applicant sponsors that had operational problems noted in the prior year, and all

sites that the State agency has determined need a pre-approval visit, including sites did not participate in the prior year or sites that are new to non-congregate meal service. USDA estimates that 53 local government agencies will submit 485 responses annually and that it takes approximately 2 hours to complete this requirement for each record. The interim final rule is increasing the number of estimated sites that must respond to this requirement, which in turn increases the responses for this collection by 946 responses, from 24,764 to 25,710 responses. This results in an increase in the burden hours for this requirement by 49,364 hours, from 2,055 to 51,419 hours per year.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(d)(2) that State agencies may conduct pre-approval visits of a CACFP institution if it was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review. USDA expects that the 53 State agencies will review 64 CACFP institutions annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 6,750 annual burden hours and 3,375 responses into OMB's information collection inventory.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(d)(4) that State agencies must establish a process to determine which sites need a pre-approval visit, including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service and existing sites that exhibited operational problems in the prior year. USDA expects that 53 State agencies will establish a process annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 265 hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(i) that State agencies must conduct a review of every new sponsor at least once during the first year of operation. USDA estimates that the 53 State agencies will conduct a review of 7 new sponsors annually for a total of 370 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 740 annual burden hours and 370 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new

requirement at 7 CFR 225.7(e)(4)(ii) that State agencies must annually review every sponsor that experienced significant operational problems in the prior year. USDA expects that the 53 State agencies will conduct a review of 3 sponsors with significant operation problems annually for a total of 159 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 318 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(iii) that State agencies must review each sponsor at least once every three years. USDA estimates that the 53 State agencies will review at least 35 sponsors annually for a total of 1,841 responses and that it will take approximately 2 hours to complete the requirement, which is estimated to add 3,683 annual burden hours and 1,841 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(iv) that State agencies may review sponsors that require additional technical assistance more frequently at their own discretion. USDA expects that the 53 State agencies will review 3 sponsors annually for a total of 159 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 318 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirements at 7 CFR 225.7(j) that State agencies must develop and provide monitor review forms to all approved sponsors. USDA estimates that the 53 State agencies will each develop a monitor review form annually and that it takes approximately 5 hours to complete the requirement, which is estimated to add 265 annual burden hours and 53 responses to the collection.

USDA expects that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.7(j) that sponsors must complete provided monitor review forms and include the required information. USDA expects that the 3,314 local government sponsors will complete a monitor review form annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 3,314 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.8(e) that State agencies, by May 1 of each fiscal year, submit to FNS a list of open site

locations and their operational details via the Summer Meal Site Locator form (FNS-905) and update weekly as needed, with a minimum of 3 updates during the summer operational period. USDA expects that 53 State agencies will submit 3 Summer Meal Site Locator forms annually for a total of 159 responses and that it takes approximately 7.5 minutes (0.125 hours) to complete this requirement. The reporting burden for the FNS-905 is already accounted for in a separate information collection for OMB Control Number 0584-0649, Summer Food Sites Locations for State Agencies. This requirement is currently voluntary but the interim final rule changes it to a mandatory requirement for the participating State agencies. Therefore, USDA estimates that an additional 20 annual burden hours and 159 responses beyond what is currently approved for this requirement will be needed due to this interim final rule. To account for this burden, USDA is adding this requirement into this collection and estimates that it will add 20 burden hours and 159 responses into the collection. USDA intends to incorporate the burden associated with the requirement at 7 CFR 225.8(e) into the information collection for OMB Control Number 0584-0649, at a later date.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.8(e) that State agencies will update Information Systems (IS) to facilitate the submission of FNS-905 forms to FNS. USDA estimates that the 53 State agencies will each need to update their Information Systems to support the submission of FNS-905 forms to FNS and that it will take approximately 10 hours to complete the requirement. Furthermore, USDA estimates that each of the 53 State agencies incur a total of \$14,542.96 in start-up costs to complete the requirement. USDA estimates that this requirement will add 530 annual burden hours, 53 responses, and \$14,542.96 in costs to the collection.

USDA estimates that 28 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that sponsors that operate non-congregate meal service and deliver meals directly to children's homes obtain written parental participation consent. USDA estimates that 28 local government agencies will submit 226 responses annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 1,603 hours and 6,410 responses to the collection.

USDA expects that 567 local government sponsors will be required to

fulfill the new requirement at 7 CFR 225.14(d)(7) that sponsors that operate conditional non-congregate sites must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement. USDA expects that 567 local government agencies will submit a certification annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 567 hours and responses will be added to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.15(d)(1) that SAs must develop training for administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor. USDA estimates that 53 State agencies will need to develop training for SFSP annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 530 annual burden hours and 53 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor. USDA estimates that the 3,314 local government sponsors will each conduct a training session for its administrative and site personnel annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 16,570 annual burden hours and 3,314 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors. USDA estimates that the 3,314 local government sponsors will each submit documentation annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 3,314 annual burden hours and responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(2) that sponsors must conduct pre-operational visits for new sites, including existing sites that are new to

non-congregate meal service, sites that experienced operational problems the previous year, and sites that have experienced significant staff turnover from the prior year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children. USDA estimates that 3,314 local government agencies will conduct 9 pre-operational visits annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 60,787 hours and 30,393 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(3) that sponsors must visit each of their sites at least once during the first week of operation under the Program. USDA estimates that the 3,314 local government sponsors will conduct 9 site visits annually for a total of 30,393 responses and that it takes approximately 30 minutes (0.5 hours) to complete the requirement for a total of 15,197 hours. This reporting requirement is currently approved in OMB Control Number 0584–0280, 7 CFR part 225, *Summer Food Service Program*, at 7 CFR 225.15(d)(2), but the interim final rule moves the requirement to 7 CFR 225.15(d)(3). USDA also estimates that the number of responses will increase by 567, from 29,826 to 30,393 responses, and that the number of annual burden hours will increase by 284, from 14,913 to 15,197 burden hours.

USDA expects that 3,314 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(4) that sponsors must review food service operations for all sites at least once during the first four weeks of Program operations, and thereafter maintain a reasonable level of monitoring. USDA expects that the 3,314 local government sponsors will review 9 food service operations annually for a total 30,393 responses and that it takes approximately 2 hours to complete the requirement for a total of 60,787 hours. This requirement is currently approved in OMB Control Number 0584–0280 at 7 CFR 225.15(d)(3), but the interim final rule moves this requirement to 7 CFR 225.15(d)(4). USDA also estimates that the number of responses will increase by 567, from 29,826 to 30,393 responses, and that the number of annual burden hours will increase by 1,135, from 59,652 to 60,787 burden hours.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR

225.16(b)(5)(i) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home. USDA estimates that the 567 local government sponsors will obtain 11 parental consent forms annually for a total of 6,410 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 6,410 annual burden hours and responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 567 local government sponsors will serve 11,805 meals annually for a total of 6,698,902 responses and that it takes approximately 5 minutes (0.0835 hours) to complete the requirement, which is estimated to add 559,358 annual burden hours and 6,698,902 responses to the collection. Of the 6,698,902 meals being served, USDA estimates that 5% of non-congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that \$1,657,978.25 (6,698,902 meals * .05 * \$4.95) in mailing costs will be associated with this requirement.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meals service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 567 local government sponsors will serve 621 meals annually for a total of 352,574 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 705,148 annual burden hours and 352,574 responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(iv) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic

conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA expects that the 567 local government sponsors will submit reimbursement claims for 55 days during the summer operating period annually, for a total of 31,211 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 31,211 annual burden hours and responses to the collection.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i) that sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA estimates that 567 local government agencies will need to ensure that a system is in place annually, for 567 responses, and that it takes approximately 5 hours to complete this requirement, which is estimated to add 2,837 hours and 567 responses to the collection.

USDA expects that 188 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i)(3) that sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of 7 CFR 225.16. USDA expects that the 188 local government sponsors will have procedures in place to ensure that bulk meal components meal service meets the requirements annually and that it takes approximately 2 hours to complete the requirement; which is estimated to add 3,76 annual burden hours and 188 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.3(b) to notify USDA if it intends to administer SFSP, by January 1 of each fiscal year, and submit an agreement that contains assurance that the State agency will comply with policy, instructions, guidance, and handbooks issued by FNS. USDA estimates that the 53 State agencies will be required to notify USDA annually and that it takes approximately 36 hours to complete this requirement. The interim final rule revises the submission date for the currently approved Program agreement from November 1 to January 1. As such, the 1,908 total annual burden hours and 56 responses will remain unchanged from the currently approved collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.8(d)(2) that State agencies within 5 days of approval of sponsors, must notify the appropriate FNSRO of sponsors, approved sites, locations, days of operation, estimated daily attendance, type of site approval, and other important details about each site. USDA expects that 53 State agencies will notify the appropriate FNSRO 104 times annually, once for each operating sponsor, and that it takes approximately 1 hour to complete this requirement. This is an existing requirement that is currently approved in OMB Control Number 0584–0280. The interim final rule adds type of site approval to the information collected about the site. This revision, however, is not expected to change the currently approved burden of 5,512 annual burden hours and responses.

Businesses (Non-Profit Institutions and Camps)

The changes in this rule will introduce new reporting requirements and impact existing ones in the information collection currently approved under OMB Control Number 0584–0280 for Non-profit Institutions and Camps.

USDA estimates that 426 non-profit institutions and camps be required to fulfill the new requirement at 7 CFR 225.6(c)(2)(ix) that new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that the 426 non-profit institutions and camps will provide information on their procedures annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 426 annual burden hours and responses to the collection.

USDA expects that 1,783 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child. USDA expects that the 1,783 non-profit institutions and camps will provide information on their procedures

annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 1,783 annual burden hours and responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(f)(1)(iii) that sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application. USDA estimates that the 378 non-profit institutions and camps will submit a policy statement annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 378 annual burden hours and responses to the collection.

USDA expects that 25 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA expects that the 25 non-profit institutions and camps will submit documentation once every 5 years for a total of 5 responses annual and that it takes approximately 1 hour to complete the requirement, which is estimated to add 5 annual burden hours and responses to the collection.

USDA estimates that 353 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(g)(2) that sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA estimates that the 353 non-profit institutions and camps will submit documentation once every five years for a total of 71 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 71 annual burden hours and responses to the collection.

USDA expects that 2,210 non-profit businesses and camps will be required to fulfill the new requirements at 7 CFR 225.7(j) that sponsors must complete provided monitor review forms and include the required information. USDA expects that the 2,210 non-profit institutions and camps will be required

to complete the monitor review form annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,210 annual burden hours and responses to the collection.

USDA expects that 19 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain participation consent from an adult household member. USDA expects that 19 non-profit institutions and camps will collect 226 consent forms annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 1,069 hours and 4,275 responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(7) that sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement. USDA estimates that 378 non-profit institutions and camps will certify that it will collect information annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 378 hours and responses to the collection.

USDA expects that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(8) that sponsors that are not a school food authority (SFA) must enter into a written agreement or Memoranda of Understanding (MOU) with the State agency or SFA if it chooses to receive school data to determine children's Program eligibility, as required under § 225.15(k). USDA expects that 2,210 non-profit institutions and camps will enter an MOU annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 2,210 hours and responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must hold Program training sessions for its administrative and site personnel. USDA estimates that the 2,210 non-profit institutions and camps will hold a training session annually for administrative and site personnel and that it takes approximately 5 hours to complete the requirement; which is estimated to add 11,050 annual burden hours and 2,210 responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors. USDA estimates that the 2,210 non-profit institutions and camps will provide documentation annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,210 annual burden hours and responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.15(d)(2) that sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children. USDA estimates that 2,210 non-profit institutions and camps will conduct 9 pre-operational visits annually and that it takes approximately 30 minutes (0.5 hours) to complete this requirement; which is estimated to add 10,134 hours and 20,268 responses to the collection.

USDA estimates that 2,210 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(3) that sponsors must visit each of their sites at least once during the first week of operation under the Program. USDA estimates that the 2,210 local government sponsors will conduct 9 site visits annually for a total of 20,268 responses and that it takes approximately 30 minutes (0.5 hours) to complete the requirement for a total of 10,134 hours. This requirement is currently approved in OMB Control Number 0584–0280, 7 CFR part 225, *Summer Food Service Program*, at 7 CFR 225.15(d)(2), but the interim final rule moves the requirement to 7 CFR 225.15(d)(3). USDA also estimates that the number of responses will increase by 378, from 19,890 to 20,268 responses, and that the number of annual burden hours will increase by 189, from 9,945 to 10,134 hours.

USDA expects that 2,210 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(4) that sponsors must review food service operations for all sites at least once during the first four weeks of Program operations, and thereafter maintain a reasonable level of monitoring. USDA expects that the 2,210 local government sponsors will

review 9 food service operations annually for a total 20,268 responses and that it takes approximately 2 hours to complete this requirement for a total of 40,537 hours. This requirement is currently approved in OMB Control Number 0584–0280 at 7 CFR 225.15(d)(3), but the interim final rule moves it to 7 CFR 225.15(d)(4). USDA also estimates that the number of responses will increase by 378, from 19,890 to 20,268 responses, and that the number of annual burden hours will increase by 757, from 39,780 to 40,537 hours.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(f) that sponsors may also use the household application procedures to identify eligible children in non-area eligible areas instead of entering into a written agreement or MOU with the local SFA. USDA estimates that the 2,210 non-profit institutions and camps will use household application procedures to identify 26 eligible children each for a total of 58,365 responses annually and that it takes approximately 30 minutes (0.5 hours) to complete the requirement, which is estimated to add 29,183 annual burden hours and 58,365 responses into the collection.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(i) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home. USDA expects that the 378 non-profit institutions and camps will obtain 11 parental consent forms for a total of 4,275 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 4,275 annual burden hours and responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide parent or guardian pick-up of non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA estimates that the 378 non-profit institutions and camps will each serve 11,805 meals for a total of 4,467,283 responses annually and that it takes approximately 5 minutes (0.0835 hours) to complete the requirement, which is estimated to add 373,018 annual burden hours and 4,467,283 responses to the collection. Of the 4,467,283 meals being served, USDA estimates that 5% of non-

congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that \$1,105,652.54 (4,467,2831,337,472 meals * .05 * \$4.95) in mailing costs will also be added to this requirement.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meal service in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 378 non-profit institutions and camps will each serve 621 meals for a total of 235,120 responses annually and that it takes approximately 2 hours to complete the requirement, which is estimated to add 470,240 annual burden hours and 235,120 to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(iv) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA estimates that the 378 non-profit institutions and camps will each submit reimbursement claims for 55 days during the summer operational period annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 20,814 annual burden hours and responses to the collection.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(i) that sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA expects that 378 non-profit institutions and camps will ensure that a system is in place annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 1,892 hours and 378 responses to the collection.

USDA estimates that 125 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i)(3) that sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of 7 CFR 225.16. USDA estimates that the 125 local government sponsors will have procedures in place to ensure that bulk meal components meal service meets the requirements annually and that it takes approximately 2 hours to complete the requirement, which is estimated to add 251 annual burden hours and 125 responses to the collection.

Households

The changes in this rule will add new reporting requirements to those currently approved under OMB Control Number 0584–0280 for Households.

USDA estimates that 10,685 households will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that households provide written consent to participate in the Program at a rural site that utilizes the home delivery option. USDA estimates that 10,685 households will have to provide their written consent to participate annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 2,671 hours and 10,685 responses to the collection.

USDA expects that 10,685 households will be required to fulfill the new requirement at 7 CFR 225.16(i)(2) that households travel to the parent or guardian pick-up site to take meals home to their children. USDA expects that the 10,685 households will travel to the pick-up site 11 times annually for a total of 117,539 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 235,078 annual burden hours and 117,539 responses to this collection.

Public Disclosure

State/Local/Tribal Governments

The changes in this rule will add a new public disclosure requirement to those currently approved under OMB Control Number 0584–0280 for State/Local/Tribal Governments.

USDA estimates 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.3(e)(4) that State agencies must make their service coordination plans available to the public through a website, or through similar means. USDA estimates that the 53 State agencies will have to make their State coordination plans publicly available annually and that it takes

approximately 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 13 hours and 53 responses to the collection.

Businesses (Non-Profit Institutions and Camps)

The changes in this rule will add a new public disclosure requirement to those currently approved under OMB Control Number 0584–0280 for Businesses (Non-profit institutions and camps).

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.15(e) that each sponsor of sites that use free meal applications to determine individual eligibility must include certain information as a part of its notification to enrolled children. USDA estimates that the 2,210 non-profit institutions and camps will be required to provide the information as a part of its notification to 26 enrolled children annually for a total of 58,365 responses and that it takes approximately 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 14,591 annual burden hours and 58,365 responses the collection.

As a result of what's outlined in this rulemaking, USDA estimates that this information collection will have 63,942 respondents, 12,505,697 responses, and 3,120,966 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the ICR for the final rule is approved USDA estimates that the burden for OMB Control Number 0584–0280 will increase by 12,113,902 responses and 2,658,267 burden hours.

For SFSP, there is a wide variation in development and administration costs to implement information systems to accommodate the FNS–905 requirements. USDA estimates a cost of \$14,542.96 per State agency to perform the necessary system upgrades for respondents of this interim rule ICR. Likewise, program operators will face increased costs to offer home delivered meals as a part of this interim final rule ICR. USDA estimates a cost of \$2,924.12 for each local government sponsor and a cost of \$2,925.01 for each non-profit institution and camp to cover mailing costs associated with providing home delivery. Therefore, as a result of the interim final rule, USDA estimates that this collection is expected to have \$770,777 in system upgrade costs, \$1,657,978.25 in local government sponsor mailing costs, and \$1,105,652.54 in non-profit institution and camp mailing costs, which will add a total of \$3,534,407.79 in combined

system upgrades and annual mailing costs to the currently approved burden for SFSP under OMB Control Number 0584–0280 to the currently approved burden for OMB Control Number 0584–0280.

Reporting

Respondents (Affected Public): Individual/households; businesses; and State, local, and Tribal government. The respondent groups identified include households, non-profit institutions and camps, and State/local/Tribal governments.

Estimated Number of Respondents: 26,948 respondents.
Estimated Number of Responses per Respondent: 454 responses.
Estimated Total Annual Responses: 12,238,098 responses.
Estimated Time per Response: 0.23 hours.
Estimated Total Annual Burden on Respondents: 2,770,008 hours.
Public Disclosure
Respondents (Affected Public): Businesses and State, local, and Tribal government. The respondent groups

identified include State agencies and non-profit institutions and camps.
Estimated Number of Respondents: 2,263 respondents.
Estimated Number of Responses per Respondent: 26 responses.
Estimated Total Annual Responses: 58,418 responses.
Estimated Time per Response: 0.25 hours.
Estimated Total Annual Burden on Respondents: 14,605 hours.
BILLING CODE 3410–30–P

Reporting										
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Hours	Current OMB Approved Burden Hours	Hours Due to Program Adjustment	Hours Due to Program Change Due to Authorizing Statute	Total Difference in Hours
State/Local Tribal Governments										
SAs must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the SFSP and the Summer EBT program.	225.3(e)(1)	53	1	53	1.00	53	0	0	53	53
SAs must develop a plan for ensuring compliance with the food service management company procurement requirements set forth at § 225.6(l).	225.4(d)(7)	53	1	53	5.00	265	0	0	265	265
SAs must provide an estimate of the State's need for monies available to pay for the cost of conducting health inspections and meal quality tests.	225.4(d)(8)	53	1	53	5.00	265	0	0	265	265
SAs must include in the Program Management Administration Plan a plan to provide a reasonable opportunity for children to access meals across all areas of the State.	225.4(d)(9)	53	1	53	5.00	265	0	0	265	265

SAs must include in the Program Management Administration Plan a plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State's plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service.	225.4(d)(10)	53	1	53	5.00	265	0	0	265	265
SAs must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals in those areas.	225.6(a)(2)	53	1	53	5.00	265	0	0	265	265
SAs may approve exceptions for any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day, if the applicant demonstrates it has the capability of managing a program larger than these limits, and the SA has the capacity to conduct reviews of at least 10 percent of the sponsor's sites, as described in § 225.7(e)(4)(v)	225.6(b)(6)	53	1	76	1.00	76	0	0	76	76

SAs must review applications submitted by new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems, for the provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2)	225.6(c)(2)	53	20	1,066	1.00	1,066	0	0	1,066	1,066
New sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(2)(ix)	640	1	640	1.00	640	0	0	640	640
SAs must review applications submitted by experienced sponsors and experienced sites and review provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that	225.6(c)(3)(viii)	53	84	4,458	1.00	4,458	0	0	4,458	4,458

duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).										
Experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(3)(viii)	2,675	1	2,675	1.00	2,675	0	0	2,675	2,675
Sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application.	225.6(f)(1)(iii)	567	1	567	1.00	567	0	0	567	567
SAs must review the site information sheet submitted by sponsors, for new sites where non-congregate meal service is proposed for the first time.	225.6(g)(1)	53	1	53	1.00	53	0	0	53	53

Sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(1)	38	0.20	8	1.00	8	0	0	8	8
SAs must review the site information sheet submitted by sponsors, for experienced sites where non-congregate meal service is proposed for the first time.	225.6(g)(2)	53	3	177	1.00	177	0	0	177	177

Sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(2)	529	0.20	106	1.00	106	0	0	106	106
SAs must ensure that sites applying for non-congregate meal service, or sites applying for both congregate and non-congregate meal service, meet the requirements for non-congregate meal service.	225.6(h)(3) & 225.6(h)(4)	53	18	946	1.00	946	0	0	946	946

The State agency must review sponsors and sites to ensure compliance with Program regulations, including all applicant sponsors that did not participate in the program the prior year, all applicant sponsors that had operational problems noted in the prior year, and all sites that the State agency has determined need a pre-approval visit, such as sites that did not participate in the prior year or sites new to non-congregate meal service.	225.7(d)	53	485	25,710	2.00	51,419	2,055	0	49,364	49,364
SAs may conduct pre-approval visits of a CACFP institution if it was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review.	225.7(d)(2)	53	64	3,375	2.00	6,750	0	0	6,750	6,750
SAs must establish a process to determine which sites need a pre-approval visit, including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service, and existing sites that exhibited operational problems in the prior year.	225.7(d)(4)	53	1	53	5.00	265	0	0	265	265
SAs must conduct a review of every new sponsor at least once during the first year of operation.	225.7(e)(4)(i)	53	7	370	2.00	740	0	0	740	740
SAs must annually review every sponsor that experienced significant operational problems in the prior year.	225.7(e)(4)(ii)	53	3	159	2.00	318	0	0	318	318

SAs must review each sponsor at least once every three years.	225.7(e)(4)(iii)	53	35	1,841	2.00	3,683	0	0	3,683	3,683
SAs may review sponsors that require additional technical assistance more frequently at their own discretion.	225.7(e)(4)(iv)	53	3	159	2.00	318	0	0	318	318
SAs must develop and provide monitor review forms to all approved sponsors.	225.7(j)	53	1	53	5.00	265	0	0	265	265
Sponsors must complete provided monitor review forms and include the required information.	225.7(j)	3,314	1	3,314	1.00	3,314	0	0	3,314	3,314
SAs, by May 1 of each year, must submit to FNS a list of open site locations and their operational details via the Summer Meal Site Locator form and update weekly, with a minimum of three updates during the summer operational period.	225.8(e)	53	3	159	0.13	20	0	0	20	20
SAs will update Information Systems to facilitate the submission of FNS-905 forms to FNS.	225.8(e)	53	1	53	10.00	530	0	0	530	530
Sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain parental participation consent.	225.14(d)(6)	28	226	6,410	0.25	1,603	0	0	1,603	1,603
Sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement.	225.14(d)(7)	567	1	567	1.00	567	0	0	567	567

SAs must develop training for sponsor administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor.	225.15(d)(1)	53	1	53	10.00	530	0	0	530	530
Sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor.	225.15(d)(1)	3,314	1	3,314	5.00	16,570	0	0	16,570	16,570
Sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors.	225.15(d)(1)	3,314	1	3,314	1.00	3,314	0	0	3,314	3,314
Sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children.	225.15(d)(2)	3,314	9	30,393	2.00	60,787	0	0	60,787	60,787

Sponsors must visit each of their sites at least once during the first week of operation under the Program.	225.15(d)(3)	3,314	9	30,393	0.50	15,197	14,913	0	284	284
Sponsors must review food service operations for all sites at least once during the first 4 weeks of Program operations, and thereafter maintain a reasonable level of monitoring.	225.15(d)(4)	3,314	9	30,393	2.00	60,787	59,652	0	1,135	1,135
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home.	225.16(b)(5)(i)	567	11	6,410	1.00	6,410	0	0	6,410	6,410
A sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	567	11,805	6,698,902	0.08	559,358	0	0	559,358	559,358
A sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	567	621	352,574	2.00	705,148	0	0	705,148	705,148
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meals service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other	225.16(b)(5)(iv)	567	55	31,211	1.00	31,211	0	0	31,211	31,211

[illegible]

New sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(2)(ix)	426	1	426	1.00	426	0	0	426	426
Experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(3)(viii)	1,783	1	1,783	1.00	1,783	0	0	1,783	1,783
Sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application.	225.6(f)(1)(iii)	378	1	378	1.00	378	0	0	378	378

Sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(1)	25	0.2	5	1.00	5	0	0	5	5
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Sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(2)	353	0.2	71	1.00	71	0	0	71	71
Sponsors must complete provided monitor review forms and include the required information.	225.7(j)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210
Sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain participation consent from an adult household member.	225.14(d)(6)	19	226	4,275	0.25	1,069	0	0	1,069	1,069

Sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement.	225.14(d)(7)	378	1	378	1.00	378	0	0	378	378
Sponsors that are not a SFA must enter into a written agreement or Memoranda of Understanding (MOU) with the State agency or SFA if it chooses to receive school data to determine children's Program eligibility, as required under §225.15(k).	225.14(d)(8)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210
Sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor.	225.15(d)(1)	2,210	1	2,210	5.00	11,050	0	0	11,050	11,050
Sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors.	225.15(d)(1)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210

Sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children.	225.15(d)(2)	2,210	9	20,268	0.50	10,134	0	0	10,134	10,134
Sponsors must visit each of their sites at least once during the first week of operation under the Program.	225.15(d)(3)	2,210	9	20,268	0.50	10,134	9,945	0	189	189
Sponsors must review food service operations for all sites at least once during the first 4 weeks of Program operations, and thereafter maintain a reasonable level of monitoring.	225.15(d)(4)	2,210	9	20,268	2.00	40,537	39,780	0	757	757
Sponsors may also use the household application procedures to identify eligible children in non-area eligible areas instead of entering into a written agreement or MOU with the local SFA.	225.15(f)	2,210	26	58,365	0.50	29,183	0	0	29,183	29,183
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home.	225.16(b)(5)(i)	378	11	4,275	1.00	4,275	0	0	4,275	4,275

A sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	378	11,805	4,467,283	0.08	373,018	0	0	373,018	373,018
A sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	378	621	235,120	2.00	470,240	0	0	470,240	470,240
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.	225.16(b)(5)(iv)	378	55	20,814	1.00	20,814	0	0	20,814	20,814
Sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child.	225.16(i)	378	1	378	5.00	1,892	0	0	1,892	1,892

[illegible]

SAs must make their service coordination plans available to the public through a website, or through similar means.	225.3(e)(4)	53	1	53	0.25	13	0	0	13	13
<i>State/Local Tribal Governments Subtotal</i>		53	1.000	53	0.250	13	0	0	13	13
Businesses (Non-profit Institutions and Camps)										
Each sponsor of sites that use free meal applications to determine individual eligibility must include the Secretary's family-size and income standards for reduced price school meals, a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits 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 disability, as a part of its notification to enrolled children.	225.15(e)	2,210	26	58,365	0.25	14,591	0	0	14,591	14,591
<i>Businesses (Non-profit Institutions and Camps) Subtotal</i>		2,210	26.410	58,365	0.250	14,591	0	0	14,591	14,591
Public Disclosure Total		2,263	25.814	58,418	0.250	14,605	0	0	14,605	14,605
Total Burden		26,948	456.31	12,296,516	0.226	2,784,612	126,345	0	2,658,267	2,658,267

SUMMARY OF BURDEN
[OMB #0584–0280]

Total No. Respondents	63,942
Average No. Responses per Respondent	196
Total Annual Responses	12,505,697
Average Hours per Response ..	0.25
Total Burden Hours	3,120,966
Current OMB Approved Burden Hours	462,699
Adjustments	0
Program Changes	2,658,267
Total Difference in Burden	2,658,267

Title: 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program.
Form Number: FNS–366(a), approved in OMB Control #0584–0594, expiration date, September 30th, 2026; FNS–388, approved in OMB Control #0584–0594, expiration date, September 30th, 2026; and SF–778, approved in OMB Control #0584–0594, expiration date, September 30th, 2026. Forms included to capture burden specific to this rule that is not captured in OMB Control Number 0584–0594.

OMB Control Number: 0584–NEW.
Expiration Date: Not Yet Determined.
Type of Request: New.
Abstract: FNS is requesting a new OMB Control Number for the information collection requirements and associated burden for the Summer EBT program which is being implemented as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting, recordkeeping, and public disclosure requirements that will impact the burden on Summer EBT Agencies (State agencies and Indian Tribal Organizations (ITOs)), the Commonwealth of Puerto Rico, local government agencies, Summer EBT authorized retailers (firms and retail food stores), and participating households.

The interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that establish a permanent, nationwide Summer EBT Program, beginning in 2024. The Summer EBT program will provide benefits on EBT cards for families to purchase food for their children, during the summer months, when school is not in session. The interim final rule will create a new chapter in 7 CFR part 292 to establish the Summer EBT Program and the required procedures to fully implement the Program. This rulemaking will introduce new reporting, recordkeeping, and public disclosure requirements to ensure State agencies and Indian Tribal Organization

(ITO) operations are compliant with the NSLA and the regulations. New requirements include State agency responsibilities, new eligibility and benefit issuance requirements, and the development of standards and monitoring requirements to ensure that eligible children receive the proper benefit and protect program integrity. The interim final rule will create new reporting and recordkeeping responsibilities that Summer EBT authorized retailers must comply with in order to redeem Summer EBT benefits spent at their locations. As a part of this rulemaking, some households will be required to submit an income eligibility, notify the appropriate Summer EBT agency for opting-out of Program participation or seeking an appeal of a Summer EBT decision, and respond to a Summer EBT agency’s request for verification their Program eligibility to participate in the Program.

Reporting
Summer EBT Agencies (State Agencies, Indian Tribal Organizations, and the Commonwealth of Puerto Rico)

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for State/Local/Tribal governments. USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(b)(1) that State agencies that have been approved to administer the Program must enter into a written agreement with FNS for the administration of the Program in the State (this is known as the Federal/State agreement). USDA estimates that the 55 State agencies will be required to enter into a Program agreement annually, and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses into the inventory. USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(e) that if the State has designated partnering agencies to provide support services to the Program, State agencies designated as the Summer EBT Coordinating Agency in their State must enter into a written agreement with partnering Summer EBT agencies that defines the roles and responsibilities of each (known as an inter-agency agreement). USDA expects that 55 State agencies will be required to enter into an inter-agency agreement annually, and that it takes approximately 1 hour to complete this

requirement, which is estimated to add 55 annual burden hours and responses into the inventory. USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(2) that the State agency may submit a request for a waiver under paragraph (f)(1) of 7 CFR 292.3. USDA estimates that the 55 State agencies will submit a request for a waiver annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses to the inventory. USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(3) that State agencies may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. USDA expects that the 55 State agencies will submit a waiver request on behalf of 757 eligible service providers annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory. USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4) that State agencies must review any waiver request submitted by an eligible service provider and promptly forward approved requests to the appropriate FNSRO. USDA estimates that the 55 State agencies will review 757 waiver requests annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory. USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4)(v) that the State agency must notify the requesting eligible service provider that the request is denied and state the reason for denying the request in writing within 30 calendar days of the receipt of the request. USDA expects that the 55 State agencies will notify 757 eligible service providers annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory. USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.3(h)(3) that Indian Tribal Organizations must provide compelling justification for the waiver request in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. USDA estimates that the 102 Indian Tribal

Organizations will provide justification for a waiver request annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 102 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that State and Indian Tribal Organization Summer EBT agencies must, by August 15th of each fiscal year, submit to the appropriate FNS Regional Office (FNSRO) of its intent to administer the Summer EBT Program. USDA expects that the 157 Summer EBT agencies will be required to submit its intent to administer the Program annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that, for 2024, State and Indian Tribal Organization Summer EBT agencies must submit to the FNSRO its intent to administer the Summer EBT Program by January 1, 2024. USDA estimates that the 157 Summer EBT agencies will be required to submit its intent to operate the Program annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that, for 2024, State and Indian Tribal Organization Summer EBT agencies must submit an interim Plan for Operations and Management that must include the programmatic information required in § 292.8(e) and (f). USDA expects that the 157 Summer EBT agencies will submit an interim Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(b)(1) that, no later than February 15th of each year, the State and Indian Tribal Organization Summer EBT agencies must submit to the FNSRO a final Plan for Operations and Management that addresses all the requirements of § 292.8(e) and (f), for the Summer EBT Program for that fiscal year if the State has elected to participate in the Program. USDA estimates that the 157

Summer EBT agencies must submit a final Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement; which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(d) that State and Indian Tribal Organization Summer EBT agencies may amend an interim or final Plan for Operations and Management to reflect changes and must submit the amendments to USDA for approval. USDA expects that the 157 Summer EBT agencies will submit an amendment annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 314 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e) that State and Indian Tribal Organization Summer EBT agencies must include their final Plan for Operation and Management, which includes all of the required agreements, plans, procedures, and other documentation. USDA estimates that the 157 Summer EBT agencies will include the required documents as a part of their final Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e)(3) that State and Indian Tribal Organization Summer EBT agencies must submit an administrative budget on behalf of the entire Program as part of the Plan for Operations and Management, using the FNS-366A Form. USDA expects that the 157 Summer EBT agencies will submit an FNS-366a form annually, and that it takes approximately 12 hours and 49 minutes (12.82 hours) to complete this requirement, which is estimated to add 2,012 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e)(3) that State and Indian Tribal Organization Summer EBT agencies must submit an amended expenditure plan should administrative fund needs change. USDA estimates that the 157 Summer EBT agencies will submit amendments annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add

314 annual burden hours and 157 responses to the inventory.

USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.8(f) that Indian Tribal Organization Summer EBT agencies must also include the required plans, descriptions, lists, and other documentation as part of their final Plan for Operations and Management. USDA estimates that the 102 Indian Tribal Organizations will submit the required information annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 408 annual burden hours and 102 responses to the inventory.

USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.9(b) that State agencies and Indian Tribal Organizations serving the same geographic areas must enter into a written agreement to ensure the coordination of Summer EBT program services. USDA expects that the 55 State agencies will enter into approximately 1.85 agreements with an ITO annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 102 burden hours and responses to the inventory.

USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.9(b) that State agencies and Indian Tribal Organizations serving the same geographic areas must enter into a written agreement to ensure the coordination of Summer EBT program services. USDA estimates that the 102 Indian Tribal Organizations will enter into approximately 0.54 agreements with the State agency annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.10(a) that State and Indian Tribal Organization Summer EBT agencies must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer Food Service Program (SFSP) and Summer EBT Program. USDA expects that the 157 Summer EBT agencies will establish and update a coordinated services plan annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 785 burden hours and 157 responses to the inventory.

USDA estimates that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b) that

State Summer EBT agencies must acquire Information Systems (IS) equipment or services to be utilized in an EBT system and adhere to the ADP process. USDA estimates that the 55 State Summer EBT agencies will be required to acquire IS equipment or services annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 55 State Summer EBT agencies will face a total of \$73,317,942 in start-up costs and \$25,760,358 in ongoing operation and maintenance costs related to this requirement. USDA estimates that this will add 550 annual burden hours, 55 responses, and \$99,078,300 in total costs to the inventory.

USDA expects that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b)(4)(i) that State Summer EBT agencies must submit a new Planning APD, Implementation APD, and Testing documents to FNS for approval of IS projects. USDA expects that the 55 State Summer EBT agencies will be required to submit a new Planning APD, Implementation APD, and Testing documents to FNS annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 550 annual burden hours and 55 responses to the inventory.

USDA estimates that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b)(4)(ii) that State Summer EBT agencies must submit an Annual APD to FNS 60 days prior to the expiration of the Federal Financial Participation (FFP) approval for the initial implementation of Summer EBT and subsequent significant project changes. USDA estimates that the 55 State Summer EBT agencies will be required to submit annual Planning APD to FNS annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 110 annual burden hours and 55 responses to the inventory.

USDA expects that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(g) that State Summer EBT agencies must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. USDA expects that the 55 State Summer EBT agencies will be required to execute a service agreement annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill

the requirement at 7 CFR 292.11(q)(2) that State and Indian Tribal Organization Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of Summer EBT. USDA estimates that the 157 Summer EBT agencies will be required to implement and maintain a comprehensive Security Program annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(q)(3) that State and Indian Tribal Organization Summer State agencies must establish and maintain a program for conducting periodic risk analysis to ensure that appropriate, cost-effective safeguards are incorporated into the new and existing system. USDA expects that the 157 Summer EBT agencies will be required to establish and maintain a program for conducting periodic risk analysis annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirements at 7 CFR 292.11(q)(4) that State and Indian Tribal Organization Summer EBT agencies must review the security of IS involved in the administration of Summer EBT on a biennial basis. USDA estimates that the 157 Summer EBT agencies will be required to review the security of IS systems twice annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 628 annual burden hours and 314 responses to the inventory.

USDA expects that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(r) that Indian Tribal Organization Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process. USDA expects that the 102 Indian Tribal Organization Summer EBT agencies will acquire IS equipment or services annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will face a total of \$136,018,290 in start-up costs and \$47,790,210 in ongoing operation and maintenance costs to complete the requirement. USDA estimates that this requirement adds 1,020 annual burden

hours, 102 responses, and \$183,808,500 in total costs to the inventory.

USDA expects that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(s)(1) that ITO Summer EBT agencies must follow the Department APD requirements and submit Planning and Implementation APDs and appropriate updates. USDA expects that the 102 ITO EBT Coordinating agencies will submit Planning and Implementation APDs annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 burden hours and 102 responses to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to follow the requirements at 7 CFR 292.11(s)(3) that Indian Tribal Organization Summer EBT agencies must submit EBT project status reports annually as a part of the State plan. USDA estimates that the 102 State Summer EBT agencies will submit a EBT project status report annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 204 burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(1) that Summer EBT agencies must establish procedures to ensure correct eligibility determinations. USDA expects that the 157 State and Indian Tribal Organization Summer EBT agencies will each develop a process to determine eligibility annually and that it takes approximately 10 hours to complete this reporting requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(2) that State and Indian Tribal Organization Summer EBT agencies must establish procedures that allow households to provide updated contact information for the purpose of receiving Summer EBT benefits. USDA estimates that the 157 Summer EBT agencies will each develop a process to update contact information annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(3) that State and Indian Tribal Organization Summer EBT agencies

must establish procedures that allow eligible households to opt out of participation in the Program. USDA estimates that the 157 State and Summer EBT agencies must establish procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that State and Indian Tribal Organization Summer EBT agencies must establish and maintain a State/ITO wide database of all children in NSLP/SBP participating schools within the State or ITO service area for the purposes of enrolling children for Summer EBT benefits and preventing duplicate benefit issuance. USDA expects that the 157 Summer EBT agencies will establish and maintain a State/ITO wide database annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 157 State and Indian Tribal Organization Summer EBT agencies will face a total of \$207,325,800 in start-up costs and \$72,755,100 in ongoing operation and maintenance costs for this requirement. USDA estimates that a total of 1,570 annual burden hours, 157 responses, and \$280,080,900 in costs will be added to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that Indian Tribal Organization Summer EBT agencies may submit for USDA approval alternate plans to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance, if an ITO determines that establishing and maintaining a database is not feasible or is unnecessary. USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will submit for approval an alternate plan annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(d) that Summer EBT agencies must use streamlined certification to automatically enroll, without further application, each eligible child without regard to whether the child has been matched against an NSLP/SBP enrollment list. USDA expects that the 157 Summer EBT agencies will each automatically enroll 66,304 eligible children annually and that it takes

approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 869,212 annual burden hours and 10,409,726 responses to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(d)(4) that Indian Tribal Organization Summer EBT agencies may submit for USDA approval alternate plans to efficiently enroll children with minimal burden for households if it determines that any element of automatic enrollment with Streamlined Certification is not feasible or is unnecessary. USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will submit an alternate plan annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(e) that State and Indian Tribal Organization Summer EBT agencies must make an application available to children who attend NSLP/SBP participating schools not already identified through streamlined certification and enroll them after matching against the statewide eligibility database. USDA estimates that the 157 Summer EBT agencies will each enroll 91,185 eligible children annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,195,387 annual burden hours and 14,316,012 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(e)(2) that State and Indian Tribal Organization Summer EBT agencies must match children on applications submitted directly to a Summer EBT agency against the statewide eligibility database, as required in § 292.12(c) prior to benefit issuance. USDA expects that the 157 Summer EBT agencies will each match 91,185 eligible children annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,195,387 annual burden hours and 14,316,012 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(1) that State and Indian Tribal Organization Summer EBT agencies must notify the household that filed an income application of their children's eligibility within 15 operating days of receiving the application from the

household. USDA estimates that the 157 Summer EBT agencies will send 91,185 notifications annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 239,077 annual burden hours and 14,316,012 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(2) that State and Indian Tribal Organization Summer EBT agencies must notify households that their children are eligible for Summer EBT and that no application is required. USDA estimates that the 157 Summer EBT agencies will each notify 66,304 eligible households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 173,842 annual burden hours and 10,409,726 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(g) that State and Indian Tribal Organization Summer EBT agencies must notify households that submitted an incomplete application or does not meet the eligibility requirements for Summer EBT benefits that their application has been denied, the reason for the denial, the notification of the right to appeal, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time. USDA estimates that the 157 Summer EBT agencies will each notify 4,559 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 11,954 annual burden hours and 715,801 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(h) that State and Indian Tribal Organization Summer EBT agencies must receive a request for an appeal by households that submitted a denied application and promptly schedule a fair hearing upon request. USDA expects that the 157 Summer EBT agencies will each receive 4,559 requests annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(h) that State and Indian Tribal Organization Summer EBT agencies must provide a conference to a household upon request to provide the opportunity for the household to discuss the situation,

present information, and obtain an explanation of the data submitted in the application or the decision rendered. USDA estimates that the 157 Summer EBT agencies will provide 4,559 conferences annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 715,801 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.13(a) that, by 2025, State and Indian Tribal Organization Summer EBT agencies must develop a Summer EBT application to make available to households whose children attend NSLP/SBP participating schools, and who do not already have an individual eligibility determination. USDA expects that the 157 Summer EBT agencies will each develop an application annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.13(h) that State and Indian Tribal Organization Summer EBT agencies may establish a system for executing household applications electronically and using electronic signatures. USDA estimates that the 157 Summer EBT agencies will establish a system for executing household applications electronically annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 157 State and Indian Tribal Organization Summer EBT agencies will face a total of \$207,325,800 in start-up costs and \$72,755,100 in ongoing operation and maintenance costs to complete the requirement. USDA estimates that this requirement adds a total of 1,570 annual burden hours, 157 responses, and \$280,080,900 in total costs to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement 7 CFR 292.14(a)(1) that State and Indian Tribal Organization Summer EBT agencies must verify questionable applications, on a case-by-case basis. USDA expects that the 157 Summer EBT agencies will verify 531 applications and that it takes approximately 1 hour to complete this requirement, which is estimated to add 83,311 burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(a)(2) that State and Indian Tribal

Organization Summer EBT agencies may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application. USDA estimates that the 157 Summer EBT agencies will verify 531 applications for cause and that it takes approximately 1 hour to complete this requirement; which is estimated to add 83,311 burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(a)(3) that State and Indian Tribal Organization Summer EBT agencies must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer. USDA estimates that the 157 Summer EBT agencies will sample 3,011 applications and that it takes approximately 1 hour to complete this requirement, which is estimated to add 472,766 burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(2) that State and Indian Tribal Organization Summer EBT agencies must provide written notification to households that their application has been selected for verification. USDA estimates that the 157 Summer EBT agencies will each notify 531 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 1,391 annual burden hours and 83,311 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(6) that State and Indian Tribal Organization Summer EBT agencies must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. USDA expects that the 157 Summer EBT agencies will make 1,134 attempts to follow-up on verification requests annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 356,076 annual burden hours and 178,038 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(7) that State and Indian Tribal Organizations Summer EBT agencies must provide written notification to households of any reduction or termination of benefits as a result of verification. USDA expects that the 157

Summer EBT agencies will each notify 531 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 1,391 annual burden hours and 83,311 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(c)(1)(i) that State and ITO Summer EBT agencies are responsible for the timely and accurate issuance of benefits to certified eligible children. USDA expects that the 157 Summer EBT agencies will issue benefits to 157,489 eligible children annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 412,920 annual burden hours and 24,725,737 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(f)(2)(ii) that State and Indian Tribal Organization Summer EBT agencies must establish an availability date for household access to their benefits and inform households of this date. USDA estimates that the 157 Summer EBT agencies will establish an availability date annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 157 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(1) that State and Indian Tribal Organization Summer EBT agencies provide written training materials to each household prior to or at Summer EBT issuance. USDA expects that the 157 Summer EBT agencies will issue training materials to 157,489 households annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(4) that State and Indian Tribal Organization Summer EBT agencies must provide replacement EBT cards available for pickup or place the card in the mail within two business days following notification by the household to the State agency that the card has been lost, stolen, or damaged and report issuance. USDA estimates that the 157 Summer EBT agencies will issue replacement benefits to 40 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add

104 annual burden hours and 6,227 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(5) that State and Indian Tribal Organization Summer EBT agencies must provide replacement EBT benefits to households whose benefits were stolen or who lost Summer EBT benefits as a result of a natural disaster. USDA expects that the 157 Summer EBT agencies will issue replacement benefits to 40 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 104 annual burden hours and 6,227 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(1)(ii) that Summer EBT agencies must provide notice, no less than 30 calendar days before benefit expungement is expected to begin, to households that their Summer EBT benefits are approaching expungement due to nonuse/inactivity. USDA estimates that the 157 Summer EBT agencies will notify 11,812 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 30,969 annual burden hours and 1,854,430 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2) that State and Indian Tribal Organization Summer EBT agencies must establish procedures to permit the appropriate managers to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement. USDA expects that the 157 Summer EBT agencies establish procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2)(ii) that State and Indian Tribal Organization Summer EBT agencies must produce issuance reports that reflect the adjustment made to the Summer EBT agency issuance totals to comply with the reporting requirements in § 292.23. USDA estimates that the 157 Summer EBT agencies will produce 11,812 issuance reports annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add

154,845 annual burden hours and 1,854,430 responses to the inventory.

USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.16(a) that State agencies must establish issuance and accountability systems as defined in § 274.1. USDA estimates that the 55 State agencies will establish issuance and accountability systems annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 550 annual burden hours and 55 responses to the inventory.

USDA expects that the Commonwealth of Puerto Rico will be required to fulfill the requirement at 7 CFR 292.18 that the Commonwealth of Puerto Rico is authorized to establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits. USDA expects that the Commonwealth of Puerto Rico will establish issuance and accountability systems annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 10 annual burden hours and 1 response to the collection.

USDA estimates that 102 ITOs will be required to fulfill the requirement at 7 CFR 292.19(c) that ITOs must create a system that ensures effective vendor integrity in accordance to specification. USDA estimates that the 102 ITOs will establish a system annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(4) that State and Indian Tribal Organization Summer EBT Agencies must provide for effective control and accountability by the Summer EBT agency for all Program funds, property, and other assets acquired with Program funds. USDA expects that the 157 Summer EBT agencies will provide for effective control and accountability for all Program funds, property, and other assets annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(5) that State and Indian Tribal Organization Summer EBT agencies must complete an Automated Standard Application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds

will be made available. USDA estimates that the 157 Summer EBT agencies will each submit an ASAP form annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(6) that State and Indian Tribal Organization Summer EBT agencies must provide for controls which minimize the time between the receipt of Federal Funds from the United States Treasury and their disbursement for Program costs. USDA expects that the 157 Summer EBT agencies will provide controls annually and that it takes 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(7) that State and Indian Tribal Organization Summer EBT agencies must provide for procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415. USDA estimates that the 157 Summer EBT agencies will provide for procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(9) that the State and Indian Tribal Organization Summer EBT agencies must provide for an audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for Program administration. USDA expects that the 157 Summer EBT agencies will provide for an audit trail annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add of 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.22 that State and Indian Tribal Organization Summer EBT agencies must monitor and document compliance with Performance Standards I–IV. USDA

estimates that the 157 Summer EBT agencies will document 3 compliance reviews and that it takes approximately 10 hours to complete this requirement, which is estimated to add 4,160 annual burden hours and 416 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(d) that, for Summer EBT Administrative Grants, State and Indian Tribal Organizations Summer EBT agencies will be required to submit an expenditure plan by August 15th, prior to the beginning of each fiscal year. USDA expects that the 157 Summer EBT agencies will submit an expenditure plan annually and that it takes 1 hour to complete this requirement, which is estimated to add 157 annual burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(e) that State Administrative Grant expenditures will be reported to FNS quarterly on a Summer EBT financial status report, using the FNS-778 Federal Financial Form. USDA estimates that the 157 Summer EBT agencies will report 4 Summer EBT financial status reports and that it takes 1 hour to complete this requirement, which is estimated to add 628 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(f) that State and Indian Tribal Organization Summer EBT agencies must report participation and issuance on a monthly basis using the FNS-388 Form. USDA expects that the 157 Summer EBT agencies will submit 12 FNS-388 forms annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 1,884 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.24(a) that State and Indian Tribal Organization Summer EBT agencies shall arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. USDA expects that the 157 Summer EBT agencies will conduct an audit of their own operations and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill

the requirement at 7 CFR 292.24(b) that State and Indian Tribal Organization Summer EBT agencies shall provide FNS with the full opportunity to conduct management evaluations and financial management reviews of all operations of the SA or ITO. USDA estimates that the 157 Summer EBT agencies will conduct an audit of their own operations annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.25 that State and Indian Tribal Organization Summer EBT agencies shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. USDA expects that the 157 Summer EBT agencies will review 121 complaints received or irregularities noted in connection with the operation of the Program annually and that it takes 4 hours to complete this requirement, which is estimated to add 75,700 annual burden hours and 18,925 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(a) that State and Indian Tribal Organization Summer EBT agencies must establish a fair hearing procedure that is applicable to the State or ITO program as a whole. USDA expects that the 157 Summer EBT agencies will establish a process annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b) that State and Indian Tribal Organization Summer EBT agencies must produce oral or documentary evidence for a requested hearing. USDA expects that the 157 Summer EBT agencies will produce oral or documentary evidence for 4,559 hearings and that it takes approximately 4 hours to complete this requirement, which is estimated to add 2,863,202 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b)(9) that a hearing official must transmit written notification to the Summer EBT agency and the household of the hearing official's decision. USDA expects that the 157 Summer EBT agencies will notify 4,559 households and that it takes

approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

Local Government Agencies

The changes in this rule will establish a new reporting requirement, as required by statute, under OMB Control Number 0586-NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the local government agencies.

USDA estimates that 757 local government agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4) that eligible service providers may submit a request for a waiver under paragraph (f)(1) of 7 CFR 292.3 in accordance with section 12(l) and the provisions of this part. USDA estimates that the 757 local government agencies will submit a waiver request annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 757 annual burden hours and responses to the inventory.

Businesses (Summer EBT Authorized Retailers)

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584-NEW, 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT Authorized Retailers.

USDA estimates that 247,636 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.17(a) that firms shall submit claims in accordance to the standards for determination and disposition of claims described at § 278.7. USDA estimates that the 247,636 Summer EBT Authorized Retailers will submit a claim monthly (12 claims annually) and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 248,131 annual burden hours and 2,971,632 responses to the inventory.

USDA expects that 9,552 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.17(e) that firms aggrieved by administrative action may request an administrative review of the administrative action with FNS. USDA expects that the 9,552 Summer EBT Authorized Retailers will submit a request annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 798 annual burden hours and 9,552 responses to the inventory.

Households

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the households.

USDA estimates that 14,316,012 households will be required to fulfill the requirement at 7 CFR 292.12(f)(1) that households not directly certified must submit an income application to determine eligibility for Summer EBT benefits. USDA estimates that the 14,316,012 households will submit an application annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 14,316,012 annual burden hours and responses to the inventory.

USDA expects that 2,132,112 households will be required to fulfill the requirement at 7 CFR 292.12(f)(3) that households must notify the appropriate Summer EBT agency that they decline their Summer EBT benefits. USDA expects that the 2,132,112 households will notify the Summer EBT agency annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 178,031 annual burden hours and 2,132,112 responses to the inventory.

USDA estimates that 715,801 households will be required to fulfill the requirement at 7 CFR 292.12(h) that households that received a notice of denial may seek an appeal in accordance to the procedures established by the Summer EBT agency or LEA. USDA estimates that the 715,801 households will submit a request for appeal annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 715,801 annual burden hours and responses to the inventory.

USDA expects that 715,801 households will be required to fulfill the requirement at 7 CFR 292.12(h) that households can request and participate for a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. USDA expects that the 715,801 households will request and participate in a conference annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 1,431,601 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 83,311 households will be required to fulfill the requirement at 7 CFR 292.14(f) that households selected and notified of

their selection for verification must provide documentation of income or evidence of SNAP, FDPIR, or TANF participation. USDA estimates that the 83,311 households will notify the Summer EBT agency annually and that it takes approximately 2 hours to complete this requirement; which is estimated to add 166,623 annual burden hours and 83,311 responses to the inventory.

USDA expects that 83,311 households will be required to fulfill the requirement at 7 CFR 292.14(f)(6) that households must respond to a follow-up attempt at verification by the Summer EBT agency. USDA expects that the 83,311 households will participate in a follow-up meeting annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 166,623 annual burden hours and 83,311 responses to the inventory.

USDA estimates that 57,874 households will be required to fulfill the requirement at 7 CFR 292.26(a) that households can request for an appeal from a decision made with respect to the application the family has made for Summer EBT benefits. USDA estimates that the 57,874 households will request for an appeal annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 4,833 annual burden hours and 57,874 responses to the inventory.

USDA expects that 57,874 households will be required to fulfill the requirement at 7 CFR 292.26(b)(5) that households may present oral or documentary evidence and arguments that support their position. USDA expects that the 57,874 households will present oral or documentary evidence and arguments before a hearing official annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 231,497 annual burden hours and 57,874 responses to the inventory.

Recordkeeping

State/Local/Tribal Governments

The changes in this rule will establish new recordkeeping requirements, as required by statute, under OMB Control Number 0584–NEW, 7 CFR *Summer Electronic Benefits Transfer (Summer EBT) Program for the State agencies and the Summer EBT agencies*.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that State and Indian Tribal Organization Summer EBT agencies must establish and maintain a statewide database of eligible children that attend NLSP/SBP

participating schools for the purposes of conducting streamlined certification. USDA estimates that the 157 Summer EBT agencies will maintain records of 157,489 eligible children and that it takes approximately 5 minutes (0.08 hours) to complete the requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(3) that State and Indian Tribal Organization Summer EBT agencies must document and maintain a record or any notification from a household declining Summer EBT benefits. USDA expects that the 157 Summer EBT agencies will each maintain 32,257 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add a total of 422,870 annual burden hours and 5,064,308 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(g) that State and Indian Tribal Organization Summer EBT agencies must document and maintain a record of the reasons for an ineligibility determination for a written application. USDA expects that the 157 Summer EBT agencies will each maintain 4,559 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2)(i) that State and Indian Tribal Organization Summer EBT agencies must document the date and amount of benefits in the household case file whenever benefits are expunged. USDA expects that the 157 Summer EBT agencies will each document the date and amount of 145,677 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,909,754 annual burden hours and 22,871,307 responses to the inventory.

USDA expects that 55 Summer agencies will be required to fulfill the requirement at 7 CFR 292.16(h) that State and Indian Tribal Organization Summer EBT agencies must maintain issuance, inventory, reconciliation, and other accountability records as described in § 274.5. USDA expects that the 55 State agencies will each maintain 12 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is

estimated to add 55 annual burden hours and 660 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.20(h) that State and Indian Tribal Organization Summer EBT agencies must maintain Program records as necessary to support the administrative costs claimed and the reports submitted to FNS under this paragraph and ensure that such records are retained for a period of 3 years. USDA estimates that the 157 Summer EBT agencies will each maintain a record of administrative costs claimed and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.22 that State and Indian Tribal Organization Summer EBT agencies must monitor and document the performance standards listed in this paragraph. USDA expects that the 157 Summer EBT agencies will each maintain 1 record annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(b) that State and Indian Tribal Organization Summer EBT agencies must retain records substantiating eligibility determinations on file for at least 3 years after the date of the submission of the final financial reports or until the audit findings have been resolved. USDA estimates that the 157 Summer EBT agencies will each maintain 157,489 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.25 that State and Indian Tribal Organizations Summer EBT agencies shall maintain on file all evidence relating to such investigations and corrective action procedures. USDA expects that the 157 Summer EBT agencies will each maintain 121 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,580 annual burden hours and 18,925 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b)(11) that State and Indian Tribal Organization Summer EBT agencies shall preserve a written record of each hearing for a period of 3 years. USDA estimates that the 157 Summer EBT agencies will each maintain 4,559 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

Businesses (Summer EBT Authorized Retailers)

The changes in this rule will establish a new recordkeeping requirement, as required by statute, under OMB Control Number 0584–NEW, *7 CFR Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT Authorized Retailers*.

USDA expects that 2,428 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.19(c)(3) that retail food stores and wholesale food concerns shall submit claims in accordance to the standards for determination and disposition of claims described in § 246.12. USDA expects that 2,428 firms will retain 12 records of submitted claims and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,433 annual burden hours and 29,134 responses to the inventory.

Public Disclosure

The changes in this rule will establish new public disclosure requirements, as required by statute, under OMB Control Number 0584–NEW, *7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT agencies*.

State/Local/Tribal Governments

USDA estimates 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.10(d) that State and Indian Tribal Organization Summer EBT agencies must make their coordinated service plans available to the public through a website, or through similar means. USDA estimates that the 157 Summer EBT agencies will each make their coordinated service plans available to the public annually and that it takes 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 39 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the

requirement at 7 CFR 292.12(a)(1) that State and Indian Tribal Organization Summer EBT agencies shall inform participant and applicant households of their Program rights and responsibilities and that the materials meet the requirements. USDA expects that the 157 Summer EBT agencies will each publicly disclose to 157,489 households annually and that it takes approximately 1 minute (0.02 hours) to complete the requirement, which is estimated to add 412,920 annual burden hours and 24,725,737 responses to the inventory.

As a result of what's outlined in this rulemaking, FNS estimates that this new information collection will have 16,696,674 respondents, 246,393,631 responses, and 35,748,275 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the ICR for the final rule is approved, FNS estimates that the burden for OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program will increase OMB's information collection inventory by 246,393,631 responses and 35,748,275 burden hours.

For S–EBT, given the wide variation in information system development and maintenance costs across State and ITO Summer EBT agencies, USDA estimates a total program cost of \$282,886,800 to acquire IS technology and perform system upgrades annually for the Advanced Planning Document (ADP) process described in this interim final rule ICR. Likewise, USDA estimates a total program cost of \$280,080,900 to acquire and develop statewide NSLP/ SBP databases per State and ITO Summer EBT agency and an additional cost of \$280,080,900 to develop and maintain a system that is capable of processing electronic applications for S–EBT. Therefore, as a result of what's outlined in this final rule, USDA estimates that this collection is expected to have \$628,260,000 in start-up costs related to system upgrades, and an additional \$220,740,000 in ongoing operation and maintenance costs. USDA estimates that a total of \$849,000,000 in combined start-up costs and ongoing operation and maintenance costs will be added to the inventory.

Reporting

Respondents (Affected Public): Individual/households; businesses; and State, local, and Tribal government. The respondent groups identified include households, Summer EBT Authorized Retailers (firms), State agencies, ITOs, Commonwealth of Puerto Rico, Summer

EBT agencies, and local government agencies.

Estimated Number of Respondents: 16,696,674 respondents.

Estimated Number of Responses per Respondent: 9 responses.

Estimated Total Annual Responses: 142,800,013 responses.

Estimated Time per Response: 0.2 hours.

Estimated Total Annual Burden on Respondents: 28,749,862 hours.

Recordkeeping

Respondents (Affected Public): Businesses; and State, local, and Tribal government. The respondent groups

identified include Summer EBT Authorized Retailers (retail food stores), State agencies and Summer EBT agencies.

Estimated Number of Respondents: 2,585 respondents.

Estimated Number of Responses per Respondent: 30,512 responses.

Estimated Total Annual Responses: 78,867,723 responses.

Estimated Time per Response: 0.08 hours.

Estimated Total Annual Burden on Respondents: 6,585,455 hours.

Public Disclosure

Respondents (Affected Public): State, local, and Tribal government. The respondent groups identified include State and ITO Summer EBT agencies.

Estimated Number of Respondents: 157 respondents.

Estimated Number of Responses per Respondent: 157,49013 responses.

Estimated Total Annual Responses: 24,725,894 responses.

Estimated Time per Response: 0.02 hours.

Estimated Total Annual Burden on Respondents: 412,959 hours.

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Reporting										
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Hours	Current OMB Approved Burden Hours	Hours Due to Program Adjustment	Hours Due to Authorizing Statute (Program Change)	Total Difference in Hours
State/Local/Tribal Governments										
Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs))										
SAs that have been approved to administer the Program must enter into a written agreement with FNS for the administration of the Program in the State (Federal/State agreement).	292.3(b)(1)	55	1	55	1.00	55.00	0	0	55	55
If the State has designated partnering agencies to provide support services to the Program, SAs designated as the Summer EBT Coordinating agency must enter into a written agreement with partnering Summer EBT agencies that defines the roles and responsibilities of each (Inter-agency agreement).	292.3(e)	55	1	55	1.00	55.00	0	0	55	55
SAs may submit a request for a waiver under paragraph (f)(1) of § 292.3 in accordance with section (12)(1)(2) and the provisions of this part.	292.3(f)(2)	55	1	55	1.00	55.00	0	0	55	55
SAs may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State.	292.3(f)(3)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635

SAs must review any waiver request submitted by an eligible service provider and promptly forward to the appropriate FNSRO, if the SA concurs with the request.	292.3(f)(4)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635
If the SA denies the request, the SA must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the receipt of the request.	292.3(f)(4)(v)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635
When submitting requests for waivers, ITOs must provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program.	292.3(h)(3)	102	1	102	1.00	102.00	0	0	102	102
State and ITO Summer EBT agencies, by Aug. 15 of each fiscal year, must submit to the FNSRO its intent to administer the Summer EBT Program.	292.8(a)	157	1	157	0.08	13.11	0	0	13	13
For 2024, State and ITO Summer EBT agencies must submit to the FNSRO its intent to administer the Summer EBT Program by Jan 1, 2024.	292.8(a)	157	1	157	0.08	13.11	0	0	13	13

For 2024, State and ITO Summer EBT agencies must submit an interim POM that must include the Summer EBT agency's forecasted program participation, anticipated administrative funding, and expenditure plan, and other programmatic information required in §292.8(e) and (f), if applicable, as soon as practicable.	292.8(a)	157	1	157	4.00	628.00	0	0	628	628
No later than Feb. 15 of each year, the State and ITO Summer EBT agencies must submit to the FNSRO a final POM that addresses all the requirements of §292.8(e) and (f), if applicable, for the Summer EBT Program for that fiscal year if the State has elected to participate in the Summer EBT Program.	292.8(b)(1)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies may amend an interim or final POM to reflect changes and must submit the amendments to USDA for approval. The amendments must be signed by the Summer EBT agency-designated official responsible for ensuring the Program is operated in accordance with the POM.	292.8(d)	157	1	157	2.00	314.00	0	0	314	314

State and ITO Summer EBT agencies must include a copy of the inter-agency written agreement, an estimate of the number of participants, a plan for timely and effective action against program violators, a plan to comply with the Summer EBT agency requirements in §§ 292.12 to 292.14, a plan to ensure that Summer EBT benefits are issued to children based on their eligibility at the end of the instructional year, a description of enrollment procedures, a plan to coordinate with an ITO Summer EBT Program or State Summer EBT Program, the procedures to detect and prevent dual participation, a description of the issuance process, customer service plans, and a copy of the fair hearing procedure for participants as a part of their final POM.	292.8(e)	157	1	157	4.00	628.00	0	0	628	628
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State and ITO Summer EBT agencies must submit an administrative budget on behalf of the entire Program, which reflects the comprehensive needs of all SA and local agencies, the State's plan to comply with any standards prescribed by the Secretary for the use of these funds, as well as an expenditure plan reflecting planned administrative costs requirements for the year, as a part of the Plan for Operations and Management.	292.8(e)(3)	157	1	157	12.82	2,012.47	0	0	2,012	2,012
State and ITO Summer EBT agencies must submit an amended expenditure plan should administrative fund needs change.	292.8(e)(3)	157	1	157	2.00	314.00	0	0	314	314

ITO Summer EBT agencies must also include the service area of the ITO, a plan to enroll children already deemed eligible by a State Summer EBT agency serving the same geographic area, a plan to determine eligibility and enroll children who must apply through the ITO to receive benefits, a description of the benefit delivery model, the list of supplemental foods for which participants can transact upon enrollment, procedures for enrolling applicable vendors to transact and redeem Summer EBT benefits, a plan for providing technical assistance and training to vendors, and a plan for vendor integrity and monitoring, pursuant to §292.19, as a part of their final POM.	292.8(f)	102	1	102	4.00	408.00	0	0	408	408
SAs and ITOs serving the same geographic area must ensure the coordination of SEBT program services, entering into written agreement.	292.9(b)	55	2	102	1.00	102.00	0	0	102	102
SAs and ITOs serving the same geographic area must ensure the coordination of SEBT program services, entering into written agreement.	292.9(b)	102	1	55	1.00	55.00	0	0	55	55

State and ITO Summer EBT agencies must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the SFSP and the Summer EBT program.	292.10(a)	157	1	157	5.00	785.00	0	0	785	785
State Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process.	292.11(b)	55	1	55	10.00	550.00	0	0	550	550
State Summer EBT agencies must submit a new Planning APD, Implementation APD, and Testing documents to FNS for approval of IS projects.	292.11(b)(4)(i)	55	1	55	10.00	550.00	0	0	550	550
State Summer EBT agencies must submit an Annual APD to FNS 60 days prior to the expiration of the Federal Financial Participation (FFP) approval for the initial implementation of Summer EBT and subsequent significant project changes.	292.11(b)(4)(i)	55	1	55	2.00	110.00	0	0	110	110
State Summer EBT agencies must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency.	292.11(g)	55	1	55	1.00	55.00	0	0	55	55

State and ITO Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of the Summer EBT.	292.11(q)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish and maintain a program for conducting periodic risk analysis to ensure that appropriate, cost-effective safeguards are incorporated into new and existing system. In addition, risk analyses must be performed whenever significant system changes occur.	292.11(q)(3)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must review the security of IS involved in the administration of Summer EBT on a biennial basis.	292.11(q)(4)	157	2	314	2.00	628.00	0	0	628	628
ITO Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process.	292.11(r)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
ITO Summer EBT agencies must follow the Department APD requirements and submit Planning and Implementation APDs and appropriate updates.	292.11(s)(1)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
ITO Summer EBT agencies must submit EBT project status	292.11(s)(3)	102	1	102	2.00	204.00	0	0	204	204

reports annually as a part of the State plan.										
State and ITO Summer EBT agencies must establish procedures to ensure correct eligibility determinations.	292.12(b)(1)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT benefits.	292.12(b)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish procedures to allow eligible households to opt out of participation in the Program.	292.12(b)(3)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish and maintain a State/ITO wide database of all children in NSLP/SBP participating schools within the State or ITO service area, as applicable, for the purposes of enrolling children for Summer EBT benefits and detecting and preventing duplicate benefit issuance.	292.12(c)	157	1	157	10.00	1,570.00	0	0	1,570	1,570

ITO Summer EBT agencies may submit for USDA approval alternate plans to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance, if an ITO determines that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children	292.12(c)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
State and ITO Summer EBT agencies must use streamlined certification to automatically enroll, without further application, each eligible child without regard to whether the child has been matched against an NSLP/SBP enrollment list. This includes children who were determined free/reduced-priced school meals eligible, or who are members of a household receiving assistance under SNAP.	292.12(d)	157	66,304	10,409,726	0.08	869,212.08	0	0	869,212	869,212

ITO Summer EBT agencies may submit for USDA approval alternate plans to efficiently enroll children with minimal burden for households if it determines that any element of automatic enrollment with Streamlined Certification is not feasible or is unnecessary based on available resources or circumstances unique to the population served.	292.12(d)(4)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
State and ITO Summer EBT agencies must make an application available to children who attend NSLP/SBP participating schools not already identified through streamlined certification, and enroll them after matching against the statewide eligibility database.	292.12(e)	157	91,185	14,316,012	0.08	1,195,386.99	0	0	1,195,387	1,195,387
State and ITO Summer EBT agencies must match children on applications submitted directly to a Summer EBT Agency against the statewide eligibility database, as required in §292.12(c), prior to benefit issuance.	292.12(e)(2)	157	91,185	14,316,012	0.08	1,195,386.99	0	0	1,195,387	1,195,387
State and ITO Summer EBT agencies must notify the household that filed an income application of their children's eligibility within 15 operating days of receiving the	292.12(f)(1)	157	91,185	14,316,012	0.02	239,077.40	0	0	239,077	239,077

application from the household.										
State and ITO Summer EBT agencies must notify households that their children are eligible for Summer EBT and that no application is required. The notice must inform the household who the parent or guardian must notify if they do not want their children to receive Summer EBT benefits.	292.12(f)(2)	157	66,304	10,409,726	0.02	173,842.42	0	0	173,842	173,842
State and ITO Summer EBT agencies must notify households that submitted an incomplete application or does not meet the eligibility requirements for Summer EBT benefits that their application has been denied, the reason for the denial, the notification of the right to appeal, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time.	292.12(g)	157	4,559	715,801	0.02	11,953.87	0	0	11,954	11,954
State and ITO Summer EBT agencies must receive a request for an appeal by households that submitted a denied application and promptly schedule a	292.12(h)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769

fair hearing upon request.										
State and ITO Summer EBT agencies must provide a conference to a household upon request to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered.	292.12(h)	157	4,559	715,801	1.00	715,800.59	0	0	715,801	715,801
By 2025, State and ITO Summer EBT agencies must make a Summer EBT application available to households whose children attend NSLP/SBP participating schools, and who do not already have an individual eligibility determination.	292.13 (a)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies may establish a system for executing household applications electronically and using electronic signatures.	292.13(h)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must verify questionable applications, on a case-by-case basis.	292.14(a)(1)	157	531	83,311	1.00	83,311.25	0	0	83,311	83,311

State and ITO Summer EBT agencies may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application.	292.14(a)(2)	157	531	83,311	1.00	83,311.25	0	0	83,311	83,311
State and ITO Summer EBT agencies must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer.	292.14(a)(3)	157	3,011	472,766	1.00	472,766.25	0	0	472,766	472,766
State and ITO Summer EBT agencies must provide written notification to households that their application has been selected for verification.	292.14(f)(2)	157	531	83,311	0.02	1,391.30	0	0	1,391	1,391
State and ITO Summer EBT agencies must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, e-mail, mail, or in-person and must be documented.	292.14(f)(6)	157	1,134	178,038	2.00	356,076.00	0	0	356,076	356,076
State and ITO Summer EBT agencies must provide written notification to households of any reduction or termination of benefits as a result of verification. Households must be notified of their right	292.14(f)(7)	157	531	83,311	0.02	1,391.30	0	0	1,391	1,391

to reapply at any time with documentation of income.										
State and ITO Summer EBT agencies are responsible for the timely and accurate issuance of benefits to certified eligible children, including compliance with the expedited service benefit delivery standard and processing standards.	292.15(c)(1)(i)	157	157,489	24,725,737	0.02	412,919.81	0	0	412,920	412,920
State and ITO Summer EBT agencies must establish an availability date for household access to their benefits and inform households of this date.	292.15(f)(2)(i)	157	1	157	1.00	157.00	0	0	157	157
State and ITO Summer EBT agencies must provide written training materials to each household prior to or at Summer EBT issuance.	292.15(g)(1)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies must provide replacement EBT cards available for pickup or place the card in the mail within two business days following notification by the household to the SA that the card has been lost, stolen or damaged.	292.15(g)(4)	157	40	6,227	0.02	104.00	0	0	104	104

State and ITO Summer EBT agencies must provide replacement EBT benefits available to households whose benefits were stolen or who lost Summer EBT benefits as a result of a natural disaster.	292.15(g)(5)	157	40	6,227	0.02	104.00	0	0	104	104
State and ITO Summer EBT agencies must provide notice, no less than 30 calendar days before benefit expungement is expected to begin, to households that their Summer EBT benefits are approaching expungement due to nonuse/inactivity.	292.15(h)(1)(i)	157	11,812	1,854,430	0.02	30,968.99	0	0	30,969	30,969
State and ITO Summer EBT agencies must establish procedures to permit the appropriate managers to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement.	292.15(h)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must produce issuance reports that reflect the adjustment made to the Summer EBT agency issuance totals to comply with the reporting requirements in §292.23.	292.15(h)(2)(i)	157	11,812	1,854,430	0.08	154,844.93	0	0	154,845	154,845
SAs must establish issuance and accountability systems as defined in §274.1.	292.16(a)	55	1	55	10.00	550.00	0	0	550	550

The Commonwealth of Puerto Rico is authorized to establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.	292.18	1	1	1	10.00	10.00	0	0	10	10
ITOs must ensure effective vendor integrity by setting forth a system which ensures: (1) Requirements and restrictions on the participation of vendors and the transaction of food benefits described at §246.12, apply to activities involving Summer EBT benefits; (2) Vendors are subject to the actions and penalties described at §246.12 of this chapter for noncompliance or violations involving Summer EBT benefits; and (3) The standards for determination and disposition of claims described at §246.12 of this chapter apply to Summer EBT benefits; or (4) set forth an alternate system to ensure effective vendor management and vendor integrity.	292.19(c)	102	1	102	10.00	1,020.00	0	0	1,020	1,020

State and ITO Summer EBT agencies must provide for effective control and accountability by the Summer EBT agency for all Program funds, property and other assets acquired with Program funds. Summer EBT agencies must adequately safeguard all such assets and must assure that they are used solely for program-authorized purposes unless disposition has been made in accordance with §292.21(b)(3).	292.21(b)(4)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must complete an Automated Standard application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available.	292.21(b)(5)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must provide for controls which minimize the time between the receipt of Federal Funds from the United States Treasury and their disbursement for Program costs. In the Letter of Credit system, the Summer EBT agency must make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as	292.21(b)(6)	157	1	157	10.00	1,570.00	0	0	1,570	1,570

nearly as possible to the time of making the disbursements.										
State and ITO Summer EBT agencies must provide for procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.	292.21(b)(7)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must provide for an audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for Program administration.	292.21(b)(9)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must monitor and document compliance with Performance Standards 1-4.	292.22	157	3	416	10.00	4,160.00	0	0	4,160	4,160

For Summer EBT Administrative Grants, State and ITO Summer EBT agencies will be required to submit an expenditure plan by August 15th, prior to the beginning of each fiscal year.	292.23(d)	157	1	157	1.00	157.00	0	0	157	157
State Administrative Grant expenditures will be reported to FNS quarterly on a Summer EBT financial status report.	292.23(e)	157	4	628	1.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must report participation and issuance on a monthly basis	292.23(f)	157	12	1,884	1.00	1,884.00	0	0	1,884	1,884
State and ITO Summer EBT agencies shall arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415.	292.24(a)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies shall provide FNS with full opportunity to conduct management evaluations and financial management reviews of all operations of the SA or ITO. Each SA shall make available its records, including records of receipts and expenditures of funds, upon a reasonable request by FNS.	292.24(b)	157	1	157	4.00	628.00	0	0	628	628

State and ITO Summer EBT agencies shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The SA shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds.	292.25	157	121	18,925	4.00	75,700.00	0	0	75,700	75,700
State and ITO Summer EBT agencies must establish a fair hearing procedure that is applicable to the State or ITO program as a whole.	292.26(a)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must produce oral or documentary evidence for requested hearing.	292.26(b)	157	4,559	715,801	4.00	2,863,202.36	0	0	2,863,202	2,863,202
Hearing official must transmit a written notification to the SA and household of the hearing official's decision.	292.26(b)(9)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
<i>Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal</i>		157	774,879	121,655,975	0.09	11,289,156.22	0	0	11,289,156	11,289,156
Local Government Agencies										
Eligible service providers may submit a request for a waiver under paragraph (f)(1) of § 292.3 in accordance with section 12(l) and the provisions of this part.	292.3(f)(4)	757	1	757	1.00	757.00	0	0	757	757
<i>Local Government Agencies Subtotal</i>		757	1.000	757	1.000	757.00	0	0	757	757

<i>State/Local/Tribal Governments Subtotal</i>		914	133,103.90 4	121,656,968	0.075	9,124,842.45	0	0	9,124,842	9,124,842
Businesses (Summer EBT Authorized Retailers)										
Firms shall submit claims in accordance to the standards for determination and disposition of claims described at §278.7.	292.17(a)	247,636	12	2,971,632	0.08	248,131.27	0	0	248,131	248,131
Firms aggrieved by administrative action may request an administrative review of the administrative action with FNS.	292.17(e)	9,552	1	9,552	0.08	797.59	0	0	798	798
<i>Businesses (Summer EBT Authorized Retailers) Subtotal</i>		247,636	12.039	2,981,184	0.084	248,928.86	0	0	248,929	248,929
Households										
Households not directly certified must submit an income application to determine eligibility for Summer EBT Benefits.	292.12(f)(1)	14,316,012	1	14,316,012	1.00	14,316,011.81	0	0	14,316,012	14,316,012
Households must notify the appropriate Summer EBT agency that they decline their Summer EBT Benefits.	292.12(f)(3)	2,132,112	1	2,132,112	0.08	178,031.39	0	0	178,031	178,031
Households that received a notice of denial may seek an appeal in accordance to the procedures established by the Summer EBT agency or LEA.	292.12(h)	715,801	1	715,801	1.00	715,800.59	0	0	715,801	715,801
Households can request and participate for a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted	292.12(h)	715,801	1	715,801	2.00	1,431,601.18	0	0	1,431,601	1,431,601

[illegible]

State and ITO Summer EBT agencies must establish and maintain a statewide database of eligible children that attend NSLP/SBP participating schools for the purposes of conducting streamlined certification.	292.12(c)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies must document and maintain a record or any notification from a household declining Summer EBT benefits.	292.12(f)(3)	157	32,257	5,064,308	0.08	422,869.69	0	0	422,870	422,870
State and ITO Summer EBT agencies must document and maintain a record of the reasons for an ineligibility determination for a written application.	292.12(g)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
State and ITO Summer EBT agencies must document the date and amount of benefits in the household case file whenever benefits are expunged.	292.15(h)(2)(i)	157	145,677	22,871,307	0.08	1,909,754.14	0	0	1,909,754	1,909,754
SA must maintain issuance, inventory, reconciliation, and other accountability records as described in §274.5.	292.16(h)	55	12	660	0.08	55.11	0	0	55	55

State and ITO Summer EBT agencies must maintain Program records as necessary to support the administrative costs claimed and the reports submitted to FNS under § 292.20(h). The SA shall ensure such records are retained for a period of 3 years or otherwise specified in §292.23.	292.20(h)	157	1	157	0.08	13.11	0	0	13	13
State and ITO Summer EBT agencies must monitor and document the performance standards listed in § 292.22.	292.22	157	1	157	0.08	13.11	0	0	13	13
State and ITO Summer EBT agencies must retain records substantiating eligibility determinations on file for at least 3 years after the date of the submission of the final Financial reports, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.	292.23(b)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies shall maintain on file all evidence relating to such investigations and corrective action procedures.	292.25	157	121	18,925	0.08	1,580.24	0	0	1,580	1,580

State and ITO Summer EBT agencies shall preserve a written record of each hearing for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.	292.26(b)(11)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
<i>Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal</i>		157	502,156.62 2	78,838,590	0.084	6,583,022.23	0	0	6,583,022	6,583,022
Businesses (Summer EBT Authorized Retailers)										
Retail food stores and wholesale food concerns shall submit claims in accordance to the standards for determination and disposition of claims described at §246.12.	292.19(c)(3)	2,428	12	29,134	0.08	2,432.66	0	0	2,433	2,433
<i>Businesses (Summer EBT Authorized Retailers) Subtotal</i>		2,428	12.000	29,134	0.084	2,432.66	0	0	2,433	2,433
Total Recordkeeping Burden		2,585	30,512.072	78,867,723	0.084	6,585,454.89	0	0	6,585,455	6,585,455
Public Disclosure										
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Hours	Current OMB Approved Burden Hours	Hours Due to Program Adjustment	Hours Due to Authorizing Statute (Program Change)	Total Difference in Hours
State/Local/Tribal Governments										
Summer EBT Agencies (State agencies and Indian Tribal Organizations (ITOs))										
State and ITO Summer EBT agencies must make their coordinated service plans available to the public through a website, or through similar means.	292.10(d)	157	1	157	0.25	39.25	0	0	39	39

State and ITO Summer EBT agencies shall inform participant and applicant households of their Program rights and responsibilities. All materials must be made available in languages other than English, as necessary; include the USDA nondiscrimination statement; and be provided in alternate formats for individuals with disabilities, as practicable.	292.12(a)(1)	157	157,489	24,725,737	0.02	412,919.81	0	0	412,920	412,920
<i>Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal</i>		157	157,489.77 3	24,725,894	0.017	412,959.06	0	0	412,959	412,959
<i>State/Local/Tribal Governments Subtotal</i>		157	157,489.77 3	24,725,894	0.017	412,959.06	0.00	0.00	412,959	412,959
Total Public Disclosure Burden		157	157,489.77 3	24,725,894	0.017	412,959.06	0.00	0.00	412,959	412,959
Total Burden		16,696,674	14.76	246,393,631	0.145	35,748,275.47	0	0	35,378,275	35,378,275

SUMMARY OF BURDEN [OMB #0584–NEW]

Total No. Respondents	16,696,674
Average No. Responses per Respondent	15
Total Annual Responses	246,393,631
Average Hours per Response ..	0.145
Total Burden Hours	35,748,276
Current OMB Approved Burden Hours	0
Adjustments	0
Program Changes	35,748,276
Total Difference in Burden	35,748,276

E-Government Act Compliance

USDA is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. An electronic copy of this interim final rule will be made available through the agency's website.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

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

7 CFR Part 292

Administrative practice and procedure, Agriculture, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Public Assistance Programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Supplemental Assistance Programs.

Accordingly, 7 CFR chapter II is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2, add in alphabetical order a definition for “Seamless Summer Option” to read as follows:

§ 210.2 Definitions.

Seamless Summer Option means the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

■ 3. In § 210.18, amend paragraph (e)(3)(ii) as follows:

■ a. Remove the period at the end of the first sentence and add in its place “and only operates congregate meal service.”; and

■ b. Add two sentences following the first sentence.

The addition reads as follows:

§ 210.18 Administrative reviews.

(e) * * *
(3) * * *
(ii) * * * If the school food authority operates congregate and non-congregate meal service, a minimum of two sites must be reviewed, one congregate site and one non-congregate site. If the school food authority has one site that operates both congregate and non-congregate meal services, the State agency may review a minimum of one site and must observe both a congregate and non-congregate meal service at that one site. * * *

■ 4. Add § 210.34 to read as follows:

§ 210.34 Seamless Summer Option non-congregate meal service.

A school food authority operating the Seamless Summer Option in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225 of this chapter. Such school food authorities must comply with the non-congregate meal service provisions set forth at § 225.16(b)(5)(i) and (iv) of this chapter and may use the non-congregate meal service options contained in § 225.16(i) of this chapter.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 5. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 6. In § 220.2, add in alphabetical order a definition for “Seamless Summer Option” to read as follows:

§ 220.2 Definitions.

Seamless Summer Option means the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

■ 7. Add § 220.23 to read as follows:

§ 220.23 Seamless Summer Option non-congregate meal service.

A school food authority participating in the National School Lunch Program's Seamless Summer Option, and which is approved to offer a non-congregate meal service, must comply with the provisions specified in § 210.34 of this chapter.

PART 225—SUMMER FOOD SERVICE PROGRAM

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

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

■ 9. In § 225.2:

■ a. Revise the definition for “Children”;

■ b. Add in alphabetical order the definitions for “Conditional non-congregate site”, “Congregate meal service”, and “Good standing”;

■ c. Revise the definition for “New site”;

■ d. Add in alphabetical order a definition for “Non-congregate meal service”; and

■ e. Revise the definitions for “Operating costs”, “Rural”, “Site”, and “Site supervisor”.

The revisions and additions read as follows:

§ 225.2 Definitions.

* * * * *

Children means:

(1) Persons 18 years of age and under; and

(2) Persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or

physically disabled and who participate in a public or nonprofit private school program established for the mentally or physically disabled.

* * * * *

Conditional non-congregate site means a site which qualifies for Program participation because it conducts a non-congregate meal service for eligible children in an area that does not meet the definition of “areas in which poor economic conditions exist” and is not a “Camp,” as defined in this section.

Congregate meal service means a food service at which meals that are provided to children are consumed on site in a supervised setting.

* * * * *

Good standing means the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

New site means a site which did not participate in the Program in the prior year, an experienced site that is proposing to operate a non-congregate meal service for the first time, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

* * * * *

Non-congregate meal service means a food service at which meals are provided for children to consume all of the components off site. Non-congregate meal service must only be operated at sites designated as “Rural” with no “Congregate meal service,” as determined in § 225.6(h)(3) and (4).

* * * * *

Operating costs means the cost of operating a food service under the Program:

- (1) Including the:
 - (i) Cost of obtaining food;
 - (ii) Labor directly involved in the preparation and service of food;
 - (iii) Cost of nonfood supplies;
 - (iv) Rental and use allowances for equipment and space; and
 - (v) Cost of transporting children in rural areas to feeding sites in rural areas;
 - (vi) Cost of delivering non-congregate meals in rural areas; but
- (2) Excluding:
 - (i) The cost of the purchase of land, acquisition or construction of buildings;
 - (ii) Alteration of existing buildings;
 - (iii) Interest costs;
 - (iv) The value of in-kind donations; and
 - (v) Administrative costs.

* * * * *

Rural means:

(1) Any area in a county which is not a part of a Metropolitan Statistical Area based on the Office of Management and Budget’s Delineations of Metropolitan Statistical Areas;

(2) Any area in a county classified as a non-metropolitan area based on USDA Economic Research Service’s Rural-Urban Continuum Codes and Urban Influence Codes;

(3) Any census tract classified as a non-metropolitan area based on USDA Economic Research Service’s Rural-Urban Commuting Area codes;

(4) Any area of a Metropolitan Statistical Area which is not part of a Census Bureau-defined urban area;

(5) Any area of a State which is not part of an urban area as determined by the Secretary;

(6) Any subsequent substitution or update of the aforementioned classification schemes that Federal governing bodies create; or

(7) Any “pocket” within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO approval, is determined to be rural in character based on other data sources.

* * * * *

Site means the place where a child receives a program meal. A site may be the indoor or outdoor location where congregate meals are served, a stop on a delivery route of a mobile congregate meal service, or the distribution location or route for a non-congregate meal service. However, a child’s residence is not considered a non-congregate meal site for Program monitoring purposes.

Site supervisor means the individual who has been trained by the sponsor and is responsible for all administrative and management activities at the site, including, but not limited to: maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts. Except for non-congregate meal service sites using delivery services, the individual is on site for the duration of the food service.

* * * * *

■ 10. In § 225.3, revise paragraph (b) add paragraph (e) to read as follows:

§ 225.3 Administration.

* * * * *

(b) *State administered programs.* Within the State, responsibility for the administration of the Program must be in the State agency. Each State agency must notify the Department by January 1 of the fiscal year regarding its intention to administer the Program.

Each State agency desiring to take part in the Program must enter into a written agreement with FNS for the administration of the Program in accordance with the provisions of this part. The agreement must cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement must contain an assurance that the State agency will comply with the Department’s nondiscrimination regulations (7 CFR part 15) issued under title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to 7 CFR part 15, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary must disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

* * * * *

(e) *Coordinated Services Plan.* (1) Each State agency must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer Food Service Program described in this part and the Summer Electronic Benefits Transfer (EBT) Program regulations (7 CFR part 292).

(2) Only one plan must be established for each State in which both the Summer Food Service Program and the Summer EBT Program is administered. If more than one agency administers the Summer Food Service Program and Summer EBT within a respective State, they must work together to develop and implement the plan. States should also ensure that plans include the National School Lunch Program’s Seamless Summer Program if appropriate.

(3) The plan must include, at minimum, the following information:

- (i) A description of the roles and responsibilities of each State administering agency, and, as applicable, any other agencies, Indian Tribal Organizations, or public or private organizations which will be involved in administering the Programs;
- (ii) A description of how the State agency and any other organizations included in the plan will coordinate outreach and programmatic activities to maximize the reach of the Summer Food Service Program and Summer EBT Program;
- (iii) Metrics to assess Program reach and coverage; and

(iv) The State agency's plans to partner with other Federal, State, Tribal, or local programs to aid participants in accessing all Federal, State, Tribal, or local programs for which they are eligible.

(4) States must notify the public about their plan and make it available to the public through a website, and should, to the maximum extent practicable, solicit and consider input on plan development and implementation from other State, Tribal, and local agencies; organizations involved in the administration of nutrition and human services programs; participants; and other stakeholders.

(5) States must consult with FNS on the development of and any significant subsequent updates to their plan. Initial Plans must be submitted to FNS no later than January 1, 2025. States must submit updates annually when significant changes are made to the plan, and otherwise no less than every 3 years.

■ 11. In § 225.4, revise paragraphs (d)(7) and (8) and add paragraphs (d)(9) and (10) to read as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) * * *

(7) The State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(l);

(8) An estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests;

(9) The State's plan to provide a reasonable opportunity for children to access meals across all areas of the State; and

(10) The State's plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State's plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service.

■ 12. In § 225.6:

■ a. Revise paragraphs (a)(2) and (b)(6) and (8);

■ b. Add paragraph (b)(12);

■ c. Remove the word "and" at the end of the paragraph (c)(2)(ix);

■ d. Remove the period at the end of paragraph (c)(2)(x) and add in its place "; and";

■ e. Add paragraph (c)(2)(xi);

■ f. Remove the word "and" at the end of the paragraph (c)(3)(vi);

■ g. Remove the period at the end of paragraph (c)(3)(vii) and add in its place "; and";

■ h. Add paragraph (c)(3)(viii); and

■ i. Revise paragraphs (f)(1), (f)(2) introductory text, and (g) through (i).

The revisions and additions read as follows:

§ 225.6 State agency responsibilities.

(a) * * *

(2) By February 1 of each fiscal year, each State agency must announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency must:

(i) Identify areas in which poor economic conditions exist to qualify for the Program and actively seek eligible applicant sponsors to serve:

(A) Rural areas;

(B) Indian Tribal territories; and

(C) Areas with a concentration of migrant farm workers.

(ii) The State agency must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals to eligible children in those areas.

(iii) The State agency must target outreach efforts to priority outreach areas.

(iv) For approval of closed enrolled sites, the State agency must establish criteria to ensure that operation of a closed enrolled site does not limit Program access for eligible children in the area where the site is located.

* * * * *

(b) * * *

(6) The State agency must not approve any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if:

(i) The applicant demonstrates that it has the capability of managing a program larger than the limits in this paragraph (b)(6); and

(ii) The State agency has the capacity to conduct reviews of at least 10 percent of the sponsor's sites, as described in § 225.7(e)(4)(v).

* * * * *

(8) Applicants which qualify as camps and sponsors of conditional non-congregate sites must be approved for reimbursement only for meals served free to enrolled children who meet the Program's income standards.

* * * * *

(12) The State agency must not deny a sponsor's application based solely on the sponsor's intent to provide a non-congregate meal service.

(c) * * *

(2) * * *

(xi) Procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).

(3) * * *

(viii) Procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).

* * * * *

(f) * * *

(1) *Nondiscrimination statement.* (i) Each sponsor must submit a nondiscrimination statement of its policy for serving meals to children. The statement must consist of:

(A) An assurance that all children are served the same meals and that there is no discrimination in the course of the food service; and

(B) Except for camps and conditional non-congregate sites, a statement that the meals served are free at all sites.

(ii) A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request.

(iii) In addition to the information described in paragraph (i) of this section, the policy statement of all camps and conditional non-congregate sites that charge separately for meals must also include:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced price school meals;

(B) A description of the method to be used in accepting applications from families for Program meals that ensures that households are permitted to apply on behalf of children who are members of households receiving SNAP, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method to be used for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the sponsor will establish hearing procedures for families

requesting to appeal a denial of an application for free meals. These procedures must meet the requirements set forth in paragraph (f)(2) of this section;

(E) An assurance that, if a family requests a hearing, the child will continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability.

(2) *Hearing procedures statement.* Each camp or sponsor of a conditional non-congregate site must submit a copy of its hearing procedures with its application. At a minimum, the procedures must provide that:

* * * * *

(g) *Site information sheet.* The State agency must develop a site information sheet for sponsors.

(1) *New sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. Where a non-congregate meal service operation is proposed for the first time, the sponsor must follow the requirements of this paragraph (g)(1). At a minimum, the site information sheet must demonstrate or describe the following:

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

(ii) The estimated number of meals to be served, types of meals to be served, and meal service times;

(iii) Whether the site is rural, as defined in § 225.2, or non-rural. Documentation supporting the rural designation is required. New documentation is required every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation;

(iv) Whether the meal service is congregate or non-congregate;

(v) Whether the site is a self-preparation site or a vended site, as defined in § 225.2;

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

(vii) Access to a means of communication to make necessary adjustments in the number of meals delivered, based on changes in the number of children in attendance at each site;

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

(ix) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years;

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census; and

(D) At the discretion of the State agency, sponsors proposing to serve an area affected by an unanticipated school closure may be exempt from submitting new site documentation if the sponsor has participated in the Program at any time during the current year or in either of the prior 2 calendar years;

(x) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; or documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years; and

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census;

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

(xii) 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, this information must 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;

(xiii) For sites that will serve children of migrant workers:

(A) Certification from a migrant organization, which attests that the site serves children of migrant workers; and

(B) Certification from the sponsor that the site primarily serves children of migrant workers, if non-migrant children are also served; and

(xiv) For conditional non-congregate sites, the number of children enrolled who meet the Program's income standards. If such information is not

available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the sponsor's claim for reimbursement.

(2) *Experienced sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. The State agency may require sponsors of experienced sites to provide information described in paragraph (g)(1) of this section. At a minimum, the site information sheet must demonstrate or describe the following:

(i) The estimated number of meals, types of meals to be served, and meal service times;

(ii) Whether the site is rural, as defined in § 225.2, or non-rural.

Documentation supporting the rural designation is required. New documentation is required every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation;

(iii) Whether the meal service is congregate or non-congregate;

(iv) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years;

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census; and

(D) Any site that a sponsor proposes to serve during an unanticipated school closure, which has participated in the Program at any time during the current year or in either of the prior 2 calendar years, is considered eligible without new documentation;

(v) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; or documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years; and

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census;

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

(vii) 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, this information must 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; and

(viii) For conditional non-congregate sites, the number of children enrolled who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the sponsor's claim for reimbursement.

(h) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency must ensure that:

(i) If not a camp or a conditional non-congregate site, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal;

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

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

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency must establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels must be established in accordance with the following provisions:

(i) The initial maximum approved level must be based upon the historical record of the number of meals served at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency must develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available. The State agency may consider participation at other similar sites located in the area, documentation of programming taking place at the site, statistics on the number of children

residing in the area, and other relevant information.

(ii) The maximum approved level must be adjusted, if warranted, based upon information collected during site reviews. If the number of meals served at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that the number of meals served exceeds the sites' approved levels. The sponsor may request an upward adjustment at any point prior to submitting the claim for the impacted reimbursement period.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it must document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor must inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels must take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor must clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children being served meals is below the site's approved level, the sponsor must adjust meal orders with the objective of serving only one meal per child as required under § 225.15(b)(3).

(3) When approving the application of a site that will provide a non-congregate meal service, the State agency must ensure that the proposed site:

(i) Meets the requirements described in paragraphs (h)(1) and (2) of this section.

(ii) Is rural, as defined in § 225.2.

(iii) Will not serve an area where children would receive the same meal at an approved congregate meal site, unless it can be demonstrated to the

satisfaction of the State agency that the site will serve a different group of children who may not be otherwise served.

(iv) Serves an area in which poor economic conditions exist or is approved for reimbursement only for meals served free to enrolled children who meet the Program's income standards.

(v) Distributes up to the allowable number of reimbursable meals that would be provided over a 10-calendar day period. The State agency may establish a shorter calendar day period on a case-by-case basis and without regard to sponsor type.

(4) When approving the application of a site which will provide both congregate and non-congregate meal services, the State agency must ensure that:

(i) The proposed site meets the requirements in paragraphs (h)(1) through (3) of this section.

(ii) The proposed site will only conduct a non-congregate meal service when the site is not providing a congregate meal service.

(iii) The sponsor proposes an organized and supervised system which prevents overlap between meal services and reasonably ensures children are not receiving more than the daily maximum allowance of meals as required in § 225.16(b)(3).

(i) *State-sponsor agreement.* A sponsor approved for participation in the Program must enter into a permanent written agreement with the State agency. The existence of a valid permanent agreement does not limit the State agency's ability to terminate the agreement, as provided under § 225.11(c). The State agency must terminate the sponsor's agreement whenever a sponsor's participation in the Program ends. The State agency or sponsor may terminate the agreement at its convenience, upon mutual agreement, due to considerations unrelated to either party's performance of Program responsibilities under the agreement. However, any action initiated by the State agency to terminate an agreement for its convenience requires prior consultation with FNS. All sponsors must agree in writing to:

(1) Operate a nonprofit food service during the period specified, as follows:

(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) 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.

(2) For school food authorities, offer meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor and offer the same meals to all children.

(3) For all other sponsors, serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor and serve the same meals to all children.

(4) Serve meals without cost to all children, except that camps and conditional non-congregate sites may charge for meals served to children who are not served meals under the Program.

(5) Issue a free meal policy statement in accordance with paragraph (c) of this section.

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

(7) Claim reimbursement only for the types of meals specified in the agreement that are served:

(i) Without charge to children at approved sites, except camps and conditional non-congregate sites, during the approved meal service time;

(ii) Without charge to children who meet the Program's income standards in camps and conditional non-congregate sites;

(iii) Within the approved level for the maximum number of children's meals that may be served, if a maximum approved level is required under paragraph (h)(2) of this section;

(iv) At the approved meal service time, unless a change is approved by the State agency, as required under § 225.16(c); and

(v) At the approved site, unless the requirements in § 225.16(g) are met.

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

(9) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations.

(10) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department.

(11) Have access to facilities necessary for storing, preparing, and serving food.

(12) Maintain a financial management system as prescribed by the State agency.

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

(14) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

(15) For approved congregate meal service, maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in § 225.16(h) are met.

(16) Retain final financial and administrative responsibility for its program.

* * * * *

■ 13. In § 225.7, revise paragraphs (d), (e)(2) and (4), (e)(5)(i), (j), and (n)(1) to read as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) *Pre-approval visits.* The State agency must conduct pre-approval visits of sponsors and sites, as specified in paragraph (d)(1) through (4) of this section, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application.

(1) The State agency must visit, prior to approval:

(i) All applicant sponsors that did not participate in the program in the prior year;

(ii) All applicant sponsors that had operational problems noted in the prior year; and

(iii) All sites that the State agency has determined need a pre-approval visit.

(2) If a sponsor is a school food authority or Child and Adult Care Food Program institution and was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency.

(3) Pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures may be conducted at the discretion of the State agency.

(4) Each State agency must establish a process to determine which sites need pre-approval visits. Characteristics that must be considered include, but are not limited to:

(i) Sites that did not participate in the program in the prior year;

(ii) Existing sites that are new to non-congregate meal service; and

(iii) Existing sites that exhibited operational problems in the prior year.

(e) * * *

(2) *Sample selection.* In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors and sites' previous participation in the Program, their current and previous Program performance, whether they operate as congregate or non-congregate sites, and the results of previous reviews.

* * * * *

(4) *Frequency and number of required reviews.* State agencies must:

(i) Conduct a review of every new sponsor at least once during the first year of operation;

(ii) Annually review every sponsor that experienced significant operational problems in the prior year;

(iii) Review each sponsor at least once every 3 years;

(iv) Review more frequently those sponsors that, in the determination of the State agency, require additional technical assistance; and

(v) As part of each sponsor review, conduct reviews of at least 10 percent of each reviewed sponsor's sites, or one site, whichever number is greater. The review sample must include sites representative of all meal service models operated by the sponsor.

(5) * * *

(i) State agencies must develop criteria for site selection when selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v) of this section. State agencies should, to the maximum extent possible, select sites that reflect the sponsor's entire population of sites. Characteristics that should be reflected in the sites selected for review include:

(A) The maximum number of meals approved to serve under § 225.6(h)(1) and (2);

(B) Method of obtaining meals (*i.e.*, self-preparation or vended meal service);

(C) Time since last site review by State agency;

(D) Type of site (*e.g.*, open, closed enrolled, camp);

(E) Type of physical location (*e.g.*, school, outdoor area, community center);

(F) Rural designation (*i.e.*, rural, as defined in § 225.2, or non-rural);

(G) Type of meal service (*i.e.*, congregate or non-congregate);

(H) If non-congregate, meal distribution method (*e.g.*, meal pick-up, delivery); and

(I) Affiliation with the sponsor, as defined in § 225.2.

* * * * *

(j) *Forms for reviews by sponsors.*

Each State agency must develop and provide monitor review forms to all approved sponsors. These forms must be completed by sponsor monitors. The monitor review form must include, but not be limited to:

(1) The time of the reviewer's arrival and departure;

(2) The site supervisor's printed name and signature;

(3) A certification statement to be signed by the monitor;

(4) The number of meals prepared or delivered;

(5) Whether the meal service is congregate or non-congregate;

(6) The number of meals served to children;

(7) The deficiencies noted;

(8) The corrective actions taken by the sponsor; and

(9) The date of such actions.

* * * * *

(n) * * *

(1) Each State agency must comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a, and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person must, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

* * * * *

■ 14. In § 225.8, revise paragraph (d)(2)(iii) and (iv) and add paragraph (e) to read as follows:

§ 225.8 Records and reports.

* * * * *

(d) * * *

(2) * * *

(iii) The type of site approval—open, restricted open, closed enrolled, conditional non-congregate, 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, congregate or non-congregate, or vended or self-preparation.

(e) By June 30 of each year, or a later date approved by the appropriate FNSRO, the State agency must submit to FNS a list of open site locations and their operational details and provide a minimum of two updates during the summer operational period. State agencies are encouraged to submit updates weekly if there are any changes to their data.

■ 15. In § 225.9:

■ a. Revise paragraph (d)(9);

■ b. Redesignate paragraph (d)(10) as paragraph (d)(12);

■ c. Add new paragraph (d)(10) and paragraph (d)(11); and

■ d. Revise paragraph (f).

The revisions and additions read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(d) * * *

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

(10) Sponsors of NYSP sites are reimbursed only for meals served to children enrolled in the NYSP.

(11) Sponsors of conditional non-congregate sites are reimbursed only for meals served to children whose eligibility for Program meals is documented.

* * * * *

(f) *Meal claiming.* The sponsor must not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under § 225.6(h)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(5) of this section. In reviewing a sponsor's claim for congregate meals served, the State agency must ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.15(b)(4).

* * * * *

■ 16. In § 225.11, revise paragraphs (c)(4) and (d) to read as follows:

§ 225.11 Corrective action procedures.

* * * * *

(c) * * *

(4) Program violations at a significant proportion of the sponsor's sites. Such

violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c), as applicable;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) For congregate meal service operations, the simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) For non-congregate meal service operations, distributing more than the daily meal limit when multi-day service is used;

(vii) Service of a significant number of meals which did not include required quantities of all meal components;

(viii) For congregate meal service operations, excessive instances of off-site meal consumption;

(ix) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* (1) With the exception for residential camps and non-congregate meal service set forth at § 225.16(b)(1)(ii) and (b)(5)(iii), respectively, the State agency must restrict to one meal service per day:

(i) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(ii) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c).

(2) If this action results in children not receiving meals under the Program, the State agency must make reasonable effort to locate another source of meal service for these children.

* * * * *

■ 17. In § 225.14:

■ a. Revise paragraph (c)(3);

■ b. Remove paragraph (d)(4);

■ c. Redesignate paragraphs (d)(5) and (6) as paragraphs (d)(4) and (5); and

■ d. Add new paragraph (d)(6) and paragraphs (d)(7) and (8).

The revision and additions read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(c) * * *

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist,

or qualifies as a camp or a conditional non-congregate site;

* * * * *

(d) * * *

(6) If the sponsor operates a non-congregate meal service that will deliver meals directly to a child's residence, it must obtain written parental consent prior to providing meals to children in that household.

(7) If the sponsor operates a conditional non-congregate site, it must certify that it will collect information to determine children's Program eligibility to support its claim for reimbursement.

(8) If the sponsor is not a school food authority, it must enter into a written agreement or Memorandum of Understanding (MOU) with the State agency or school food authority if it chooses to receive school data for the purposes of identifying eligible children and determining children's Program eligibility, as required under § 225.15(k).

■ 18. In § 225.15, revise paragraphs (b)(3) and (4), (d), (e), and (f)(3) introductory text to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(b) * * *

(3) All sponsors must 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.

(i) The sponsor must make the adjustments necessary to achieve this objective using the results from its monitoring of sites.

(ii) The sponsor must adjust the number of meals ordered or prepared whenever the number of children receiving meals is below the maximum approved level of meal service.

(iii) The sponsor must 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)(5).

(iv) Records of participation and of preparation or ordering of meals must be maintained to demonstrate positive action toward meeting the objective of this paragraph (b)(3).

(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 2 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 for congregate meals served. The State agency must 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 must be served only after all participating children at the site's congregate meal service have been served a meal. Second meals may not be served as part of a non-congregate meal service.

* * * * *

(d) *Training and monitoring.* (1) Each sponsor must hold Program training sessions for its administrative and site personnel and must not allow a site to operate until personnel have attended at least one of these training sessions. The State agency may waive these training requirements for operation of the Program during unanticipated school closures.

(i) Training of site personnel must, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations, including both congregate and non-congregate meal services; meal pattern requirements; and the duties of a monitor.

(ii) Each sponsor must ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors must 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.

(iii) Each site must have present at each meal service at least one person who has received this training.

(2) Sponsors must conduct pre-operational visits for new sites, sites that experienced operational problems the previous year, and existing sites that are new to non-congregate meal service, to determine that the sites have the capacity to provide meal service for the anticipated number of children in attendance and the capability to conduct the proposed meal service.

(3) Sponsors must visit each of their sites, as specified in paragraphs (d)(3)(i) through (iv) of this section, at least once during the first two weeks of program operations and must promptly take such actions as are necessary to correct any deficiencies. In cases where the site operates for seven calendar days or fewer, the visit must be conducted during the period of operation. Sponsors must conduct these visits for:

(i) All new sites;

(ii) All existing sites that are new to providing non-congregate meal service;

(iii) All sites that have been determined by the sponsor to need a visit based on criteria established by the State agency pertaining to operational problems noted in the prior year, as set forth in § 225.7(o); and

(iv) Any other sites that the State agency has determined need a visit.

(4) Sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations, and thereafter must maintain a reasonable level of site monitoring. Sponsors must complete a monitoring form developed by the State agency during the conduct of these reviews. Sponsors may conduct a full review of food service operations at the same time they are conducting a site visit required under paragraph (d)(3) of this section.

(e) *Notification to the community.* Each sponsor must annually announce in the media serving the area from which it draws its attendance the availability of free meals. Sponsors of camps, closed enrolled sites, and conditional non-congregate sites must notify participants of the availability of free meals and if a free meal application is needed, as outlined in paragraph (f) of this section. For sites that use free meal applications to determine individual eligibility, notification to enrolled children must include: the Secretary's family-size and income standards for reduced price school meals labeled "SFSP Income Eligibility Standards;" a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits 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 (including gender identity and sexual orientation), age, or disability. State agencies may issue a media release for all sponsors operating SFSP sites in the State as long as the notification meets the requirements in this section.

(f) * * *

(3) *Application based on the household's receipt of SNAP, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of SNAP, FDPIR, or TANF benefits by providing the following information:

* * * * *

■ 19. In § 225.16:

■ a. Add paragraph (b)(5);

■ c. Revise paragraphs (c);

■ d. Amend paragraph (e)(4) by removing the word "believes" and adding in its place the word "determines";

■ e. Amend the first sentence of paragraph (h) by removing the word

“Sponsors” and adding in its place the words “For congregate meal services, sponsors”; and

■ f. Add paragraph (i).

The additions and revision read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) * * *

(5) *Non-congregate meal service.* A sponsor of a site must have the administrative capability; the capacity to meet State and local health, safety, and sanitation requirements; and, where applicable, have adequate food preparation and holding facilities to be approved to serve non-congregate meals. Sponsors of sites that are approved to provide non-congregate meals in rural areas with no congregate meal service must:

(i) Obtain prior written parental consent, if meals are to be delivered to a child’s home, as described in § 225.14(d)(6).

(ii) Serve meals as described in paragraph (b)(3) of this section.

(iii) Comply with meal service time requirements described in paragraphs (c)(1), (4), and (5) of this section.

(iv) Claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.

(c) *Meal service times.* (1) Meal service times must be:

(i) Established by sponsors for each site;

(ii) Included in the sponsor’s application; and

(iii) Approved by the State agency. Approval of meal service times must be in accordance with the State agency or sponsor’s capacity to monitor the full meal service during a review.

(2) Except for non-congregate meal service, breakfast meals must be served at or close to the beginning of a child’s day. Three component meals served after a lunch or supper meal service are not eligible for reimbursement as a breakfast.

(3) At all sites except residential camps and non-congregate meal service, meal services must start at least one hour after the end of the previous meal or snack.

(4) Meals served outside the approved meal service time:

(i) Are not eligible for reimbursement; and

(ii) May be approved for reimbursement by the State agency only if an unanticipated event, outside of the

sponsor’s control, occurs. The State agency may request documentation to support approval of meals claimed when an unanticipated event occurs.

(5) The State agency must approve any permanent or planned changes in meal service time.

(6) If congregate meals are not prepared on site:

(i) Meal deliveries must arrive before the approved meal service time; and

(ii) Meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

* * * * *

(i) *Non-congregate meal service options.* The options described in this paragraph (i) are available to all types of sponsors in good standing, as defined in § 225.2, that are approved to operate non-congregate meal service sites. The State agency may limit the use of these options on a case-by-case basis, if it determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites. The State agency may not limit the use of options to only certain types of sponsors. The State agency’s decision to prohibit a sponsor from using the options described in this paragraph (i) is not an appealable action. Sponsors in good standing may elect to use any of the following options:

(1) *Multi-day meal issuance.* Approved sponsors may distribute up to the allowable number of reimbursable meals that would be provided over a 10-calendar day period. The State agency may establish a shorter time period, on a case-by-case basis. Sponsors electing this option must have documented procedures, submitted with their application, in place to ensure that the proper number of meals are distributed to each eligible child.

(2) *Parent or guardian pick-up of meals.* Approved sponsors may distribute meals to parents or guardians to take home to their children. Sponsors electing this option must have documented procedures, submitted with their application, in place to ensure that meals are only distributed to parents or guardians of eligible children and that duplicate meals are not distributed to any child.

(3) *Bulk meal components.* Approved self-preparation sponsors may provide bulk food items that meet the minimum amounts of each food component of a reimbursable meal breakfast, lunch, supper, or snack, as described in paragraph (d) of this section. Sponsors electing this option must ensure that:

(i) Required food components for each reimbursable meal are served, as described in paragraph (d) of this section.

(ii) All food items that contribute to a reimbursable meal are clearly identifiable.

(ii) Menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal.

(iv) Food preparation, such as heating or warming, is minimal. Sponsors may offer food items that require further preparation only with State agency and FNSRO approval.

(v) The maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period. The State agency may establish a shorter or longer time period, which may not exceed the time period for which the sponsor is approved for multi-day meal issuance, on a case-by-case basis.

■ 20. In § 225.18, add paragraph (l) to read as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(l) *Updates to data sources.* By January 1 each year, or as soon as is practicable, FNS will issue any necessary updates to approved data sources listed under the definition of “rural” in § 225.2 to be used for rural site designations in that program year. FNS will make this information available and referenceable in a simplified format.

■ 21. Add part 292 to read as follows:

PART 292—SUMMER ELECTRONIC BENEFITS TRANSFER PROGRAM

Sec.

Subpart A—General

- 292.1 General purpose and scope.
- 292.2 Definitions.
- 292.3 Administration.
- 292.4 [Reserved]

Subpart B—Eligibility Standards and Criteria

- 292.5 General purpose and scope.
- 292.6 Eligibility.
- 292.7 Period to establish eligibility.

Subpart C—Requirements of Summer EBT Agencies

- 292.8 Plan for Operations and Management.
- 292.9 Coordination between State-administered and ITO-administered Summer EBT Programs.
- 292.10 Coordinated Services Plan.
- 292.11 Advance Planning Document (APD) processes.
- 292.12 Enrolling eligible children.
- 292.13 Application requirements.
- 292.14 Verification requirements.

Subpart D—Issuance and Use of Program Benefits

- 292.15 General standards.
- 292.16 Issuance and adjustment requirements specific to States that administer SNAP.
- 292.17 Retailer integrity requirements specific to States that administer SNAP.
- 292.18 Requirements specific to States that administer Nutrition Assistance Program (NAP) programs.
- 292.19 Requirements specific to ITO Summer EBT agencies.

Subpart E—General Administrative Requirements

- 292.20 Payments to Summer EBT agencies and use of administrative program funds.
- 292.21 Standards for financial management systems.
- 292.22 Performance criteria.
- 292.23 Records and reports.
- 292.24 Audits and management control evaluations.
- 292.25 Investigations.
- 292.26 Hearing procedure for families and Summer EBT agencies.
- 292.27 Claims.
- 292.28 Procurement standards.
- 292.29 Miscellaneous administrative provisions.
- 292.30 Severability.
- 292.31 [Reserved]

Authority: 42 U.S.C. 1762.

Subpart A—General**§ 292.1 General purpose and scope.**

(a) This part establishes the regulations under which the Secretary will administer the Summer Electronic Benefits Transfer (Summer EBT) Program. Section 13A of the Richard B. Russell National School Lunch Act authorizes the Secretary to establish a Program under which States, and Indian Tribal Organizations (ITOs) that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program must, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits.

(b) This program was established for the purpose of providing nutrition assistance during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.

§ 292.2 Definitions.

2 CFR part 200 means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Office of Management and Budget (OMB). The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart

D), Cost Principles (subpart E), and Audit Requirements (subpart F).

Act means the Richard B. Russell National School Lunch Act, as amended.

Acquisition means obtaining supplies or services through a purchase or lease, regardless of whether the supplies or services are already in existence or must be developed, created, or evaluated.

Administrative costs means costs incurred by a Summer EBT agency, LEA, or local agencies operating in a formal agreement with a Summer EBT agency related to planning, organizing, and managing a Summer EBT Program.

Adult means, for the purposes of completing an application for eligibility for Program benefits, any individual 18 years of age or older.

Advance Planning Document for project planning or *Planning APD* (APD or PAPD) means a brief written plan of action that requests Federal financial participation to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of an IS equipment or services acquisition, plan the acquisition of IS equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means a document submitted annually (Annual APDU) by the Summer EBT agency to report the status of project activities and expenditures in relation to the approved Planning APD or Implementation APD; or on an as needed basis (As Needed APDU) to request funding approval for project continuation when significant project changes occur or are anticipated.

Cash-Value Benefit (CVB) means a type of benefit that is a fixed-dollar amount used to obtain supplemental foods by participants served by an ITO Summer EBT agency for the purposes of the Summer EBT Program.

Categorically eligible means considered income eligible for Summer EBT, as applicable, based on documentation that a child is a member of a *household*, as defined in this section, and one or more children in that household are receiving assistance under SNAP, TANF, or FDPIR, or another means tested program, as approved by the Secretary. A *foster child*, *homeless child*, a *migrant child*, a *Head Start child* and a *runaway child*, as defined in § 245.2 of this chapter, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

Commercial Off-the-Shelf (COTS) means proprietary software products

that are ready-made and available for sale to the general public at established catalog or market prices in which the software vendor is not positioned as the sole implementer or integrator of the product.

Continuous school calendar means a situation in which all or part of the student body of a school is:

- (1) On a vacation for periods of 15 continuous school days or more during the period October through April; and
- (2) In attendance at regularly scheduled classes during most of the period May through September.

Current income means income received during the month prior to application for Summer EBT benefits. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

Department means the U.S. Department of Agriculture.

Direct verification means the process of verifying household income or categorical eligibility by matching against data sources or other records without the need to contact households for documentation.

Disclosure means reveal or use individual children's program eligibility information obtained through the Summer EBT eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Dual participation means a child simultaneously receiving benefits from more than one State or ITO-administered Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program.

Electronic Benefit Transfer (EBT) account means a set of records containing demographic, card, benefit, transaction, and balance data for an individual household within the EBT system that is maintained and managed by a Summer EBT agency or its contractor as part of the client case record.

Electronic Benefit Transfer (EBT) card means a method to access EBT benefits issued to a household member or authorized representative through the EBT system by a benefit issuer. This method may include an on-line magnetic stripe card, an off-line smart card, a chip card, a contactless digital

wallet with a stored card, or any other similar benefit access technology approved by USDA.

Electronic Benefit Transfer (EBT) contractor or vendor means an entity that is selected to perform EBT-related services for the Summer EBT agency.

Electronic Benefit Transfer (EBT) system means an electronic payments system under which benefits are issued from and stored in a central databank, maintained and managed by a Summer EBT agency or its contractor, and uses electronic funds transfer technology for the delivery and control of food and other public assistance benefits.

Eligible child means a child who meets the requirements to receive Summer EBT benefits as provided in §§ 292.5 and 292.6.

Eligible household means a household that includes at least one eligible child.

Enhancement means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware. Software enhancements that substantially increase risk or cost or functionality will require submission of an IAPD or an As Needed IAPDU.

Enrolled students means students who are enrolled in and attending schools participating in the NSLP/SBP and who have access to a meal service (breakfast or lunch) on a regular basis.

Expungement means the removal of Summer-EBT benefits from the EBT account to which they were issued, typically by an EBT processor on behalf of a Summer EBT agency.

FDPIR means the food distribution program for households on Indian reservations operated under 7 CFR part 253, and the food distribution program for Indian households in Oklahoma under 7 CFR part 254.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means an FNS Regional Office.

Firm, as used in this part:

(1) Means:

(i) A retail food store that is authorized to accept or redeem Summer EBT benefits;

(ii) A retail food store that is not authorized to accept or redeem Summer EBT benefits; or

(iii) An entity that does not meet the definition of a retail food store in § 271.2 of this chapter.

(2) For purposes of the regulations in this part the terms firm, entity, retailer, and store may be used interchangeably.

Food instrument, as applicable to ITO Summer EBT agencies, means the definition set forth in WIC regulations at § 246.2 of this chapter.

Household means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

Implementation Advance Planning Document or Implementation APD (IAPD) means a written plan of action requesting Federal financial participation (FFP) to acquire and implement Electronic Benefit Transaction services. The Implementation APD includes the general design, development, testing, and implementation phases of the project during its initiation. Once the Summer EBT process becomes more routine (e.g., after its initial implementation), the IAPD will be streamlined to include one of the following documents as outlined in this section and in FNS Handbook 901:

(1) Transmittal letter.

(2) Cost Allocation Plan.

(3) Pre-conversion outlays (where applicable).

(4) Brief schedule of events and payments, and budget.

Income eligibility guidelines means the household-size and income standards prescribed annually by the Secretary for determining income eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Indian Tribal Organization (ITO) means an Indian Tribe, band, or group recognized by the Department of the Interior or an intertribal council or group which is an authorized representative of Indian Tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such Tribes, bands or groups. For the purposes of the Summer EBT Program, this definition only includes those Indian Tribal Organizations which administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). For the purposes of the Summer EBT Program, an administering Indian Tribal Organization is also referred to as a "Summer EBT agency".

Information System (IS) means a combination of hardware and software, data and telecommunications that performs specific functions to support the Summer EBT agency, or other Federal, State, or local organization.

Instructional year means the period from July 1 of the prior year through one

day prior to the summer operational period.

ITO Service Area means the geographic area served by an ITO Summer EBT agency.

Local Education Agency (LEA) means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

NSLP/SBP means the National School Lunch Program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) and/or the School Breakfast Program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*).

NSLP/SBP application means an application for free and reduced price meals, submitted by a household for a child or children enrolled at an NSLP- or SBP-participating school(s). Eligibility determinations based on NSLP/SBP applications may be used to confer eligibility for Summer EBT.

OIG means the Office of Inspector General of the Department.

Period of eligibility means the period of time from the first day of *instructional year*, as defined in this section, immediately preceding the *summer operational period*, as defined in this section, through the last day of the summer operational period.

Planning Advanced Planning Document (PAPD) means a brief written plan of action that requests FFP to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of EBT service acquisitions, plan the acquisition of EBT services, and to acquire information necessary to

prepare an Implementation APD when there is a change or an enhancement to the EBT technology.

Program means the Summer Electronic Benefits Transfer for Children Program authorized by section 13A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762.

Program funds means Federal financial assistance made available to Summer EBT agencies for the purpose of making Program payments.

Project means a related set of information technology related tasks, undertaken by a Summer EBT agency, to improve the efficiency, economy and effectiveness of administration and/or operation of its human services programs. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system, or an upgrade of computer hardware.

Request for Proposal (RFP) means the document used for public solicitations of competitive proposals from qualified sources as outlined in paragraphs (1) through (7) of this definition:

(1) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate.

(2) Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements must apply:

(i) Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable.

(ii) The Request for Proposal must identify significant evaluation factors, including price or cost where required and their relative importance.

(iii) The Summer EBT agency must provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the Summer EBT agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

Rolling verification means sampling applications for verification on a rolling basis from the beginning of the instructional year immediately preceding the summer operational period.

School aged means the years in which a child is required to attend school, or an equivalent program as defined by State or Tribal law. Also known as the age requirement for compulsory education.

Secretary means the Secretary of Agriculture.

SNAP means the program operated pursuant to the Food and Nutrition Act of 2008.

SNAP eligible foods means any food or food product that meets the definition of eligible foods at § 271.2 of this chapter.

SNAP retail food store means an establishment that meets the definition of retail food store at § 271.2 of this chapter.

Special provision school means, for the purposes of Summer EBT, those schools which do not collect NSLP/SBP applications annually described in section 11(a)(1)(B)–(F) of the Richard B. Russell National School Lunch Act (NSLA) which are provision 1 at § 245.9(a) of this chapter, provision 2 at § 245.9(b) and (c) of this chapter, provision 3 at § 245.9(d) and (e) of this chapter, and the community eligibility provision codified at § 245.9(f) of this chapter.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

Streamlined certification means automatically enrolling an eligible child for Summer EBT, without need for further application or confirmation of school enrollment.

Summer EBT application means an application submitted to a Summer EBT agency or an NSLP/SBP-participating school by a household for a child or children who are enrolled at a NSLP/SBP-participating school for Summer EBT benefits. Eligibility determinations based on Summer EBT applications may not be used to confer eligibility for the NSLP/SBP.

Summer EBT agency, as used in this part:

(1) Means:

(i)(A) Any agency of State government that has been designated by the Governor or other appropriate executive or legislative authority of the State which is responsible for the administration of the Summer EBT Program within the State and enters into a written agreement with USDA to administer Summer EBT. In those States where such assistance programs are operated on a decentralized basis, it includes all State agencies that assist with administration of the Summer EBT Program unless otherwise specified.

(B) Coordinating Summer EBT agencies have an inter-agency written agreement with partnering Summer EBT agencies to administer the Program, as applicable.

(ii) An ITO that is responsible for the administration of the Summer EBT Program and has entered into a written agreement with USDA to administer Summer EBT.

(2) Summer EBT agencies may be further described to clarify roles and requirements, as necessary, including:

(i) *Coordinating Summer EBT agency* means the Summer EBT agency within a State that is designated as the primary point of contact for USDA for the Summer EBT Program within the State or ITO and is responsible for the effective and efficient administration of the Program.

(ii) *Partnering Summer EBT agency* means a Summer EBT agency other than the coordinating Summer EBT agency that has a role in administration of the Program.

(iii) *ITO Summer EBT agency* means an agency of an ITO that administers the Program on behalf of the ITO.

(iv) *State Summer EBT agency* means an agency of a State that administers the Program on behalf of the State.

Summer operational period means the benefit period that generally reflects the period between the end of classes during the current school year and the start of classes for the next school year, as determined by the Summer EBT agency.

Supplemental foods means, for the purposes of ITOs administering the Summer EBT Program, foods—

(1) Containing nutrients determined by nutritional research to be lacking in the diets of children; and

(2) Promoting the health of the population served by the program under this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as determined by FNS; and

(3) Supplemental foods authorized for the WIC Program by the applicable WIC ITO meet the requirements set forth in this definition, excluding infant foods and infant formula.

System error means an error resulting from a malfunction at any point in the redemption process. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Trafficking means:

(1)(i) The buying, selling, stealing, or otherwise effecting an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(ii) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. 802, for Summer EBT benefits;

(iii) Purchasing a product with Summer EBT benefits that has a container requiring a return deposit with the intent of obtaining cash by intentionally discarding the product and intentionally returning the container for the deposit amount;

(iv) Purchasing a product with Summer EBT benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food; or

(v) Intentionally purchasing products originally purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food.

(2) Attempting to buy, sell, steal, or otherwise affect an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in

complicity or collusion with others, or acting alone.

Vendor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores enrolled by an ITO for the purposes of the Summer EBT Program to provide supplemental foods in areas approved for service. To be eligible for the Summer EBT Program, the vendor must be authorized by the WIC ITO to provide authorized supplemental foods to WIC participants under a retail food delivery system.

Verification means confirmation of eligibility for the Summer EBT Program when a child's eligibility is established through a Summer EBT application. Verification includes confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application. Direct verification, as outlined in § 292.14(e), must be attempted prior to contacting the household. If such efforts are unsuccessful, verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 292.14(f)(3). If a SNAP or TANF case number or a FDIPIR case number or other identifier is provided for a child, verification for such child must only include confirmation that the child is a member of a household receiving SNAP, TANF, or FDIPIR benefits.

Verification for cause means verification of questionable applications, on a case-by-case basis, such as an instance when the Summer EBT agency is made aware of conflicting or inconsistent information than what was provided on the application.

WIC or WIC Program means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

§ 292.3 Administration.

(a) *Delegation to FNS.* FNS must act on behalf of USDA in the administration of the Program.

(b) *Delegation to a State or ITO.* The Governor or other appropriate executive or legislative authority of the State or ITO will designate one or more Summer EBT agencies to be responsible for the administration of the Summer EBT Program within the State or ITO. If more than one Summer EBT agency is named within a State or ITO, a coordinating Summer EBT agency must be named. All other Summer EBT agencies will be partnering Summer EBT agencies.

(1) *Coordinating Summer EBT agency.*
(i) Each coordinating Summer EBT

agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The coordinating Summer EBT agency is:

(A) The primary point of contact for the Summer EBT Program within the State or ITO;

(B) Responsible for the complete and timely submission of any required plans, forms, and reports;

(C) Responsible for activities as outlined in the inter-agency written agreement; and

(D) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2 CFR part 182); FNS guidelines; and, instructions issued under the FNS Directives Management System.

(2) *Partnering Summer EBT agencies.*

(i) Each partnering Summer EBT agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The partnering Summer EBT agency is:

(A) Responsible for activities as outlined in the inter-agency written agreement. If only one Agency will be responsible for the administration of Summer EBT, designation of partnering agencies is not applicable.

(B) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2

CFR part 182); FNS guidelines; and, instructions issued under the FNS Directives Management System.

(c) *Designation of responsibility among Summer EBT agencies and requirements for written inter-agency agreements.* To ensure clear roles and responsibilities, the coordinating Summer EBT agency and any partnering Summer EBT agency or agencies must enter into an inter-agency written agreement that defines the roles and responsibilities of each, as well as the administrative structure and lines of authority, if applicable.

(1) The inter-agency written agreement should outline the Summer EBT agencies assignment of responsibilities including, but not limited to:

- (i) Certification and enrollment of children;
- (ii) Issuance, control, and accountability of Summer EBT benefits and EBT cards;
- (iii) Developing and maintaining complaint procedures;
- (iv) Developing, conducting, and evaluating training;
- (v) Keeping records necessary to determine whether the program is being conducted in compliance with the requirements in this part for the proper storage and use of data. The records must survive the duration of this agreement;
- (vi) Submitting accurate and timely financial and program plans, forms, and reports; and
- (vii) Public notification and participant support.

(2) [Reserved]

(d) *Suspension, termination, and closeout procedures.* Whenever it is determined that a Summer EBT agency has materially failed to comply with the provisions of this part, FNS may suspend or terminate the agreement between FNS and the Summer EBT agency or agencies or take any other action as may be available and appropriate. A Summer EBT agency may also terminate the agreement, but must provide FNS at least 60 days advance written notice, including a detailed explanation and the proposed effective date of the change. FNS and the Summer EBT agency shall comply with the provisions of 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415 concerning grant suspension termination and closeout procedures.

(e) *Authority to waive statute and regulations for State Summer EBT agencies.* (1) As authorized under section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), FNS may waive provisions of

such Act or the Child Nutrition Act of 1966, as amended, and the provisions of this part with respect to a State or eligible service provider. The provisions of this part required by other statutes may not be waived under this authority. FNS may only approve requests for a waiver that are submitted by a State Summer EBT agency and comply with the requirements at section 12(l)(1) and the limitations at section 12(l)(4), including that FNS may not grant a waiver that increases Federal costs.

(2) A State Summer EBT agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l)(2) and the provisions of this part.

(3) A State Summer EBT agency may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver where the State concurs must be submitted to the appropriate FNSRO.

(4) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l) and the provisions of this part.

(i) Any waiver request submitted by an eligible service provider must be submitted to the State Summer EBT agency for review.

(ii) A State Summer EBT agency must act promptly on such a waiver request and must deny or concur with a request submitted by an eligible service provider.

(iii) If a State Summer EBT agency concurs with a request from an eligible service provider, the Summer EBT agency must promptly forward to the appropriate FNSRO the request and a rationale, consistent with section 12(l)(2), supporting the request.

(iv) By forwarding the request to the FNSRO, the State Summer EBT agency affirms:

(A) The request meets all requirements for waiver submissions; and,

(B) The State Summer EBT agency will conduct all monitoring requirements related to regular Program operations and the implementation of the waiver.

(v) If the State Summer EBT agency denies the request, the State Summer EBT agency must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the State Summer EBT agency's receipt of the request. The State Summer EBT agency response is final and may not be appealed to FNS.

(f) *Waivers for ITO Summer EBT agencies.* (1) The Secretary may waive

or modify specific regulatory provisions of this part for one or more ITO Summer EBT agency. Waivers may be issued following an ITO Summer EBT agency request or at the discretion of USDA.

(2) To be approvable, a waiver must:

(i) Address a specific regulatory provision which cannot be implemented effectively by the requesting ITO operation;

(ii) Result in more effective and efficient administration of the Program;

(iii) Be consistent with the provisions of the Act; and

(iv) Not result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) When submitting requests for waivers, ITO Summer EBT agencies must provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers must include, but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) Anticipated impact on service to participants or potential participants who would be affected;

(iii) Anticipated time period for which the waiver is needed; and

(iv) A thorough description of the proposed waiver and how it would be implemented.

§ 292.4 [Reserved]

Subpart B—Eligibility Standards and Criteria

§ 292.5 General purpose and scope.

(a) Summer EBT eligibility is based on the eligibility standards for the NSLP/SBP, which includes children who are income eligible for free or reduced-price school meals based on the Income Eligibility Guidelines published by the Department by notice in the **Federal Register** and in accordance with the household size and income standards for free and reduced price school meals, and children who are categorically eligible, as defined in § 292.2.

(b) The Income Eligibility Guidelines are published annually and change on July 1. The guidelines in effect on the date of application must be used to determine eligibility.

§ 292.6 Eligibility.

Children eligible for Summer EBT include those who, at any time during the period of eligibility, are:

(a) School-aged and categorically eligible.

(b) Enrolled in an NSLP/SBP-participating school, except for special provision schools, and:

(1) Categorically eligible;

(2) Meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application;

(3) Otherwise are determined eligible to receive a free or reduced price meal; or

(4) Determined eligible through a Summer EBT application, consistent with § 292.13.

(c) Enrolled in a special provision school, and:

(1) Categorically eligible;

(2) Otherwise meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application; or

(3) Determined eligible through a Summer EBT application, consistent with § 292.13.

§ 292.7 Period to establish eligibility.

(a) Eligibility for Summer EBT, as determined through an application or by streamlined certification, may be established from the first day of the instructional year immediately preceding the summer operational period through the last day of the summer operational period, as defined by the Summer EBT agency in the Plan for Operations and Management (POM).

(b) Households are not required to report changes in circumstances during the instructional year or summer operational period, but a household may voluntarily contact the State or LEA to report any changes in income, household composition, or program participation.

(c) The carryover period in the school meal programs, as required at § 245.6(c)(1) of this chapter, may not be used to confer eligibility for Summer EBT benefits during the summer operational period following the instructional year in which the carryover benefit was provided as it is outside of the period to establish eligibility, as described in paragraph (a) of this section.

Subpart C—Requirements of Summer EBT Agencies

§ 292.8 Plan for Operations and Management.

(a) Not later than August 15 of each year, the Summer EBT agency must submit to the FNS Regional Office its intent to administer the Summer EBT Program the following summer, along with an interim Plan for Operations and Management (POM) and expenditure plan for the Summer EBT Program for the upcoming fiscal year. For 2024 only, the Summer EBT agency must submit to the FNS regional office its intent to administer the Summer EBT Program by

January 1, 2024, and the interim POM and expenditure plan as soon as is practicable. The interim POM must:

(1) Include the Summer EBT agency's forecasted program participation, anticipated administrative funding needs as part of an expenditure plan, and other programmatic information required in paragraphs (e) and (f) of this section, if applicable, to the extent that such information has been determined at the time of submission.

(2) Be approved by FNS before the Summer EBT agency may draw Federal administrative funds for the fiscal year.

(b) Not later than February 15 of each year, the Summer EBT agency must submit to the FNS Regional Office a final POM. The final POM must:

(1) Address all the requirements of paragraphs (e) and (f) of this section, if applicable.

(2) Be approved by FNS before the Summer EBT agency may draw Federal food benefit funds for the fiscal year.

(c) USDA will respond to the interim and final POM, respectively, within 30 calendar days of receipt. If the plan initially submitted is not approved, the Summer EBT agency and USDA will collaborate to ensure changes to the plan are submitted for approval.

(d) At any time after approval, the Summer EBT agency may amend an interim or final POM to reflect changes. The Summer EBT agency must submit the amendments to USDA for approval. The amendments must be signed by the Summer EBT agency-designated official responsible for ensuring that the Program is operated in accordance with the POM.

(e) Summer EBT agencies must include the following in their final POM, at a minimum:

(1) A copy of the inter-agency written agreement between the Summer EBT coordinating agency and each partnering agency that outlines the roles and responsibilities of each as required in § 292.3(e) if applicable.

(2) An estimate of the number of participants who will be served for the coming year.

(3) The administrative budget on behalf of the State's or ITO's entire program operations which reflects the comprehensive needs of the Summer EBT agencies and local education agencies. The budget must include the Summer EBT agency's plan to comply with any standards prescribed by the Secretary for the use of these funds, as well as an expenditure plan reflecting planned administrative cost requirements for the year. Should administrative fund needs change, an amended expenditure plan is required.

(4) A plan for timely and effective action against program violators.

(5) A plan to comply with the Summer EBT agency requirements in §§ 292.12 through 292.14.

(6) A plan to ensure that Summer EBT benefits are issued to children based on their enrollment at the end of the instructional year immediately preceding each summer.

(7) A description of enrollment procedures including, but not limited to, applications, NSLP enrollment database, direct verification and verification, as applicable.

(8) The plan to coordinate with an ITO Summer EBT Program or State Summer EBT Program, as applicable, in accordance with § 292.9.

(9) The procedures to detect and prevent dual participation including a child simultaneously receiving benefits from more than one Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program as required in § 292.9(b)(3).

(10) A description of the issuance process including:

(i) The start and end dates of the summer operational period;

(ii) Date(s) when benefits will be issued;

(iii) Benefit issuance dates for LEAs operating on a continuous school calendar, as applicable;

(iv) Whether benefits will be added to an existing EBT card or other mobile payment instrument used to deliver SNAP or WIC benefits or, instead, whether benefits will be issued on a unique Summer EBT card or instrument;

(v) Whether benefits will be issued to each eligible child or to households, as applicable;

(vi) How the Summer EBT agency will provide access to households experiencing homelessness and other vulnerable populations; and

(vii) Claims procedures in cases of erroneous payments in accordance with requirements at § 292.16(g).

(11) Customer service plans including:

(i) A single point of contact for all customer service information and inquiries including a hotline and website;

(ii) How eligible households will be informed of the availability of program benefits and the process to apply for benefits, if necessary; and

(iii) A simplified process for households to opt out of the program.

(12) A copy of the fair hearing procedure for participants.

(f) In addition to the items listed in paragraph (e) of this section, an ITO

Summer EBT agency must include in its POM:

(1) The service area of the ITO, a map or other visual reference aid, and a description of any Tribal areas outside of the ITO's jurisdiction that they propose to serve;

(2) A plan and procedures to enroll children already deemed eligible by a State Summer EBT agency serving the same geographic area, without further application;

(3) A plan and procedures to determine eligibility for and enroll children who must apply through the ITO Summer EBT agency to receive benefits because they have not already been identified as eligible, *e.g.*, by a State Summer EBT agency serving the same geographic area. The ITO Summer EBT agency must use the eligibility criteria under § 292.6;

(4) A description of the benefit delivery model to be used. The ITO Summer EBT agency may use a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The ITO Summer EBT agency must use the same benefit model for all participants throughout its service area;

(i) For ITOs using a CVB-only benefit delivery model, a description of how the benefit level equal to the amount set forth in § 292.15(e); or

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, a description of how the benefit level will not exceed the amount set forth in § 292.15(e);

(5) The list of supplemental foods for which participants can transact upon enrollment, excluding infant formula and infant foods;

(6) Procedures for enrolling applicable vendors to transact and redeem Summer EBT Program benefits. As a prerequisite, such vendors must be approved for participation in the WIC Program;

(7) A plan for providing technical assistance and training to vendors enrolled to transact and redeem Summer EBT Program benefits; and

(8) A plan for vendor integrity and monitoring, pursuant to § 292.19.

§ 292.9 Coordination between State-administered and ITO-administered Summer EBT Programs.

(a) The ITO Summer EBT agency must receive priority consideration to serve eligible individuals within its service area, as identified in its FNS-approved Plan for Operations and Management (POM) per § 292.8.

(b) An ITO Summer EBT agency and State Summer EBT agency serving

proximate geographic areas must coordinate Summer EBT Program services, which may include a written agreement between both parties. ITO Summer EBT agency and State Summer EBT agency coordination must, at minimum, include the following:

(1) The State Summer EBT agency must share data, including household contact information, indicating those individuals deemed eligible in the ITO Summer EBT agency's service area in a manner and timeframe that will allow the ITO Summer EBT agency to issue program benefits timely;

(2) The ITO Summer EBT agency and the State Summer EBT agency must each provide notice to eligible individuals or households that they may choose to receive Summer EBT Program benefits from either Summer EBT agency, in addition to referral information upon individual or household request; and

(3) The ITO Summer EBT agency and State Summer EBT agency must coordinate to detect and prevent dual participation in the same summer operational period when serving proximate service areas in accordance with § 292.15(d). For all student data exchanged applicable to the Summer EBT Program, the ITO Summer EBT agency and State Summer EBT agency must ensure the confidentiality of such data and data must only be used for program purposes in accordance with § 292.13(o).

(c) Eligible households choosing to participate in either the ITO-operated Summer EBT Program or the State-operated Summer EBT Program must participate in the same program for the duration of the summer operational period in any given year.

§ 292.10 Coordinated Services Plan.

(a) Each State Summer EBT agency must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer EBT Program described in this part and the Summer Food Service Program established in 7 CFR part 225. Each ITO Summer EBT agency is encouraged to develop a plan coordinating summer services available to the children and households they serve.

(b) Only one plan must be established for each State in which both the Summer Food Service Program and the Summer EBT Program is administered. If more than one agency administers the Summer Food Service Program and Summer EBT within a respective State, they must work together to develop and implement the plan. States should also ensure that plans include the National

School Lunch Program's Seamless Summer Program if appropriate.

(c) The plan must include, at minimum, the following information:

(1) A description of the roles and responsibilities of each Summer Food Service Program and Summer EBT agency, and, as applicable, any other agencies, ITOs, or public or private organizations which will be involved in administering the Programs;

(2) A description of how the Summer EBT agency and any other organizations included in the plan will coordinate outreach and programmatic activities to maximize the reach of the Summer Food Service Program and Summer EBT Program; metrics to assess program reach and coverage; and

(3) The Summer EBT agency's plans to partner with other Federal, State, Tribal, or local programs to aid participants in accessing all Federal, State, Tribal, or local programs for which they are eligible.

(d) States must notify the public about their plan and make it available to the public through a website, and should, to the maximum extent practicable, solicit and consider input on plan development and implementation from other State agencies, ITOs, and local agencies; organizations involved in the administration of nutrition and human services programs; participants; and other stakeholders.

(e) States must consult with FNS on the development of and any significant subsequent updates to their plan. Initial plans must be submitted to FNS no later than January 1, 2025. States must submit updates annually when significant changes are made to the plan, and otherwise no less than every 3 years.

§ 292.11 Advance Planning Document (APD) processes.

(a) *APD process for State agencies and ITOs.* As a condition for the initial and continued ability to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation, and implementation of Information System (IS) equipment and services used in the administration of the Summer EBT Program, Summer EBT agencies must adhere to the APD process in this section (see guidance in Food and Nutrition Service's (FNS' Handbook 901 for more information), the State Systems APD process in paragraph (b) of this section, and for SNAP and WIC ITOs the existing APD process requirements for Management Information Systems and/or Information Systems as outlined in 7 CFR parts 246, 274, and 277, respectively. Summer EBT Projects have

the option to include the Summer EBT Program in an existing SNAP or WIC EBT APD or to create a separate APD specific to Summer EBT services. Where the Summer EBT agency is a SNAP or WIC agency, changes to the Management Information System to support Summer EBT follow the APD processes as outlined in §§ 246.12 and 277.18 of this chapter (see guidance within FNS' Handbook 901 for more information). Child Nutrition Programs do not have a similar requirement for Management Information Systems, so the APD requirements will only apply to the EBT services projects associated with the Summer EBT Program.

(b) *APD process for States.*

Requirements for FNS prior approval of IS projects—

(1) *For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards (subpart D of this part).* For Summer EBT agencies that administer SNAP and are planning changes to their SNAP information systems to incorporate the Summer EBT requirements, refer to § 277.18 of this chapter.

(2) *Specific prior approval requirements.* (i) For IS projects which require prior approval, as specified in paragraph (b)(1) of this section, the State Summer EBT agency must obtain the prior written approval of USDA for:

(A) Conducting planning activities, entering into contractual agreements or making any other commitment for acquiring the necessary planning services for the development of an initial Summer EBT services project; and

(B) Conducting design, development, testing or implementation activities, entering into contractual agreements or making any other commitment for the acquisition of IS equipment or services.

(ii) For IS equipment and services acquisitions requiring prior approval as specified in paragraph (b)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) *Requests for Proposals (RFPs).* Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval of the RFP before the RFP may be released. The State Summer EBT agency must obtain prior written approval from FNS for RFPs which are associated with an EBT system regardless of the cost.

(B) *Contracts.* All contracts must be submitted to FNS. The State Summer EBT agency must obtain prior written approval from FNS for contracts which

are associated with an EBT system regardless of the cost.

(C) *Contract amendments.* All contract amendments must be submitted to FNS. Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval from FNS of any contract amendments which cumulatively exceed 20 percent of the base contract costs before being signed by the State Summer EBT agency.

(3) *Procurement requirements.* (i) Procurements of IS equipment and services are subject to § 277.14 of this chapter (procurement standards) regardless of any conditions for prior approval contained in this section, except the requirements of § 277.14(b)(1) and (2) of this chapter regarding review of proposed contracts. The procurement standards in § 277.14(b)(1) and (2) include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(ii) The standards prescribed by § 277.14 of this chapter, as well as the requirement for prior approval in this paragraph (b), apply to IS services and equipment acquired primarily to support Summer EBT regardless of the acquiring entity.

(iii) The competitive procurement policy prescribed by § 277.14 of this chapter must be applicable except for IS services provided by the agency itself, or by other State or local agencies.

(iv) The following FNS-required provisions as required under 2 CFR part 200, appendix II, apply to Summer EBT procurements as well:

(A) Compliance with Executive Order 11246 related to equal employment opportunity.

(B) Compliance with Clean Air Act (42 U.S.C. 7401–7671q).

(C) Compliance with Clean Water Act (33 U.S.C. 1251–1387).

(D) Compliance with Anti-Lobbying Act.

(E) Compliance with Americans with Disabilities Act.

(F) Compliance with drug-free workplace requirements.

(G) Compliance with suspension/debarment requirements.

(H) USDA has royalty-free rights to use software and documentation developed.

(I) The State Summer EBT agency must obtain prior written approval from FNS, as specified in paragraphs (b)(1) and (2) of this section, to claim and receive reimbursement for the associated costs of the IS acquisition.

(4) *Document submission requirements.* (i) For IS projects requiring prior approval as specified in

paragraphs (b)(1) and (2) of this section, the State Summer EBT agency must submit the following documents to FNS for approval:

(A) Planning APD as described in § 292.2.

(B) Implementation APD as described in § 292.2.

(C) Annual APDU as described in § 292.2 for the initial Summer EBT implementation.

(ii) The Annual APDU must be submitted to FNS 60 days prior to the expiration of the FFP approval, unless the submission date is specifically altered by USDA. In years where an As Needed APDU is required, as described in § 292.2, FNS may waive or modify the requirement to submit the annual APDU. The requirement in this paragraph (b)(4)(ii) will only apply to the initial implementation of Summer EBT.

(iii) As Needed APDU as described in § 292.2. As Needed APDU are required to obtain a commitment of FFP whenever significant project changes occur. Significant project changes are defined as changes in cost, schedule, scope or strategy which exceed FNS-defined thresholds or triggers. Without such approval, the Summer EBT agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APDU until such time as approval is specifically granted by FNS.

(iv) Acquisition documents as described in § 277.14(g) of this chapter for Summer EBT agencies that administer SNAP (see guidance within in FNS Handbook 901 for more information), or for Summer EBT services projects utilizing an existing or new SNAP EBT services contract for Summer EBT.

(v) Emergency acquisition requests as described in paragraph (j) of this section.

(c) *Prior approval.* The State Summer EBT agency must obtain prior FNS approval of the documents specified in paragraph (b)(4)(i) of this section in order to claim and receive reimbursement for the associated costs of the IS acquisition.

(d) *Approval by the State Summer EBT agency.* Approval by the State Summer EBT agency is required for all documents and acquisitions specified in this subpart prior to submission for FNS approval. However, the State Summer EBT agency may delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS.

(e) *Prompt action on requests for prior approval.* FNS will reply promptly to State Summer EBT agency requests for prior approval. If FNS has not provided written approval, disapproval, or a request for additional information within 60 days of FNS' acknowledgment of receipt of the State Summer EBT agency's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (b) of this section. However, provisional approval will not exempt a State Summer EBT agency from having to meet all other Federal requirements which pertain to the acquisition of IS equipment and services. Such requirements remain subject to Federal audit and review.

(f) *APD content requirements—(1) Planning APD (PAPD).* The PAPD is a written plan of action to acquire proposed services or equipment and to perform necessary activities to investigate the feasibility, system alternatives, requirements and resources needed to replace, modify, or upgrade the State Summer EBT agency's IS. The PAPD must contain adequate documentation to demonstrate the need to undertake a planning process, as well as a thorough description of the proposed planning activities, and estimated costs and timeline (see guidance within FNS' Handbook 901 for more information).

(2) *Implementation APD (IAPD).* The IAPD is a written plan of action to acquire the proposed IS services or equipment and to perform necessary activities to design, develop, acquire, install, test, and implement the new IS. The IAPD must contain detailed documentation of planning and preparedness for the proposed project, (see guidance within FNS' Handbook 901 for more information), demonstrating the feasibility of the project, thorough analysis of system requirements and design, a rigorous management approach, stewardship of Federal funds, a realistic schedule and budget, and preliminary plans for key project phases. The IAPD must be submitted and approved prior to incurring any costs under the new EBT service contract.

(3) *Annual APDU content requirements.* The Annual APDU is a yearly update to ongoing IS projects when planning or implementation activities occur. The Annual APDU must contain documentation on the project activity status and a description of major tasks, milestones, budget, and any changes (see guidance within FNS' Handbook 901 for more information).

(4) *As Needed APDU content requirements.*

The As Needed APDU document must contain the items as defined in paragraph (b)(4)(ii) of this section with emphasis on the area(s) where changes have occurred or are anticipated that triggered the submission of the APDU (see guidance within FNS' Handbook 901 for more information)."

Paragraph (d) should read: (q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D to this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process in this section (see guidance within FNS' Handbook 901 for more information).

(g) *Service agreements.* (1) The State Summer EBT agency must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. *Service agreement* means the document signed by the State or local agency and the State or local central IT facility whenever an IT facility provides IT services to the State or local agency. Service agreements must:

(i) Identify the IS services that will be provided;

(ii) Include a schedule of rates for each identified IS service, and a certification that these rates apply equally to all users;

(iii) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(iv) Include assurances that services provided will be timely and satisfactory;

(v) Include assurances that information in the IS as well as access, use and disposal of IS data will be safeguarded in accordance with provisions of §§ 272.1(c) (disclosure) and 277.13 (property) of this chapter;

(vi) Require the provider to obtain prior approval from FNS pursuant to paragraph (b) of this section for IS equipment and IS services that are acquired from commercial sources primarily to support federally aided public assistance programs and require the provider to comply with § 277.14 of this chapter (procurement standards) for procurements related to the service agreement. IS equipment and services are considered to be primarily acquired to support federally aided public assistance programs when the Programs

may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the IS equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of IS equipment or services;

(vii) Include the beginning and ending dates of the period of time covered by the service agreement; and

(viii) Include a schedule of expected total charges to the Program for the period of the service agreement.

(2) The State Summer EBT agency must maintain a copy of each service agreement in its files for Federal review upon request.

(h) *Basis for continued Federal financial participation (FFP)—(1) General.* FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that IS resources are used for the purposes authorized. FNS will use the APDU to monitor IS project development. The submission of the update as prescribed in paragraph (b)(4) of this section for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of IS project development and State and local agency IS operations may be conducted by or for FNS to assure compliance with approved APDs, proper use of IS resources, and the adequacy of State or local agency IS operations.

(2) *Pre-implementation.* The State Summer EBT agency must demonstrate through thorough testing that the system meets all program functional and performance requirements. FNS may require a pre-implementation review of the system to validate system functionality prior to Summer EBT agency testing.

(3) *Testing.* The State Summer EBT agency must commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the project area:

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in this part in combination with the system components described by the approved system design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the functional demonstration if one is conducted. FNS may require that any or all of these tests be repeated in instances where significant modifications are made to

the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest.

(ii) *An Acceptance Test Plan.* The Acceptance Test Plan for the project must describe the methodology to be utilized to verify that the EBT system complies with Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan must address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing must include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing; and

(C) A “what-if” component must also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(iii) *Independent testing.* The Department reserves the right to participate and conduct independent testing as necessary during the acceptance testing and appropriate events during system design, development, implementation, and operation.

(iv) *An acceptance test report.* The State Summer EBT agency must provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. The report must summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report must contain the State Summer EBT agency’s recommendations regarding implementation of the EBT system.

(v) *A prototype food retailer agreement.* The State Summer EBT agency must enter an agreement with each FNS authorized retailer that complies with the requirements under § 274.3 of this chapter.

(vi) *An implementation plan.* (A) The implementation plan must include the following:

(1) A description of the tools, procedures, detailed schedules, and resources needed to implement the project;

(2) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(3) A phase-in-strategy which permits a measured and orderly transition from one EBT system to another. In describing this strategy, the plan must address schedules that avoid disruption of normal shopping patterns and operations of participating children and food retailers. Training of Summer EBT eligible children, State Summer EBT agency personnel and retailers and/or their trainers must be coordinated with the installation of equipment in retail stores;

(4) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description must also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Program requirements; and,

(5) A plan for orderly phase-out of the project and/or for continuing benefit issuance operations if it is demonstrated during the pilot project or conversion operations that the new system is not acceptable.

(B) The State Summer EBT agency must submit a written contingency plan for FNS approval. The contingency plan must contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan must be incorporated into the Summer EBT State system security plan after FNS approval as specified in paragraph (p) of this section.

(i) *Disallowance of Federal financial participation (FFP).* If FNS finds that any acquisition approved under the provisions of paragraph (b) of this section fails to comply with the criteria, requirements and other undertakings described in the approved or modified APD, payment of FFP may be suspended or may be disallowed in whole or in part.

(j) *Emergency acquisition requirements.* The State Summer EBT agency may request FFP for the costs of IS equipment and services acquired to meet emergency situations in which the agency can demonstrate to FNS an immediate need to acquire IS equipment or services in order to continue operation of Summer EBT; and the State Summer EBT agency can clearly document that the need could not have been anticipated or planned for and

precludes the State from following the prior approval requirements of paragraph (c) of this section. FNS may provide FFP in emergency situations if the following conditions are met:

(1) The State Summer EBT agency must submit a written request to FNS prior to the acquisition of any IS equipment or services. The written request must include:

(i) A brief description of the IS equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State Summer EBT agency’s need to proceed with the acquisition prior to fulfilling approval requirements at paragraph (c) of this section; and

(iii) A description of the adverse impact which would result if the State Summer EBT agency does not immediately acquire the IS equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS must provide a written response to the State Summer EBT agency within 14 days. The FNS response must:

(i) Inform the State Summer EBT agency that the request has been disapproved and the reason for disapproval.

(ii) If FNS approves the request submitted under paragraph (j)(1) of this section, FFP will be available from the date the State Summer EBT agency acquires the IS equipment and services.

(iii) FNS recognizes that an emergency situation exists and grants conditional approval pending receipt of the State Summer EBT agency’s formal submission of the IAPD information specified at paragraph (b)(4) of this section within 90 days from the date of the agency’s initial written request.

(iv) If the complete IAPD submission required by paragraph (b)(2) of this section is not received by FNS within 90 days from the date of the initial written request, costs may be subject to disallowance.

(k) *General cost requirements—(1) Cost determination.* Actual costs must be determined in compliance with 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415 and an FNS approved budget and must be reconcilable with the approved FNS funding level. A State Summer EBT agency must not claim reimbursement for costs charged to any other Federal program or uses of IS systems for purposes not connected with Summer EBT. The approved APD cost allocation plan includes the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS

as part of the request for FNS approval of funding as required in this section. Operational costs are to be allocated based on the statewide cost allocation plan rather than the APD cost plan. Approved cost allocation plans for ongoing operational costs must not apply to IS system development costs under this section unless documentation required under paragraph (b) of this section is submitted to and approvals are obtained from FNS. Any APD-related costs approved by FNS must be excluded in determining the Summer EBT agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State Summer EBT agencies must assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, in accordance with the cost principles set forth in 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, the State Summer EBT agency must specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/ functions. The State Summer EBT agency must amend the cost allocation plan required by 2 CFR part 200, subpart E, to include the approved APD methodology for the identification, assignment, and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an IS must be identified and assigned by the State Summer EBT agency to funding sources in accordance with the approved cost allocation plan required by 2 CFR part 200, subpart E.

(iii) *Service agreement costs.* States that operate a central data processing facility must use their approved central service cost allocation plan required by 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415 to identify and assign costs incurred under service agreements with the State Summer EBT agency. The State Summer EBT agency must then distribute these costs to funding sources in accordance with the development and operational costs outlined in this section.

(iv) *Claiming costs.* Prior to claiming funding under this section the State Summer EBT agency must have complied with the requirements for obtaining approval and prior approval of paragraph (b) of this section.

(v) *Budget authority.* FNS approval of requests for funding must provide notification to the State Summer EBT agency of the budget authority and dollar limitations under which such funding may be claimed. FNS must provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization must be based on the budget submitted by the State Summer EBT agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, must require FNS approval of an As Needed APDU as prescribed in paragraphs (b)(4) and (f)(4) of this section, including an amended State budget. Requests to amend the budget authorization approved by FNS must be submitted to FNS prior to claiming such expenses.

(l) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, must be made available by the State Summer EBT agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access to all parts of the system may result in suspension and/or termination of Summer EBT funds for the costs of the system and its operation.

(m) *Ownership rights.* The State Summer EBT agency must comply with the requirements under this part and the requirement for intangible property in 2 CFR 200.315.

(n) *Software.* (1) The State or local government must include a clause in all procurement instruments which provides that the State or local government must have all ownership rights in any software or modifications thereof and associated documentation designed, developed, or installed with FFP under this section.

(2) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such

software, modifications, and documentation.

(3) Proprietary operating/vendor software packages which meet the definition of COTS in § 292.2 must not be subject to the ownership provisions in paragraph (m) of this section. FFP is not available for development costs for proprietary application software developed specifically for Summer EBT.

(o) *Information Systems equipment.* The policies and procedures governing title, use and disposition of property purchased with FFP, which appear at 2 CFR 200.315 are applicable to IS equipment.

(p) *Information system security requirements and review process—(1) Information system security requirements.* State and local agencies are responsible for the security of all IS projects under development, and operational systems involved in the administration of Summer EBT. State and local agencies must determine appropriate IS security requirements based on recognized industry standards or compliance with standards governing security of Federal information systems and information processing.

(2) *Information security program.* State Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of the Summer EBT. Security Programs must include the following components:

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of IS security:

(A) Physical security of IS resources;
(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;
(D) Telecommunications security;
(E) Personnel security;
(F) Contingency plans to meet critical

processing needs in the event of short- or long-term interruption of service;
(G) Emergency preparedness; and
(H) Designation of an Agency IS Security Manager.

(3) *Periodic risk analyses.* State Summer EBT agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses must be performed whenever significant system changes occur.

(4) *IS security reviews.* State Summer EBT agencies must review the security

of IS involved in the administration of Summer EBT on a biennial basis. At a minimum, the reviews must include an evaluation of physical and data security, operating procedures and personnel practices. State Summer EBT agencies must maintain reports of their biennial IS security reviews, together with pertinent supporting documentation, for Federal review upon request.

(5) *Applicability.* The security requirements of this section apply to all IS systems used by State and local governments to administer Summer EBT.

(q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D of this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process (see guidance within FNS' Handbook 901 for more information).

(r) *ITO EBT management and reporting.* (1) The Summer EBT agency must follow the Department APD requirements in this section and submit Planning and Implementation APDs and appropriate updates, for Department approval, for planning, development, and implementation of initial and subsequent EBT systems.

(2) If an ITO plans to incorporate additional programs in its EBT system, the ITO must consult with ITO officials responsible for administering the programs prior to submitting the Planning APD (PAPD) document and include the outcome of those discussions in the PAPD submission to the Department for approval.

(3) Annually as part of the State plan, the Summer EBT agency must submit EBT project status reports. At a minimum, the annual status report must contain:

(i) Any information on future EBT changes and procurement updates affecting present operations; and
(ii) Such other information the Secretary may require.

(4) The ITO must be responsible for EBT coordination and management for planning, implementation and ongoing operations of Summer EBT.

(s) *ITO Summer EBT procurements.* The following procurement requirements from title 2 of the Code of Federal Regulations apply to ITO Summer EBT agencies:

- (1) 2 CFR 200.315;
- (2) 2 CFR 200.317;
- (3) 2 CFR 200.326;
- (4) 2 CFR part 200, appendix II:
- (i) Remedies for violation or breach;
- (ii) Termination for cause and for convenience;
- (iii) Equal employment opportunity (EEO) provisions;
- (iv) Clean Air Act and Federal Water Pollution Control Act;
- (v) Debarment and suspension requirements; and
- (vi) Anti-lobbying requirements; and
- (5) 2 CFR part 400.

(t) *ITO Program costs.* (1) The two kinds of allowable costs under the Program are "food costs" and "nutrition services and administration costs." In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of nutrition services and administration costs are:

(i) *Direct costs.* Those direct costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415.

(ii) *Indirect costs.* Those indirect costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, a claim for indirect costs must be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Program funds may not be used to pay for retroactive benefits.

§ 292.12 Enrolling eligible children.

(a) *Minimum requirements for Program informational activities.* Summer EBT agencies must comply with the following minimum information requirements for applicants and recipients.

(1) Summer EBT agencies must inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the Summer EBT agency deems appropriate.

(2) All Program informational material must:

- (i) Be in an understandable and uniform format, and to the maximum extent practicable, in a language that parents and guardians can understand;
- (ii) Include the USDA nondiscrimination statement; and
- (iii) Be provided in alternate formats for individuals with disabilities, as practicable.

(3) All program information material should be provided by households' preferred method of contact, to the maximum extent practicable.

(b) *General requirements.* In enrolling eligible children, Summer EBT agencies must:

(1) Establish procedures to ensure correct eligibility determinations;

(2) Establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT; and

(3) Establish procedures to enable anyone who has been determined to be eligible for Summer EBT benefits to confirm their eligibility status and unenroll, or opt out, of the Program, if they do not want to receive benefits; and

(4) Provide assistance to households that seek help in applying for benefits.

(c) *NSLP/SBP enrollment database.* By 2025, Summer EBT agencies must establish and maintain a State- or ITO-wide database of all children enrolled in NSLP- or SBP-participating schools within the State or ITO service area, as applicable, for the purposes of enrolling children for Summer EBT benefits and detecting and preventing duplicate benefit issuance. If an ITO, in consultation with FNS, determines that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children, the ITO may submit a waiver request under § 292.3(h).

(1) *Database elements.* At a minimum, the database must contain the following information for these children:

- (i) Name;
- (ii) Date of birth;
- (iii) School/school district where enrolled;
- (iv) Mailing address;
- (v) Individual free or reduced price eligibility status, as applicable; and
- (vi) Any other information needed to issue benefits timely and with integrity.

(2) *Data use and confidentiality.* Summer EBT agencies must ensure the confidentiality of all such data, and the data must be used only for the purposes of the Summer EBT Program, or to provide other social service benefits to eligible children.

(3) *Data sharing across Summer EBT Programs.* State Summer EBT agencies must make this data available to ITO Summer EBT agencies for children within an ITO's Summer EBT service area, in a timeframe that allows ITO Summer EBT agencies to issue timely benefits. ITO Summer EBT agencies must ensure confidentiality of the data in accordance with paragraph (c)(2) of this section.

(d) *Automatic enrollment with streamlined certification.* (1) Summer

EBT agencies must enroll eligible children through streamlined certification, including those who, during the period of eligibility were:

(i)(A) Individually certified for free or reduced price school meals through the NSLP/SBP, per § 245.6 of this chapter; or

(B) School aged and:

(1) Members of a household receiving assistance under SNAP, as defined in § 292.2;

(2) Members of a household receiving assistance under FDPIR and TANF, if data for these programs are available at the State level; or

(3) A foster, homeless, migrant, runaway, or Head Start child, as defined in § 245.2 of this chapter, if data for these programs are available at the State level.

(ii) Not enrolled in a special provision school but are otherwise determined eligible for a free or reduced priced meal through the NSLP/SBP.

(2) Summer EBT agency may enroll eligible children through streamlined certification who are members of a household receiving assistance under other means-tested programs, as approved by the Secretary.

(3) Streamlined certification does not require further confirmation of school enrollment.

(4) If an ITO, in consultation with FNS, determines that any element of automatic enrollment with streamlined certification is not feasible or is unnecessary based on available resources or circumstances to the population served, the ITO may submit a waiver request under § 292.3(h).

(e) *Enrollment by Summer EBT application.* (1) Summer EBT agencies must enroll eligible children in Summer EBT if it is determined that they meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through a complete Summer EBT application. A Summer EBT application is considered complete if the following information is provided:

(i) Names of children and other household members;

(ii) Amount, source, and frequency of income for each household member; and

(iii) Signature of an adult household member, including electronic signatures, as described in § 292.13(h).

(2) Confirmation of enrollment in an NSLP/SBP- participating school during the immediately preceding instructional year is required for children who apply by Summer EBT application. This can be accomplished by matching against the State or ITO-wide NSLP/SBP enrollment database, as required in

paragraph (c) of this section, prior to benefit issuance.

(3) Children who are not in an NSLP or SBP-participating school in the immediately preceding instructional year cannot be certified as eligible, and therefore cannot be deemed eligible for Summer EBT through submission of an application for Summer EBT benefits.

(4) Summer EBT agencies are prohibited from requiring income documentation at the time of application.

(f) *Notice of approval—(1) Income applications.* The Summer EBT agency must notify (or place notification in the mail) eligible households of a child's approved status within 15 operational days of receipt of a complete application. This may be included in the mailing containing the EBT card, if applicable, or other communication informing the household about the issuance or use of benefits.

(2) *Streamlined certification.* Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of a means-tested program that has been approved by the Secretary must be notified, in writing, that their children are eligible for Summer EBT and that no application is required. The notice of approval must also inform the household how to opt-out if they do not want their children to receive Summer EBT benefits.

(3) *Households declining benefits.* Children from households that notify the Summer EBT agency that they do not want Summer EBT benefits must not be issued benefits, or have their benefits expunged as soon as possible if already issued. Any notification from the household declining benefits must be documented and maintained on file, as required under § 292.23, to substantiate the change in benefits. Because any expungement in this instance is at the request of the household, the 30 day household notice typically required for expunging benefits is not required in this instance.

(4) *Duplicate benefit issuance.* Summer EBT agencies must include in the notice of approval a statement communicating that households that are erroneously issued duplicate benefits from more than one State or ITO should only use benefits from the State or ITO where their child(ren) completed the instructional year immediately preceding the summer operational period. Under no circumstances may they use both.

(g) *Denied applications and the notice of denial.* When the application furnished by a household is not

complete or does not meet the eligibility criteria for Summer EBT benefits, the Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, the Summer EBT agency must provide written notice to each household denied benefits within 15 operational days of receipt of a complete application. At a minimum, this notice must include:

(1) The specific reason or reasons for the denial of benefits, e.g., income in excess of allowable limits or incomplete application;

(2) Notification of the right to appeal;

(3) Instructions on how to appeal; and

(4) A statement reminding households that they may reapply for benefits at any time.

(h) *Appeals of denied benefits.* A household that wishes to appeal an application that was denied may do so in accordance with the procedures established by the Summer EBT agency as required by § 292.26. However, prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(i) *Confidential nature of streamlined certification information.* Information about children or their households obtained through the streamlined certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758.

§ 292.13 Application requirements.

(a) *Statewide application.* By 2025, the Summer EBT agency must make a Summer EBT application available to households whose children are enrolled in NSLP- or SBP-participating schools and who do not already have an individual eligibility determination.

(b) *Contracting application processes.* Summer EBT agencies may not delegate to LEAs the responsibility of making a Summer EBT application available. However, a Summer EBT agency may contract with another entity into order to fulfill the requirement in this paragraph (b).

(c) *Household applications.* The application must be clear and simple in design and the required information must be limited to what is required to

demonstrate that the household does, or does not, meet the eligibility criteria for Summer EBT benefits at § 292.5(a). The application or associated instructions must also include the income eligibility guidelines and an explanation that households with incomes at or below the income limit may be eligible for Summer EBT. Summer EBT agencies are encouraged to include optional questions on the application to improve customer service including, but not limited to:

(1) Preferred method of communication (e.g., mail, email, phone, text message);

(2) Preferred contact information;

(3) Preferred language of communication;

(4) Preferred method of benefit issuance (e.g., EBT card, electronic benefit);

(5) Interest in receiving information about how to access other assistance program benefits (e.g., Summer Food Service Program, NSLP/SBP, Child and Adult Care Food Program, SNAP, WIC, TANF, FDPIR, Medicaid);

(6) Membership in an ITO; and

(7) Other program options where a household may have preferences, receipt of information that households may find useful, or information that would aid Summer EBT agencies in successful program implementation.

(d) *Understandable communications.* Any communication with households for eligibility determination purposes must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

(e) *Availability of applications.* Summer EBT agencies must ensure that a Summer EBT application is available throughout the period of eligibility, as defined in § 292.2.

(f) *Timely certifications.* Summer EBT agencies must follow-up with a household that submits an incomplete application within 10 operational days of receipt of the application. See notice of approval at § 292.12(f) for additional requirements for complete applications that are approved for benefits, and providing benefits to participants at § 292.15(c) for requirements around timely issuance of benefits for eligible children.

(g) *Deadline for applications.* Households must submit an application for Summer EBT benefits by the last day of the summer operational period in order to receive benefits for that summer. Applications that are submitted after the last day of the summer operational period may be used to establish eligibility for the following summer. Summer EBT agencies may

encourage households to apply prior to the application deadline, however applications must be accepted and processed up until the application deadline, and benefits must be issued if the application is approved.

(h) *Electronic applications.* In addition to the distribution of information, applications, and descriptive materials in paper form, the Summer EBT agency may establish a system for executing household applications electronically and using electronic signatures. The electronic submission system must comply with the same requirements as paper applications. Descriptive materials may also be made available electronically by the Summer EBT or local educational agency. If the application is made available electronically, a paper version must also be available.

(i) *Application content requirements.* Summer EBT applications must contain the following elements:

(1) *Required income information.* The information requested on the application with respect to the current income of the household must be limited to:

(i) The income received by each member identified by the household member who received the income or an indication which household members had no income; and

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available to pay for a child's meals.

(2) *Household members.* The application must require applicants to provide the names of all household members. However, the application must allow the household to provide a case number if they participate in SNAP, or another means-tested program that has been approved by the Secretary, in lieu of names of all household members and household income information.

(3) *Name of school where child is enrolled.* A State- or ITO-wide application must contain a space for the household to indicate the name of the school or district where each eligible child is enrolled.

(4) *Mailing address.* The application must contain a space for the household to list their mailing address. However, the application must be accepted and processed as complete even if the field was not completed by the applicant. The instructions should communicate

that it will be used to mail their EBT card, as applicable, and therefore should be the address that will be used by the household at the time the Summer EBT agency issues benefits.

(5) *Adult member's signature.* The application must be signed by an adult member of the household.

(j) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that the applicant is not already receiving Summer EBT benefits in another State or ITO, that Summer EBT agencies may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(k) *Race and ethnicity.* The application must contain space for collection of information on race and ethnicity of applicants. The questions should be labeled as optional, and incomplete responses cannot be used as the basis for the denial of benefits.

(l) *Accompanying instructions.* The application must contain clear instructions with respect to the completion and submission of the application to the Summer EBT agency to make eligibility determinations. The instructions should inform households that if they intend to move, or have recently moved, that they should apply for benefits in the State where their child will complete or completed the school year immediately preceding the summer operational period.

(m) *Required statements for the application.* The application and descriptive materials must include substantially the following statements:

(1) "The Richard B. Russell National School Lunch Act requires that we use information from this application to determine who qualifies for Summer EBT benefits. We can only approve complete forms. We may share your eligibility information with education, health, and nutrition programs to help them deliver program benefits to your household. Inspectors and law enforcement may also use your information to make sure that program rules are met. Some children qualify for Summer EBT without an application. Please contact your State or ITO to get Summer EBT for a foster child, and children who are homeless, migrant, or runaway."

(2) When either the Summer EBT agency or the LEA plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in § 245.6(h) of this chapter, must be added to this statement. State agencies and LEAs are responsible for drafting the appropriate statement.

(3) The application must contain the USDA nondiscrimination statement for Child Nutrition Programs.

(4) The Summer EBT agency must inform applicants and prospective applicants that a non-household member may be designated as the authorized representative for application processing purposes if they have difficulty completing the application process.

(n) *Calculating income.* The Summer EBT agency must use the income information provided by the household on the application to calculate the household's total current income. When a household submits a complete application, and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for Summer EBT benefits.

(o) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in this section may have access to children's eligibility information, without parent or guardian consent. Persons considered directly connected with administration or enforcement of a program or activity are Federal, State, ITO, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies, ITOs, and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(p) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children's names and eligibility status, the Summer EBT agency, as appropriate, may disclose, without parental consent, all eligibility information obtained through the Summer EBT eligibility process

(including all information on the application or obtained through streamlined certification) to:

(1) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, or the Food and Nutrition Act of 2008. This means that all eligibility information obtained for the Summer EBT Program may be disclosed to persons directly connected with administering or enforcing regulations under the Summer EBT Program, National School Lunch or School Breakfast Programs (7 CFR parts 210 and 220, respectively), Child and Adult Care Food Program (7 CFR part 226), Summer Food Service Program (7 CFR part 225), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (7 CFR part 246), and the Supplemental Nutrition Assistance Program (SNAP) (7 CFR parts 271 through 285);

(2) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in § 292.16(b)(1)(iii); and

(3) The Comptroller General of the United States for purposes of audit and examination.

(q) *Phase-in flexibility.* For 2024, alternative income applications that do not meet the criteria in paragraph (i) of this section can be used to confer eligibility for Summer EBT if the information provided on the alternative application is sufficient for the Summer EBT agency or LEA to determine that the household meets the income eligibility guidelines for Summer EBT. In 2024, Summer EBT agencies may delegate application processing to LEAs. If a Summer EBT agency delegates application processing to LEAs, then it must cover all administrative costs incurred by the LEAs with respect to Summer EBT application processing.

§ 292.14 Verification requirements.

(a) Summer EBT applications are subject to the following verification requirements:

(1) *Verification for cause.* (i) The Summer EBT agency must verify for cause applications, on a case-by-case basis, such as in an instance when the agency is aware of conflicting or inconsistent information from what was provided on the application.

(ii) The Summer EBT agency may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application.

(iii) Applications verified for cause are not considered part of three (3) percent sample size described in paragraph (a)(2) of this section.

(iv) Applications do not need to be selected for verification for cause during initial application processing. A Summer EBT agency may become aware of a questionable application after the initial certification was completed and benefits were issued. In this case, the Summer EBT agency must verify the application for cause at the time they learn of the questionable or conflicting information.

(v) All verification procedures in this section must be followed for applications selected for verification for cause in the same manner as an application randomly selected as part of the sample described in paragraph (a)(2) of this section.

(2) *Verification sample.* (i) The Summer EBT agency must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer.

(ii) The sample size for the Summer EBT agency must equal three (3) percent of all applications approved by the Summer EBT agency from the start of the instructional year through April 1 of the school year immediately preceding the summer operational period, selected randomly from all applications.

(3) *Verification alternatives.* (i) In lieu of carrying out provisions in paragraph (a)(2) of this section, Summer EBT agencies may propose alternative methods for verification that strengthen program integrity and preserve participant access.

(ii) Summer EBT agencies that intend to propose alternative procedures must include a detailed description of their plan in their POM submission. Proposals are subject to USDA approval.

(b) *Replacing applications.* The Summer EBT agency may, on a case-by-case basis, replace up to ten percent of applications that are randomly selected as part of the verification sample. Applications may be replaced if the Summer EBT agency determines that the household would be unable to satisfactorily respond to the verification request.

(c) *Rolling verification sample selection.* Summer EBT agencies may choose to conduct verification on a rolling basis, as long as the sample size requirements in paragraph (a)(3) of this section are met. (1) If conducting rolling verification, the Summer EBT agency must:

(i)(A) Include in each sample pool only applications approved since the last sample was selected; and

(B) Select three (3) percent of approved applications, as required by the sampling method, each time, but round down to the nearest whole number to prevent over-sampling. If rounding down results in a zero, no applications should be verified for the sample period, and the applications received in that sample period should be included in the next sample pool.

(ii) Select the final sample on April 1.

(A) Selecting only from the applications approved since the last sampling;

(B) Summing the number of applications selected for verification to date (including the final, April 1 sample); and

(C) Calculating three (3) percent of all applications approved as of April 1, and rounding up to the next whole number.

(2) If the number of applications summed per paragraph (c)(1)(ii)(B) of this section is less than the three (3) percent calculated per paragraph (c)(1)(ii)(C) of this section, the Summer EBT agency must fill the remainder of the sample by selecting randomly from all applications.

(3) Summer EBT agencies may choose to sample at any frequency prior to April 1, but may not sample any applications after April 1.

(d) *Verification after April 1.*

Applications that come in after April 1 are still subject to verification for cause, on a case-by-case basis, per paragraph (a)(1) of this section.

(e) *Direct verification.* Summer EBT agencies must conduct direct verification activities with the programs eligible for use in streamlined certification, as defined in § 292.12(d), as well as records from other assistance programs and administrative data, where available. Data records are subject to the timeframe specified in paragraph (e)(2) of this section.

(1) Direct verification must be conducted prior to contacting the household for documentation.

(2) For the purposes of direct verification, documentation may indicate participation in an applicable program or income at any point during the period of eligibility. The information provided only needs to indicate eligibility at a single point in time during the period of eligibility, not that the child was eligible at the time of application or verification.

(3) Summer EBT agencies must include in their POM submission all sources of administrative data that is intended to be used for direct verification.

(f) *Verification procedures and assistance for households—(1) Exceptions from verification.*

Verification is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP, FDPIR, TANF, or another means tested program, as approved by the Secretary, or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in § 245.2 of this chapter.

(2) *Notification of selection.*

Households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number to contact for assistance. Any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. These households must be advised of the type of information or documents that will be expected. Households selected for verification must be informed that:

(i) They are required to submit the requested information to verify eligibility for Summer EBT benefits, by the date determined by the Summer EBT agency.

(ii) They may, instead, submit proof that the children receive assistance under SNAP, FDPIR, TANF, or another means tested program, as approved by the Secretary.

(iii) They may, instead, request that the Summer EBT agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway.

(iv) Failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Sources of information.* For the purposes of this section, sources of information for verification may include, but are not limited to, written evidence, individuals outside of the child's household who can verify the child's circumstances, and systems of records as follows:

(i) Written evidence must be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the verifying agency may require confirmation from a person outside of the child's household, or accept a statement from an adult member of the child's household.

(ii) Verbal confirmations of a household's circumstances by a person outside of the household may be made in person or by phone. The verifying official may select a person to contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a person, contact must not be made without providing written or oral notice to the household. At the time of this notice, the household must be informed that it may consent to the contact or provide acceptable documentation in another form. If the household refuses to choose one of these options, its eligibility must be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Individuals outside of the child's household who can verify the child's circumstances could include but are not limited to: employers, social service agencies, school officials, and migrant agencies.

(iii) Agency records to which the verifying agency may have access are not considered to be the same as a person outside of the child's household who can verify their circumstances. Information concerning income, household size, or SNAP, FDPIR, or TANF eligibility, maintained by other government agencies to which the verifying agency can legally gain access, must be used to confirm a household's income, size, or receipt of benefits, as applicable. Information may also be obtained from individuals or agencies serving categorically eligible children, as defined in § 292.2, including foster, homeless, migrant, or runaway children.

(iv) Households which dispute the validity of income information acquired through an individual outside of the child's household or a system of records must be given the opportunity to provide other documentation.

(4) *Documentation timeframe.* Households selected and notified of their selection for verification must provide documentation of income. The documentation must indicate the source, amount and frequency of all household income and may indicate eligibility at any point during the period of eligibility. The information provided only needs to indicate eligibility for participation in the program at a single point in time during the period of eligibility, not that the child was certified for that program's benefits at the time of application or verification.

(5) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for Summer EBT benefits must be terminated.

(6) *Telephone assistance.* The Summer EBT agency must provide a telephone number to households selected for verification to call free of charge to obtain information about the verification process. The telephone number must be prominently displayed on the letter to households selected for verification.

(7) *Follow-up attempts.* The Summer EBT agency must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, email, or mail, and must be documented. Non-response to the initial request for verification includes no response and incomplete or ambiguous responses that do not permit the Summer EBT agency to resolve the children's eligibility for Summer EBT benefits.

(8) *Eligibility changes.* The Summer EBT agency must complete the following activities if there is an eligibility change as a result of verification:

(i) Make appropriate modifications to the initial eligibility determinations.

(ii) Notify the household of any change in eligibility as a result of verification.

(iii)(A) The notice must advise the household of:

(1) The change;

(2) The reasons for the change;

(3) Notification of the right to appeal and when the appeal must be filed;

(4) Instructions on how to appeal; and

(5) The right to reapply at any time during the instructional year or summer operational period.

(B) Properly document and retain on file at the Summer EBT agency the reasons for ineligibility.

(9) *Issuance of benefits.* Benefits cannot be issued for applications selected for verification until the verification process is completed with the exception of verification for cause, as described in paragraph (a)(1) of this section.

(10) *Timing of verification for continuous school calendars.* In the case of children who are enrolled in a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the timing of conducting verification, in accordance with the State or ITO's approved POM.

(11) *Verification after benefit issuance.* If a Summer EBT agency is alerted to a questionable application after initial approval or issuance of benefits, no further benefits should be issued until verification for cause, as outlined in paragraph (a)(1) of this

section is complete and eligibility is confirmed.

(12) *Nondiscrimination.* The verification efforts must be applied without regard to race, sex, color, national origin, age, or disability.

(g) *Verification of alternative income applications in 2024.* In 2024, Summer EBT agencies or LEAs should, on a case-by-case basis, verify for cause any questionable Summer EBT application or alternate income applications used to confer Summer EBT eligibility and follow the procedures in paragraphs (e) and (f) of this section.

Subpart D—Issuance and Use of Program Benefits

§ 292.15 General standards.

(a) *Timing.* Summer EBT benefits are intended for use during the summer operational period, in accordance with the Summer EBT agency's approved POM.

(b) *Continuous school calendar.* In the case of children who attend a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the periods during which Summer EBT benefits must be issued and used, in accordance with the State or ITO's approved POM.

(c) *Benefit issuance—(1) Providing benefits to participants.* (i) The Summer EBT agency shall ensure the timely and accurate issuance of benefits.

(A) For children who can be streamline certified or who have an approved Summer EBT application on file, benefits must be issued and available for participants to use at least seven calendar days and not more than 14 calendar days before the start of the summer operational period. When the Summer EBT agency does not have sufficient data to issue a benefit to an eligible child, the agency must work to resolve the case and issue the benefit as expeditiously as possible.

(B) For eligible children who apply after the summer operational period begins, benefits must be issued and available to spend not later than 15 operational days after a complete application is received by the Summer EBT agency, so that participants may use their benefits during the summer.

(ii) If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future.

(iii) The Summer EBT agency's issuance schedule does not need to

align with the start of calendar months and may include staggered benefit issuance across multiple days.

Regardless of the issuance schedule, Summer EBT agencies may only issue a full three months of benefits for the summer operational period.

(iv) Children on applications that are selected for verification must not be issued benefits until verification is complete and eligibility is confirmed. Additional information about the verification requirements for Summer EBT applications can be found at § 292.14.

(v) Summer EBT agencies must aid households with eligible children who do not reside in a permanent dwelling or have a fixed mailing address in obtaining Summer EBT benefits by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(2) *Method of issuance.* Benefits may be issued:

(i) In the form of an EBT card;

(A) Into an existing EBT account associated with an existing EBT card; or
(B) Into a new EBT account associated with a new EBT card;

(ii) Through other electronic methods, as determined by the Secretary; or

(iii) In the case of a Summer EBT agency that does not issue nutrition assistance program benefits electronically, using the same methods by which that Summer EBT agency issues benefits under the nutrition assistance program of that State.

(d) *Dual participation.* (1) Dual participation in Summer EBT in the same summer operational period is not allowed.

(2) Summer EBT agencies must develop procedures to detect and prevent dual participation across multiple States and/or ITOs, and must describe these procedures in their POMs, as explained in § 292.8(e)(9).

(e) *Benefit amount.* (1) In 2024, the benefit will be \$40 per month in the summer operational period for each eligible child, and will be adjusted in subsequent years to reflect changes in the cost of food as measured by the Thrifty Food Plan (TFP). Any year-to-year decrease of the TFP will not be implemented.

(2) In Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates to reflect the differences between the costs of foods in those

States and the costs of foods in all other States.

(3) Benefit amounts will be issued in an amount equal to the unrounded benefit amount from the prior year, adjusted to the nearest lower dollar increment to reflect changes to the cost of the diet described in section 3(u) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year and rounded to the nearest lower dollar increment. Rates will be effective January 1 through December 31 of each year.

(4) Summer EBT agencies may not prorate benefits for partial months and must issue the full three months of summer benefits to each eligible child.

(f) *Benefit allotments.* (1) The Summer EBT agency may issue benefit allotments to a child in a single issuance prior to the start of the summer operational period, or multiple issuances provided that the first issuance occurs before the start of the summer operational period.

(2) In providing benefit allotments Summer EBT agencies:

(i) May stagger issuance throughout the month.

(ii) Must establish an availability date for household access to their benefits and inform households of this date.

(iii) Must issue the full benefit amount for all summer months to each eligible child who applies before the last day of the summer period, independent of the date of application submission or eligibility determination.

(iv) Must adhere to the reporting requirements specified by USDA, regardless of the issuance schedule used.

(g) *Participant support—(1) Household training.* The Summer EBT agency must provide written training materials to each eligible household prior to Summer EBT benefit issuance and as needed during ongoing operation of the Summer EBT Program. At a minimum, the household training must include:

(i) Content which will familiarize each eligible household with:

(A) Where benefits can be used;

(B) What benefits can be used to purchase; and

(C) Unallowable uses of benefits, and penalties for misuse;

(ii) The appropriate utilization and security of the personal identification number (PIN);

(iii) The established procedures to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on

the EBT food balance, and receive the current benefit end date;

(iv) Eligibility criteria for the Program;

(v) Written materials and other information, including the specific rights to benefits. This must include the USDA statement of non-discrimination. Written materials must be prepared at an educational reading level suitable for participant households; and

(vi) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(2) *EBT cards and PINs.* Summer EBT agencies which issue EBT cards by mail must, at a minimum, use first class mail and sturdy non-forwarding envelopes or packages to send Summer EBT cards to households.

(i) The Summer EBT agency must permit a Summer EBT eligible household to select their PIN.

(ii) PIN assignment procedures must be permitted in accordance with industry standards as long as PIN selection is available to households if they so desire and households are informed of this option.

(iii) If assigning a PIN by mail in conjunction with card issuance, Summer EBT agencies must mail the PIN separate from the card one business day after the card is mailed.

(3) *Adjustments.* The Summer EBT agency:

(i) May make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) Must make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(4) *Providing replacement EBT cards or PINs.* The Summer EBT agency must make replacement EBT cards available for pick up or place the card in the mail within two business days following notice by the household to the Summer EBT agency that the card has been lost, stolen or damaged.

(i) The Summer EBT agency must ensure a duplicate account is not established which would permit households to access more than one account in the system.

(ii) An immediate hold must be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The Summer EBT agency must implement a reporting system which is continually operative. Once a household reports

their EBT card has been lost or stolen, the agency must assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The Summer EBT agency must maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(5) *Providing replacement EBT benefits.* The Summer EBT agency must make replacement EBT benefits available to a household when the household reports that food purchased with Summer EBT benefits was destroyed in a household misfortune or disaster.

(h) *Expungement—(1) General expungement procedures—*(i) Summer EBT agencies shall expunge Summer EBT benefits 122 calendar days after their issuance.

(ii) No less than 30 days before benefit expungement is scheduled to begin, Summer EBT agencies must provide notice to the household of the expungement date and amount that is scheduled for expungement.

(iii) Expunged benefits shall not be reinstated.

(2) *Procedures to adjust Summer EBT accounts.* The Summer EBT agency shall establish procedures to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement.

(i) Whenever benefits are expunged, the Summer EBT agency must document the date and amount of the benefits in the household case file.

(ii) Issuance reports must reflect the adjustment to the Summer EBT agency issuance totals to comply with reporting requirements in § 292.23.

(i) *Expungement Procedures specific to States that administer the supplemental nutrition assistance program (SNAP).* (1) Summer EBT agencies that load Summer EBT benefits onto existing SNAP accounts must draw down Summer benefits prior to drawing from the household's SNAP benefits.

(2) Expunged benefits must be returned to the State's Summer EBT account and must not be co-mingled with SNAP funds.

§ 292.16 Issuance and adjustment requirements specific to States that administer SNAP.

(a) *Basic issuance requirements.* State Summer EBT agencies must establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that Program benefits are timely distributed in the correct amounts; and that benefit

issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(1) *On-line issuance of electronic benefits.* State Summer EBT agencies may issue benefits to households through an on-line EBT system in which Program benefits are stored in a central computer database and electronically accessed by households at the point of sale via reusable plastic cards.

(2) *Alternative benefit issuance system.* (i) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State Summer EBT agency to issue or deliver benefits using another method.

(ii) The cost of documents or systems which may be required as a result of a permanent alternative issuance system must not be imposed upon retail food firms participating in the Program.

(3) *Contracting or delegating issuance responsibilities.* State Summer EBT agencies may assign to others such as banks, savings and loan associations, and other commercial businesses, the responsibility for the issuance of benefits. State Summer EBT agencies may permit contractors to subcontract assigned issuance responsibilities.

(i) Any assignment of issuance functions must clearly delineate the responsibilities of both parties. The State Summer EBT agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State Summer EBT agency is strictly liable to FNS for all losses of benefits, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(ii) All issuance contracts must follow procurement standards set forth in § 292.27.

(iii) The State Summer EBT agency must not assign the issuance of benefits to any retail food firm.

(4) *EBT system administration.* (i) The State Summer EBT agency must be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State Summer EBT agency upon a finding that the State Summer EBT agency or its contracted representative has failed to comply with the requirements of this part.

(ii) The State Summer EBT agency must indicate how it plans to incorporate additional programs into the

EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the EBT system. The State Summer EBT agency must also consult with the State agency officials responsible for administering the WIC prior to submitting the Planning APD for FNS approval.

(5) *Master issuance file.* (i) The State Summer EBT agency must establish a master issuance file which is a composite of the issuance records of all eligible children. The master issuance file must contain all the information needed to identify eligible children, issue Summer EBT benefits, record the participation activity for each household, and supply all information necessary to fulfill the reporting requirements in § 292.23.

(ii) The master issuance file must be kept current and accurate. It must be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(iii) Before entering an eligible child's data on the master issuance file, the State Summer EBT agency must review the master issuance file to ensure that the child is not currently participating in, or disqualified from, the Program.

(6) *Shared responsibility of issuance activities.* State Summer EBT agencies may divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, the posting of benefits to an EBT account, and preparation of EBT cards and PINs for mailing. If issuance functions in an office are handled by one person, a second-party review must be made to verify card inventory, the reconciliation of the mail log, and the number of mailings prepared.

(7) *Summer EBT monitoring, examinations, and audits.* State Summer EBT agency's accountability system monitoring procedures must be included in the monitoring procedures for SNAP as described at § 274.1(i) of this chapter.

(8) *Compliance investigations.* State Summer EBT agencies must provide on-line read-only access to State EBT systems for compliance investigations.

(i) The State Summer EBT agency is required to provide software and telecommunications capability as necessary to FNS Retailer Investigation Branch Area offices, Regional offices, and Field offices so that FNS compliance investigators, other

appropriate FNS personnel, and USDA OIG investigators have access to the system in order to conduct investigations of program abuse and alleged violations; and

(ii) The State Summer EBT agency must ensure that FNS compliance investigators and USDA OIG investigators have access to EBT cards and accounts that are updated as necessary to conduct SNAP investigations.

(9) *Federal financial participation.* Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements.

(b) *Disclosure.* (1) Use or disclosure of information obtained from Summer EBT recipients must be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of section 13A of the Richard B. Russell National School Lunch Act, the Food and Nutrition Act of 2008, or regulations in this chapter, other Federal assistance programs, or federally-assisted State programs providing assistance on a means-tested basis to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the NSLA, Food and Nutrition Act of 2008, or regulations in this chapter. The written request shall include the identity of the individual requesting the information and their authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free and reduced price meals under the School Lunch and School Breakfast programs.

(3) Recipients of information released under this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section.

(4) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review

material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the Summer EBT agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(5) Copies of regulations, plans of operation, State Summer EBT agency manuals, State Summer EBT agency corrective action plans, and Federal procedures may be obtained from FNS in accordance with 7 CFR part 295.

(c) *Program administration*—(1) *Automation of Summer EBT operations.* All State Summer EBT agencies are required to sufficiently automate their Summer EBT operations and computerize their systems for obtaining, maintaining, utilizing, and transmitting information concerning Summer EBT.

(2) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the Summer EBT agencies must establish an organizational structure which divides the responsibility for eligibility determinations and benefit issuance among certification, data management, and issuance units within coordinating or partnering Summer EBT agencies.

(3) *Court suit reporting*—(i) *State Summer EBT agency responsibility.* (A) In the event that a State Summer EBT agency is sued by any person(s) in a State or Federal Court in any matter which involves the State Summer EBT agency's administration of Summer EBT, the Summer EBT agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. Summer EBT agencies involved in suits shall, upon request of FNS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FNS, as parties to the suit. FNS may request to join the following types of suits:

(1) Class action suits;

(2) A suit in which an adverse decision could have a national impact;

(3) A suit challenging Federal policy such as a provision of the NSLA, Food and Nutrition Act of 2008, or regulations in this part or an interpretation of the regulations in this part; or,

(4) A suit based on an empirical situation that is likely to recur.

(B) FNS may advise a Summer EBT agency to seek a settlement agreement of a court suit if the Summer EBT agency is being sued because it misapplied Federal policy in administering the Summer EBT Program.

(C) State Summer EBT agencies shall notify FNS when court cases have been dismissed or otherwise settled. State Summer EBT agencies shall also provide FNS with information that is requested regarding the State Summer EBT agency's compliance with the requirements of court orders or settlement agreements.

(4) *Notification of lawsuits.* FNS shall notify all Summer EBT agencies of any suits brought in Federal court that involve FNS' administration of the Program and which have the potential of affecting many Summer EBT agencies' Program operations. Summer EBT agencies may not be notified of suits brought in Federal Court involving FNS' administration of the Program which may only affect Program operations in one or two States or ITOs. The notification provided to Summer EBT agencies shall contain a description of the Federal policy that is affected.

(d) *Procedures for program administration in Alaska*—(1) *Purpose.* To achieve the efficient and effective administration of Summer EBT in rural areas of Alaska, FNS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this paragraph (d) apply only in those areas of Alaska designated as "rural" in § 272.7(b) of this chapter. All regulations in this part not specifically modified by this paragraph (d) shall remain in effect.

(2) *Fee agents.* *Fee agent* means a paid agent who, on behalf of the State Summer EBT agency, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State Summer EBT agency, and provide other services as required by the State Summer EBT agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(3) *Application processing.* The State Summer EBT agency may modify the application processing requirements in this part as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(4) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt.

(5) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency.

(6) *Expedited service.* (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the benefits no later than the close of business of the second working day following the date the application was received by the State Summer EBT agency.

(ii) If the signed application is submitted directly to the State Summer EBT agency in person by a rural resident or its authorized representative or by mail, the State Summer EBT agency shall process the application and issue benefits to households eligible for expedited service in accordance with the time standards contained in this part.

(iii) If an incomplete application is submitted directly to the State Summer EBT agency by mail, the State Summer EBT agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio-phone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State Summer EBT agency shall complete the application and process the case. Because of the mailing time in rural areas, the State Summer EBT agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(7) *Social Security insurance (SSI) joint processing.* Social Security Administration (SSA) workers shall mail all jointly processed applications to the appropriate Summer EBT agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed

application was received by the SSA worker.

(8) *Fair hearings, fraud hearings, and agency conferences.* The Summer EBT agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in this part.

(e) *Disqualification.* (1) The Summer EBT agency shall be responsible to investigate cases of alleged intentional Program violation, and to ensure that appropriate cases are acted upon. The State Summer EBT agency must ensure investigations are consistent with § 273.16(a) of this chapter.

(2) The penalties for intentional Summer EBT Program violations specified at § 273.16(b) of this chapter as well as the definition of intentional program violations at § 273.16(c) of this chapter are applicable to individuals 18 years of age or over who:

(i) Allegedly committed an intentional Summer EBT Program violation; or

(ii) Allegedly ordered, coerced, persuaded, encouraged, or otherwise induced a person under the age of 18 to commit an intentional Summer EBT Program violation.

(3) Requirements for notifying households about disqualification penalties that are specified at § 273.16(d) of this chapter apply to Summer EBT.

(4) Disqualification hearing procedures for individuals accused of intentional Program violation specified at § 273.16(e)(f) through (h) of this chapter also apply to Summer EBT.

(5) Each State Summer EBT agency must report to FNS information concerning individuals disqualified for an intentional Program violation in accordance with § 273.16(i) of this chapter for Summer EBT.

(6) In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency must reinstate the individual in the program if the household is eligible.

(f) *Restoration of lost benefits—(1)*

Entitlement. (i) The Summer EBT agency must restore benefits which were lost whenever the loss was caused by an error by the Summer EBT agency or by an administrative disqualification for intentional Program violation which was subsequently reversed, or if there is a statement elsewhere in the regulations specifically stating that the household is

entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in this part that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(A) The date the Summer EBT agency receives a request for restoration from a household; or

(B) The date the Summer EBT agency is notified or otherwise discovers that a loss to a household has occurred.

(ii) The Summer EBT agency must restore benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits must be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a Summer EBT agency action, the benefits must be restored for a period of not more than twelve months from the first of the following dates:

(A) The date the Summer EBT agency receives a request for restoration.

(B) If no request for restoration is received, the date the fair hearing action was initiated; but

(C) Never more than one year from when the Summer EBT agency is notified of, or discovers, the loss.

(D) Benefits must be restored even if the child is currently ineligible.

(2) *Errors discovered by the Summer EBT agency.* If the Summer EBT agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the Summer EBT agency must automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits must not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(3) *Disputed benefits.* (i) If the Summer EBT agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as

calculated by the Summer EBT agency or any other action taken by the Summer EBT agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the Summer EBT agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the Summer EBT agency must restore the lost benefits in accordance with that decision.

(ii) If a household believes it is entitled to restoration of lost benefits but the Summer EBT agency, after reviewing the case file, does not agree, the household has 90 days from the date of the Summer EBT agency determination to request a fair hearing. The Summer EBT agency must restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the Summer EBT agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(4) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of Summer EBT agency notification, only if the decision which resulted in disqualification is subsequently reversed.

(5) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the Summer EBT agency must restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive.

(6) *Accounting procedures.* The Summer EBT agency shall be responsible for maintaining an accounting system for documenting a child's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored. The Summer EBT agency must at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system must be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(g) *Retailers.* Retail food operations authorized to participate as a SNAP retailer must also accept State Summer EBT benefits.

(h) *Record retentions and forms of security.* The State Summer EBT agency must maintain issuance, inventory, reconciliation, and other accountability records related to Summer EBT.

(1) *Availability of records.* (i) The State Summer EBT agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years. This period may be extended at the written request of FNS.

(ii) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(2) *Control of issuance documents.* The State Summer EBT agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State Summer EBT agency. The State Summer EBT agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(3) *Accountable documents.* (i) EBT cards shall be considered accountable documents. The State Summer EBT agency shall provide the following minimum security and control procedures for these documents:

- (A) Secure storage;
- (B) Access limited to authorized personnel;
- (C) Bulk inventory control records;
- (D) Subsequent control records maintained through the point of issuance or use; and
- (E) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(ii) For notices of change which initiate, update or terminate the master issuance file, the State Summer EBT agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

(i) *Benefit redemption by eligible households—*(1) *Eligible food.* Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household from SNAP-authorized retailers, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

(2) *Prior payment prohibition.* Program benefits must not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Benefits must not be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(3) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions can be established. In addition, no transaction fees can be imposed on Summer EBT households utilizing the EBT system to access their benefits.

(4) *Access to balances.* (i) Households shall be permitted to determine their Summer EBT account balances without making a purchase or standing in a checkout line.

(ii) The Summer EBT agency must ensure that the EBT system is capable of providing a transaction history for a period of up to 2 calendar months to households upon request.

(iii) Households must be provided printed receipts at the time of transaction. At a minimum this information must:

(A) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the Summer EBT account;

(B) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(C) Identify the Summer EBT households member's account number using a truncated number or coded transaction number. The child's name must not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(5) *Equal treatment.* The EBT system must be implemented and operated in a manner that maintains equal treatment for Summer EBT households. Summer EBT benefits must be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request voluntary use of Summer EBT benefits from homeless Summer EBT recipients and may not request such household using Summer EBT benefits to pay more than the average cost of the food purchased by the public or private nonprofit homeless meal provider

contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by Summer EBT recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source must not be considered in determining the amount to be requested from Summer EBT recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, Summer EBT recipients must be provided the same option of eating free or making a donation in money or Summer EBT benefits. No retail food store may single out Summer EBT recipients for special treatment in any way. The following requirements for the equal treatment of Summer EBT households must directly apply to EBT systems:

(i) Retailers must not establish special checkout lanes which are only for Summer EBT households. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, Summer EBT customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) Checkout lanes equipped with POS devices shall be made available to Summer EBT households during all retail store hours of operation.

(6) *Households eligible for prepared meals—*(i) *Meals-on-wheels.* Eligible guardians of Summer EBT recipients 60 years of age or over or guardians who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare meals may use Summer EBT benefits to purchase meals for the participant that are prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(ii) *Communal dining facilities.* Eligible guardians of Summer EBT recipients 60 years of age or over may use Summer EBT benefits issued to purchase meals for the participant that are prepared at communal dining facilities authorized by FNS for that purpose.

(iii) *Residents of certain institutions.* (A) Eligible residents of a group living arrangement may use Summer EBT benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem Summer

EBT benefits in accordance with paragraph (g) of this section.

(B) Residents of shelters for battered women and children may use their Program benefits to purchase meals prepared especially for the participant at a shelter which is authorized by FNS to redeem benefits in accordance with paragraph (g) of this section.

(iv) *Homeless households.* (A) Homeless Summer EBT households may use their benefits to purchase prepared meals for the participant from authorized homeless meal providers.

(B) Eligible homeless Summer EBT households may use their benefits to purchase meals for the participant from restaurants authorized by FNS for such purpose.

(7) *Allowable purchase of equipment for hunting and fishing.* Eligible Summer EBT households residing in areas of Alaska determined by FNS as areas where access to authorized retailers is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of their benefits issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use benefits to purchase firearms, ammunition, and other explosives.

(8) *Limiting hunting and fishing purchases to eligible households.* State Summer EBT agencies shall implement a method to ensure that access to prepared meals and hunting and fishing equipment is limited to eligible households as described in paragraphs (i)(6) and (7) of this section.

(9) *Container deposit fees.* Program benefits may not be used to pay for deposit fees in excess of the amount of the State fee reimbursement required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for item. The returnable container type and fee must be included in State law in order for the customer to be able to pay for the upfront deposit with Summer EBT benefits. If a Summer EBT eligible product has a State deposit fee associated with it, the product remains eligible for purchase with Summer EBT benefits, and the State deposit fee may be paid with Summer EBT benefits as well; however, any fee in excess of the State deposit fee must be paid in cash or other form of payment other than with Summer EBT benefits.

(j) *Reconciliation.* State Summer EBT agencies must account for all issuance through a reconciliation process as described by USDA.

§ 292.17 Retailer integrity requirements specific to States that administer SNAP.

(a) *Participation of retail food stores and wholesale food concerns, and redemption of Summer EBT benefits.* Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of benefits described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of benefits for eligible food at authorized firms, also apply to activities involving Summer EBT benefits.

(b) *Firm eligibility standards.* A firm may be subject to the following actions described at § 278.1 of this chapter for noncompliance or violations involving Summer EBT benefits:

(1) The requirements described at § 278.1(b)(4) of this chapter regarding a collateral bond or irrevocable letter of credit for applicant firms with certain sanctions apply to applicant firms with sanctions imposed for violations involving Summer EBT benefits. The amount of the collateral bond or irrevocable letter of credit shall be calculated in accordance with § 278.1(b)(4)(i)(D) and shall also include the amount of Summer EBT benefit redemptions when calculating the average monthly benefit redemption volume.

(2) Authorization shall be denied or withdrawn based on a determination by the Food and Nutrition Service (FNS) that a firm lacks or fails to maintain necessary business integrity and reputation, in accordance with the standards and time periods described at § 278.1(b)(3), (k)(3), and (l)(1)(iv) of this chapter. When making such determinations, FNS shall consider the criteria referred to in § 278.1(b)(3), (k)(3), and (l)(1)(iv) where the underlying activities involve Summer EBT benefits.

(3) Firm authorization shall be denied or withdrawn for failure to pay any claims, fines, or civil money penalties in the manner described at § 278.1(k)(7) and (l)(1)(v) and (vi) of this chapter where such sanctions were imposed for violations involving Summer EBT benefits.

(c) *Penalties.* For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve Summer EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at § 278.6(e)(1)(i) of this

chapter, for trafficking, as defined at § 284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at § 278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of the regulations in this section;

(2) Disqualify a firm permanently, as described at § 278.6(e)(1)(ii) of this chapter, for any violation involving Summer EBT benefits committed by a firm that had already been sanctioned at least twice before under this section or 7 CFR part 278;

(3) Disqualify the firm for 5 years, as described at § 278.6(e)(2)(v) of this chapter, or for 3 years, as described at § 278.6(e)(3)(iv) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits, and impose fines, as described at § 278.6(m) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits;

(4) Disqualify the firm for 5 years in circumstances described at § 278.6(e)(2) of this chapter when the amount of redemptions, which shall also include the amount of Summer EBT redemptions, exceed food sales for the same period of time, as described at § 278.6(e)(2)(ii) through (iv);

(5) Disqualify the firm for 3 years as described at § 278.6(e)(3)(ii) of this chapter for situations described at § 278.6(e)(2) of this chapter involving Summer EBT benefits;

(6) Disqualify the firm for 1 year for credit account violations as described at §§ 278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve Summer EBT benefits;

(7) Disqualify the firm for ineligibles violations for such circumstances and corresponding time periods as described at § 278.6(e)(2)(i), (e)(3)(i), (e)(4)(i), and (e)(5) of this chapter, where such violations involve Summer EBT benefits;

(8) Double the appropriate period of disqualification for a violation, as described at § 278.6(e)(6) of this chapter, where such violation involves Summer EBT benefits, when the firm has once before been assigned a sanction under this section or 7 CFR part 278;

(9) Issue a warning letter to the violative firm when violations are too limited to warrant a period of disqualification, as described at § 278.6(e)(7) of this chapter, where such violations involve Summer EBT benefits;

(10) Impose a civil money penalty for hardship or transfer of ownership, as described at § 278.6(g) of this chapter, in amounts calculated using the described formula at § 278.6(g), which shall also

include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions; and

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at § 278.6(j) of this chapter in an amount calculated using the described formula at § 278.6(j), which shall also include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions.

(d) *Claims.* The standards for determination and disposition of claims against retail food stores and wholesale food concerns described at § 278.7 of this chapter apply to Summer EBT benefits.

(e) *Administrative and Judicial review.* Firms aggrieved by administrative action under 7 CFR parts 271, 278, and 279 may request administrative review of the administrative action with USDA in accordance with 7 CFR part 279, subpart A. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

§ 292.18 Requirements specific to States that administer Nutrition Assistance Program (NAP) programs.

Summer EBT benefits issued by a Territory that administers the Nutrition Assistance Program in lieu of SNAP may only be used by the eligible household that receives such summer benefits to purchase eligible foods from retail food stores that have been approved for participation in the Nutrition Assistance Program in American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. States that administer NAP shall establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.

§ 292.19 Requirements specific to ITO Summer EBT agencies.

(a) The ITO Summer EBT Agency must ensure that Summer EBT Program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from retailers that have been approved for participation in the WIC Program. The ITO Summer EBT agency must:

(1) Use the same benefit delivery model for all participants throughout its service area, in accordance with its FNS-approved POM;

(i) For ITOs using a CVB-only benefit delivery model, issue a benefit level

equal to the amount set forth in § 292.15(e); and

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, issue a benefit not to exceed the amounts set forth in § 292.15(e);

(2) Ensure vendors charge prices for eligible food items which are reasonable for the area(s) served and are at the current price or less than the current price charged to other customers. Vendors may not charge Summer EBT participants more for an item than the price in the retail environment for all other customers;

(3) Provide participants supplemental foods deemed eligible for Summer EBT via an FNS-approved POM. Supplemental foods authorized for the WIC Program by the applicable WIC ITO must meet the requirements set forth in this paragraph (a)(3). The POM must identify a list of supplemental foods that:

(i) Contain nutrients determined by nutritional research to be lacking in the diets of children, and promote the health of the population served by the program, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns; and

(ii) Do not include infant formula and infant foods.

(b) ITO Summer EBT procedures and operations related to basic issuance requirements, reconciliation, benefit redemption, and functional and technical EBT system requirements, should be consistent with WIC regulations at § 246.12 of this chapter as applicable to the benefit delivery model used, to the extent such requirements do not conflict with the requirements set forth for ITO Summer EBT agencies in this part.

(c) To ensure effective vendor integrity, the ITO Summer EBT agency must set forth a system which ensures:

(1) Requirements and restrictions on the participation of vendors and the transaction of food benefits described at § 246.12 of this chapter, apply to activities involving Summer EBT benefits; and

(2) Vendors are subject to the actions and penalties described at § 246.12 of this chapter for noncompliance or violations involving Summer EBT benefits; and

(3) The standards for determination and disposition of claims against vendors described at § 246.12 of this chapter apply to Summer EBT benefits; or

(4) Set forth an alternate system to ensure effective vendor management and vendor integrity.

Subpart E—General Administrative Requirements

§ 292.20 Payments to Summer EBT agencies and use of administrative program funds.

(a) *General requirements for grant awards.* Grant awards are all subject to procedures established by USDA in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(b) *Program benefit funds.* FNS shall provide a grant to the Summer EBT agency that administers the EBT benefit issuance in an amount equal to 100 percent of issued eligible benefit funds as reflected in the final POM. Summer EBT benefits must be tracked separately from SNAP benefits, or other benefit types.

(c) *State administrative funds.* FNS must pay to each Summer EBT agency an amount equal to 50 percent of the administrative expenses incurred by the Summer EBT agency in operating the program under this section, including the administrative expenses of LEAs and other agencies in each State or ITO, as applicable, relating to the operation of the program under this section. Summer EBT agencies will report their incurred administrative expenses on a financial status report. Generally, Summer EBT agencies must cover the balance of their administrative costs, *i.e.*, their “match,” with non-Federal funds.

(d) *Applicable terms and conditions on grant awards.* All grant awards described in paragraphs (a) through (c) of this section shall be subject to terms and conditions and standard reporting requirements of the Federal grant and Federal-State Agreement.

(e) *Use of State administrative funds—(1) Matching funds.* Summer EBT agency costs for Federal matching funds may consist of:

(i) Charges reported on a cash or accrual basis by the Summer EBT agency as project costs.

(ii) Project costs financed with cash contributed or donated to the Summer EBT agency.

(iii) Project costs represented by services and real or personal property donated to the Summer EBT agency.

(2) *Cash and in-kind contributions.* All cash or in-kind contributions except as provided in paragraph (f) of this section must be allowable as part of the Summer EBT agency's share of program costs when such contributions:

(i) Are verifiable;

(ii) Are not contributed for another federally assisted program, unless authorized by Federal legislation;

(iii) Are necessary and reasonable for accomplishment of project objectives;

(iv) Are charges that would be allowable under this part;

(v) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(vi) Are in the approved budget.

(f) *Volunteer services.* The value of services rendered by volunteers is unallowable for reimbursement purposes.

(g) *Recovery of funds.* The Summer EBT agency must return any Federal funds made available under this part which are in excess of obligations reported at the end of each fiscal year, in accordance with the reconciliation procedures specified in paragraph (h) of this section. The Summer EBT agency shall reflect such recoveries by a related adjustment in the Summer EBT agency's Letter of Credit.

(h) *Substantiation and reconciliation process.* The Summer EBT agency must maintain Program records necessary to support administrative costs claimed and the reports submitted to USDA under this paragraph (h). The Summer EBT agency must ensure such records are retained for a period of 3 years or as otherwise specified in § 292.23. Partnering agencies must also meet these requirements consistent with the inter-agency agreement with the Summer EBT agency.

§ 292.21 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the Summer EBT agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in Summer EBT must provide for the following. The standards in this paragraph (b) also apply to subagencies or contractors involved with program funding.

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements in § 292.23.

(2) Records which identify the source and application of funds for FNS or Summer EBT agency activities supporting the administration of the

Program. These records must show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the Summer EBT agency, its sub-agencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations and the disposition of these amounts. Accounting procedures must be in effect to prevent a Summer EBT agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the Summer EBT agency for all program funds, property, and other assets acquired with program funds. Summer EBT agencies must adequately safeguard all such assets and must assure that they are used solely for program-authorized purposes unless disposition has been made in accordance with paragraph (b)(3) of this section.

(5) If necessary, Summer EBT agencies will be expected to complete an Automated Standard Application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available.

(6) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the Summer EBT agency must make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(7) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(8) Support and source documents for costs.

(9) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(10) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 292.24(a).

(11) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(12) The standards in this paragraph (b) also apply to subagencies, or contractors involved with program funding.

(13) Identification in Summer EBT agency accounts of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

§ 292.22 Performance criteria.

The Summer EBT agency must monitor and document data on each of the following performance criteria:

(a) Performance Criteria 1—

Percentage of children eligible for Summer EBT benefits who participated by using their benefits at least once.

(b) Performance Criteria 2—

Percentage of Summer EBT benefits that are issued to children not eligible for Summer EBT.

(c) Performance Criteria 3—

Percentage of children issued benefits who receive their first issuance before the start of the summer operational period.

(d) Performance Criteria 4—

Percentage of eligible children who can be identified through streamlined certification who are enrolled without further application.

§ 292.23 Records and reports.

(a) Summer EBT agencies and LEAs may retain necessary records in their original or electronic form.

(b) Summer EBT agency records must be retained for a period of 3 years after the date of submission of the final Financial Reports for the fiscal year. If audit and investigation findings have not been resolved, the records must be retained beyond the 3-year period as long as is required for the resolution of the issues raised by the audit or investigation.

(c) Summer EBT agencies receiving Federal awards will be required to submit periodic financial management planning and reporting documentation in the Food Program Reporting System (FPRS), on standard schedules that will be announced annually.

(d) For Summer EBT Administrative Grants, Summer EBT agencies will be required to submit an expenditure plan for State expenditure planning by August 15th, prior to the beginning of each fiscal year. Regional approval for those documents will set funding levels for the Summer EBT agency. These documents may be amended on a rolling basis throughout the year as agency needs evolve.

(e) State Administrative Grant expenditures will be reported to FNS

quarterly on a Summer EBT financial status report.

(f) Summer EBT agencies must report participation and issuance on a monthly basis.

§ 292.24 Audits and management control evaluations.

(a) *Audits.* Summer EBT agencies must arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. Unless otherwise exempt, LEAs must arrange for audits to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. Summer EBT agencies must provide the USDA Office of the Inspector General (OIG) with full opportunity to audit the Summer EBT agency and LEAs. Unless otherwise exempt, audits at the Summer EBT agency and LEA levels must be conducted in accordance with 2 CFR part 200, subpart F and appendix XI, and USDA implementing regulations in 2 CFR parts 400 and 415. While OIG must rely to the fullest extent feasible upon Summer EBT agency-sponsored or LEA-sponsored audits, it must, when considered necessary:

- (1) Make audits on a State or ITO-wide basis;
- (2) Perform on-site test audits; and
- (3) Review audit reports and related working papers of audits performed by or for Summer EBT agencies.

(b) *Management control evaluations.* Summer EBT agencies must provide USDA with full opportunity to conduct management control evaluations of all operations of the Summer EBT agency and must provide OIG with full opportunity to conduct audits of all Summer EBT agency Program operations. The Summer EBT agency must make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by USDA.

(c) *Error reduction strategies.* USDA may omit designated areas of review, in part or entirely, where a Summer EBT agency has implemented FNS-approved error reduction strategies.

§ 292.25 Investigations.

The Summer EBT agency must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and must take appropriate action to correct any irregularities. The Summer EBT agency must maintain on file all evidence relating to such investigations and actions. The Summer EBT agency must inform the appropriate

FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the Summer EBT agency, or where the Department determines investigations are appropriate.

§ 292.26 Hearing procedure for families and Summer EBT agencies.

(a) Each Summer EBT agency must establish a fair hearing procedure that is applicable to the State or ITO program as a whole. Fair hearing procedures must:

- (1) Allow a household to appeal, within 90 days after the end of the summer operational period, a decision made with respect to:

(i)(A) An application the household has made for Summer EBT benefits;

(B) A streamlined certification for Summer EBT benefits; or

(C) A verification process or procedure.

(ii) Any adverse action taken against the household by the Summer EBT agency.

(2) Require the State to provide a household with back-benefits for Summer EBT if the fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family, an administrative disqualification for intentional Program violation was subsequently reversed, or if there is a statement elsewhere in this part specifically stating that the household is entitled to restoration of lost benefits.

(b) In response to an appeal, the Summer EBT agency may defend its initial decision to deny the eligibility of the child for Summer EBT benefits or take an adverse action against a household. The fair hearing procedure must provide for both the household and the Summer EBT agency:

(1) A simple, publicly announced method to make an oral or written request for a hearing;

(2) An opportunity to be assisted or represented by an attorney or other person;

(3) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(4) That the hearing must be held with reasonable promptness and convenience, and that adequate notice must be given as to the time and place of the hearing;

(5) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(6) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(7) That the hearing must be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(8) That the decision of the hearing official must be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(9) That the parties concerned and any designated representative must be notified in writing of the decision of the hearing official;

(10) That a written record must be prepared with respect to each hearing, which must include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(11) That the written record of each hearing must be preserved for a period of 3 years and must be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(12) That the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(13) Any communication with households related to fair hearings must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

§ 292.27 Claims.

(a) *Basis for claims.* Summer EBT agencies are responsible to ensure that program benefits are provided only to eligible children and in the correct amount in accordance with program regulations in this part. Erroneous issuances include, but are not limited to:

(1) Benefits issued to ineligible children or in the incorrect amount.

(2) Duplicate benefit issuances, including situations where the Summer EBT agency allows an eligible household to access more than one

Summer EBT account for the same time period, or an eligible household receives program benefits from more than one State or ITO for the same time period.

(b) *Claims against Summer EBT agencies.* (1) USDA may hold Summer EBT agencies liable for erroneous payments. USDA may pursue erroneous claims in the aggregate when merited, based on the nature of the error that gave rise to the over-issuance, the size of the error, and whether such action would advance program purposes.

(2) Summer EBT agencies must develop a process to allow households to submit a claim for benefits that were not issued or issued in the incorrect amount.

(c) *Claims against households.* (1) Summer EBT agencies must develop a process to manage cases of erroneous issuances and pursue claims against a household, as appropriate.

(2) Summer EBT agencies have the discretion to determine when to pursue a claim based on cost effectiveness or the individual circumstances. To the maximum extent practicable, Summer EBT agencies should limit claims against households to situations where there is evidence that the household knowingly obtained benefits through fraudulent activities.

(i) Summer EBT agencies must include in their POM submission a proposed plan for identifying instances of fraudulent activity for use in pursuing claims against households.

(ii) Procedures described in paragraph (c)(2)(i) of this section must outline steps the Summer EBT agency will take to ensure that Civil Rights provision at § 292.29(a) are upheld.

(3) Summer EBT agencies must not reclaim Summer EBT benefits by reducing a household's SNAP, NAP, or WIC benefit.

§ 292.28 Procurement standards.

(a) *Applicability of the Advance Planning Document (APD) process.* If an EBT services contract established for the purpose of benefit issuance includes Summer EBT, the State Systems Advance Planning Document (APD) process must be followed in accordance with § 292.11(b)(3) for States and § 292.11(u) for ITOs, respectively.

(b) *General requirements on the procurement of goods and services with Federal funds.* All other Summer EBT

agency and local agency costs, including eligibility systems, must comply with the requirements of this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, which implement the applicable requirements concerning the procurement of all goods and services with Federal funds.

(c) *Contractual responsibilities.* The standards contained in this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, do not relieve any Summer EBT agency or local agency of any contractual responsibilities under its contracts. The Summer EBT agency or local agency is the responsible authority, without recourse to USDA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(d) *Procedures.* The Summer EBT agency must follow either the State or ITO laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 200.326. Regardless of the option selected, Summer EBT agencies must ensure that all contracts include any clauses required by Federal statutes and Executive orders and that the requirements in 2 CFR 200.236 and 2 CFR part 200, appendix II, are followed.

§ 292.29 Miscellaneous administrative provisions.

(a) *Civil rights.* In the operation of the Program, no child may be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. Summer EBT agencies and LEAs must comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Department of Agriculture regulations

on nondiscrimination (7 CFR parts 15, 15a, and 15b).

(b) *Program evaluations.* States, ITOs, Summer EBT agencies, LEAs, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department related to programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966.

(c) *General responsibilities.* The criminal penalties and provisions established in section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)) provide that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under the Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud must, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, must be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§ 292.30 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

§ 292.31 [Reserved]

Cynthia Long,

Administrator, Food and Nutrition Service.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

Statement of Need

The Consolidated Appropriations Act of 2023 (Pub. L. 117–328) requires the Secretary of Agriculture to make available an option to States to provide summer meals for non-congregate meal service in rural areas with no congregate meal service and to establish a permanent summer electronic benefits transfer for children program (Summer EBT) for the purpose of ensuring continued access to food when school is not in session for the summer. This interim final rule amends the Summer Food Service (SFSP) and National School Lunch Program's Seamless Summer Option (SSO) regulations in 7 CFR parts 210, 220, and 225 to codify the flexibility for rural program operators to provide non-congregate meal service in the SFSP and SSO. This rule also establishes 7 CFR part 292 and codifies the Summer EBT Program in this part.

Background

Ample research supports the effectiveness of programs like the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in improving food security of participating children during the school year.^{16 17 18} Despite substantial expansion of summer meal programs in recent years, just 1 in 6 children who eat free or reduced-price school meals participates in summer meal programs in a typical year.¹⁹ There is evidence to suggest that food insecurity among children increases in the summer months and that participation in nutrition programs such as the SFSP can reduce rates of food insecurity, and particularly its most severe forms.^{20 21 22 23 24}

Since 2011, the USDA has administered Summer EBT demonstration projects in collaboration with State agencies²⁵ and Indian Tribal Organizations²⁶ with the goals of reducing or eliminating food insecurity and hunger and improving nutritional status among participating children. Authorized and funded by the 2010 Agriculture Appropriations Act (Pub. L. 111–80), these demonstration projects have been rigorously evaluated over the course of a decade and have proven successful at mitigating food insecurity and improving diet quality. Evaluation findings show that Summer EBT benefits reduce the most severe category of food insecurity by one-third among participating children, compared with those receiving no benefits, and indicate that this model could be effectively implemented in a wide variety of communities.^{27 28}

The USDA has also initiated other demonstration projects to improve the reach and impact of summer meal programs under section 749(g) of the Agriculture, Rural Development, Food and Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132). One demonstration project was the Enhanced Summer Food Service Program (eSFSP), which tested changes to the existing structure and delivery mechanism of SFSP for the purpose of determining effects on program participation. The eSFSP included the Meal Delivery demonstration which offered breakfast and lunch delivery to homes of eligible children in rural areas, as well as the Food Backpack demonstration which provided weekend and holiday meals to SFSP participants for consumption when SFSP sites were not open.

In 2013, Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excess Heat was implemented, allowing SFSP and Seamless Summer Option (SSO)

sponsors operating approved outdoor meal sites without temperature-controlled alternate sites to operate as non-congregate sites during conditions of excessive heat.²⁹ In 2019, this demonstration was expanded to allow sites in four States to operate as non-congregate due to smoke and air quality concerns. In more recent years, USDA implemented Meals-to-You (MTY) under the demonstration authority. MTY was developed in response to stakeholder feedback about the challenges and difficulties of serving summer meals in sparsely populated communities and remote areas. Through MTY, food boxes were mailed directly to families of children who were eligible for free or reduced price school meals. Each eligible child received a weekly box, which contained five breakfast meals, five snacks, and five lunch/supper meals.

These non-congregate meal service projects offered potential solutions to some of the most common challenges related to summer meal service, including transportation and geographical access issues, that can act as barriers to sustained participation in summer meal programs. USDA research has shown that access to meal sites is a significant challenge to participation and is often exacerbated in rural areas where fewer sites and more limited transportation options exist.^{30 31}

During the COVID–19 public health emergency, many requirements pertaining to child nutrition programs were waived to protect public health and ensure continued access to healthy foods for children and families. The availability of such waivers, including those that permitted non-congregate meal service and the ability to provide more than one meal at a time, were cited by State agencies as an important factor in reducing barriers for kids and families to access meals and increasing program participation.^{32 33} Also introduced in

¹⁶ Arteaga, Irma, and Colleen Heflin (2014). Participation in the National School Lunch Program and food security: An analysis of transitions into kindergarten. *Children and Youth Services Review*, 47, 224–230. <http://dx.doi.org/10.1016/j.childyouth.2014.09.014>.

¹⁷ Gunderson, C., Kreider, B., & and Pepper, J. (2012). The impact of the National School Lunch Program on child health: A nonparametric bounds analysis. *Journal of Econometrics* 166(1): 79–91. <https://doi.org/10.1016/j.jeconom.2011.06.007>.

¹⁸ Bartfeld, J., & Ryu, J. (2011). The School Breakfast Program and Breakfast-Skipping among Wisconsin Elementary School Children. *Social Service Review* 85(4):619–634. <https://doi.org/10.1086/663635>.

¹⁹ Food and Nutrition Service. (2019). USDA Highlights Importance of Keeping Kids Fed During Summer Months. U.S. Department of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/pressrelease/2019/fns-000719#:~:text=During%20the%20academic%20year%2C%20approximately,in%20the%20summer%20meal%20programs>.

²⁰ Huang, J., Barnidge, E., & Kim, Y. (2015). Children Receiving Free or Reduced Price Meals Have Higher Food Insufficiency Rates in Summer. *The Journal of Nutrition* 145: 2161–2168. <https://doi.org/10.3945/jn.115.214486>.

²¹ Nord, M., & Romig, K. (2006). Hunger in the Summer: Seasonal Food Insecurity and the National School Lunch and Summer Food Service Programs. *Journal of Children & Poverty* 12(2): 141–158. <https://doi.org/10.1080/10796120600879582>.

²² Miller, D.P. (2016). Accessibility of summer meals and the food insecurity of low-income households with children. *Public Health Nutrition*

19(11): 2079–2089. <https://doi.org/10.1017/S1368980016000033>.

²³ Food and Nutrition Service. (2021). USDA Summer Meals Study Summary. U.S. Department of Agriculture, Food and Nutrition Service. <https://fns-prod.azureedge.us/sites/default/files/resource-files/SummerMealsStudy-2018-SummaryofFindings.pdf>.

²⁴ Turner, L., & Calvert, H.G. (2019). *The Academic, Behavioral, and Health Influence of Summer Child Nutrition Programs: A Narrative Review and Proposed Research and Policy Agenda*. Journal of the Academy of Nutrition and Dietetics 119(6): 972–983. <https://doi.org/10.1016/j.jand.2019.02.006>.

²⁵ For the purpose of this analysis, State agency refers to State agencies administering the SFSP and Summer EBT agencies, including Indian Tribal Organizations (ITOs) administering Summer EBT.

²⁶ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

²⁷ Food and Nutrition Service. (2016). *Summer Electronic Benefit Transfer for Children (SEBTC) Demonstration: Summary Report*. U.S. Department of Agriculture, Food and Nutrition Service. <https://fns-prod.azureedge.us/sites/default/files/ops/sebctfinalreport.pdf>.

²⁸ Food and Nutrition Service. (2020). *Summer Electronic Benefit Transfer for Children Evaluation: Final Report*. U.S. Department of Agriculture, Food and Nutrition Service.

²⁹ Food and Nutrition Service. (2019, May 29). *Demonstration Project for Non-Congregate Feeding for Outdoor Summer Meal Sites Experiencing Excessive Heat with Questions & Answers*. Policy memo SP 28–2019, SFSP 13–2019. U.S. Department of Agriculture, Food and Nutrition Services. <https://www.fns.usda.gov/cn/demonstration-project-non-congregate-feeding-outdoor-summer-meal-sites#:~:text=Non%2Dcongregate%20meal%20service%20shall,outdoor%20meal%20site%20is%20located>.

³⁰ Miller, D.P. (2016). Accessibility of summer meals and the food insecurity of low-income households with children. *Public Health Nutrition* 19(11): 2079–2089. <https://doi.org/10.1017/S1368980016000033>.

³¹ Food and Nutrition Service. (2019). *SFSP Characteristics Study*. U.S. Department of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/sfsp/summer-food-service-program-characteristics-study>.

³² Food and Nutrition Service. (2023). *Child Nutrition Program Operations During the COVID–19 Pandemic, March through September 2020: School Meals Operations Study, Year 1 Report*. U.S. Department of Agriculture, Food and Nutrition Service. <https://www.mathematica.org/publications/child-nutrition-program-operations-during-the-covid-19-pandemic-march-through-september-2020-school>.

³³ Food and Nutrition Service. (2022). *Summer Food Service Program Integrity Study*. U.S.

Continued

response to the pandemic was Pandemic EBT, a program which successfully provided food benefits through EBT to families of eligible school children when children missed school due to COVID-19 related illness or when schools were closed or operating with reduced hours.

Due in part to the precedent set by demonstration projects, the favorable findings of rigorous evaluations, and the positive impact of regulatory waivers exercised during the COVID-19 pandemic, the Consolidated Appropriations Act of 2023 (Pub. L. 117-328) authorized both a non-congregate meal service option at SFSP and SSO sites in rural areas and a permanent Summer EBT program.

Summary of Impacts

In total, the 10-year cost of the interim final rule is estimated at approximately \$40.3 billion, with \$7.4 billion attributed to non-congregate meal option implementation (\$7.35 billion for program meals and \$43.2 million for provision administration) and \$32.9 billion in costs attributed to Summer EBT implementation (\$28.0 billion for program benefits and \$5.0 billion for program implementation and administration) (see Table 1). These costs represent the operation of both provisions over a ten-year period between Fiscal Years (FY) 2023 and 2032, though it should be noted that Summer EBT will not be implemented until 2024 and

therefore all analyses pertaining to Summer EBT represent only nine years of program operation. Though some States may have already incurred costs in FY 2023 preparing for the implementation of Summer EBT in FY 2024, it is assumed that the administrative costs estimated in FY 2024 are representative of the total cost of program implementation occurring either during or prior to Summer EBT rollout.

The non-congregate meal provision is expected to increase participation among eligible populations in rural sites by 4.25 million children by 2027 (Year 5) at a cost of \$1.0 billion in associated meal reimbursements, for a total increase in Federal Summer Food Service Program reimbursements of \$7.35 billion over the course of ten years. Annual administrative burden to households adds only marginally to these costs—between \$0.2 million and \$4.7 million annually, for a total of \$29.3 million over ten years. In addition, we estimate one-time costs for modifying State systems to accommodate non-congregate meal service. We estimate those costs will average \$250,000 per State agency based on past internal analyses of regulatory changes with similar implementation mechanisms, totaling \$14.0 million across all 56 State agencies in Year 1 (2023).³⁴

It is expected that 25.0 million children out of approximately 30.1 million considered eligible will receive Summer EBT benefits,

resulting in between \$2.8 and \$3.4 billion in benefits distributed each summer period for a total cost of \$28.0 billion in benefits over nine years.³⁵ Program implementation and administration costs, which include initial start-up costs equal to 30% of benefits administered and ongoing administrative costs equal to 7% of benefits administered, are expected to peak at \$1.0 billion in the first year of program operation (2024) and level off at \$366 million by 2028. This includes expected administrative burden for Summer EBT retailers due to reporting and recordkeeping at \$8.9 million, while the expected household burden of administrative tasks required for program participation (e.g., applications) for children not already certified as Free and Reduced-Price eligible is estimated at \$149 million. The retailer costs are expected to be incurred primarily in Year 1 (2024) and are reflected as such in Table 1. Total annual costs for Summer EBT benefits and administration are estimated at between \$3.5 and \$3.8 billion annually for a total nine-year cost of \$32.9 billion.

This rule is expected to yield substantial public benefit, including improvements in nutrition security and diet quality and economic growth via retail transactions. These benefits are discussed further in section V. (*Benefits of the Interim Final Rule*).

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TABLE 1. TOTAL 10-YEAR COST ESTIMATES, NON-CONGREGATE MEALS AND SUMMER EBT

	Annual Cost (\$ Millions) [†]										
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total
Non-Congregate Meal Costs	\$52.3	\$95.4	\$140	\$571	\$1,022	\$1,045	\$1,069	\$1,094	\$1,119	\$1,145	\$7,354
Non-Congregate Administrative Costs	\$14.2	\$0.4	\$0.5	\$2.2	\$4.0	\$4.1	\$4.2	\$4.4	\$4.5	\$4.7	\$43.2
Non-Congregate Total	\$66.5	\$95.7	\$141	\$573	\$1,026	\$1,049	\$1,073	\$1,098	\$1,124	\$1,150	\$7,397
Summer EBT Benefit Costs		\$2,831	\$2,896	\$2,963	\$3,031	\$3,101	\$3,172	\$3,245	\$3,320	\$3,396	\$27,955
Summer EBT Administrative Costs		\$1,007	\$851	\$697	\$535	\$366	\$371	\$376	\$381	\$387	\$4,973
Summer EBT Total		\$3,838	\$3,748	\$3,660	\$3,567	\$3,467	\$3,543	\$3,621	\$3,701	\$3,783	\$32,928
Summer EBT and Non-Congregate Total	\$66.5	\$3,934	\$3,889	\$4,234	\$4,592	\$4,516	\$4,617	\$4,720	\$4,825	\$4,932	\$40,324

[†]All costs adjusted for inflation. Non-congregate meal reimbursement costs adjusted using forecasts of the Consumer Price Index for Food Away from Home; these forecasts were used in preparing the FY 2024 President's Budget. Summer EBT benefit costs adjusted using forecasts of the cost of the Thrift Food Plan; these forecasts were used in preparing the FY 2024 President's Budget. Costs may not add to total due to rounding.

As required by OMB Circular A-4, in Table 2 below the Department has prepared an

accounting statement showing the annualized estimates of benefits, costs, and

transfers associated with the provisions of this rule. Meal costs and Summer EBT

Department of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/sfsp/integrity-study>.

³⁴ Food and Nutrition Service. (July 24, 2019.) (AE62) Revision of Categorical Eligibility in SNAP

Regulatory Impact Analysis (FNS-2018-0037-0002). U.S. Department of Agriculture Food and Nutrition Service. <https://www.regulations.gov/document/FNS-2018-0037-0002>.

³⁵ Students attending schools operating year-round may also receive Summer EBT during other breaks occurring outside of typical summer months, subject to USDA approval.

benefit payments are categorized as transfers in the table below. The next section provides an impact analysis for each change.

TABLE 2: ACCOUNTING STATEMENT

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered
<u>Qualitative:</u> Potential benefits associated with the interim final rule include reductions in food insecurity, improvements in diet quality, and economic activity generated through increased retail transactions. These benefits have not been quantified due to the limitations and uncertainty of analyzing the associated economic impacts.					
Annualized Monetized (\$millions/year)			2023	7%	FY 2023-2032
			2023	3%	
Costs	Range	Estimate	Year Dollar	Discount Rate	Period Covered
<u>Quantitative:</u> Costs include administrative and implementation costs incurred primarily by the Federal Government and State agencies for rural non-congregate option and Summer EBT program.					
Annualized Monetized (\$millions/year)	Total	\$486.8	2023	7%	FY 2023-2032
		\$478.6	2023	3%	
Transfers	Range	Estimate	Year Dollar	Discount Rate	Period Covered
<u>Quantitative:</u> Transfers include Federal reimbursements for meals served in non-congregate settings due to the interim final rule and Summer EBT benefit payments.					
Annualized Monetized (\$millions/year)	Total	\$2,971.6	2023	7%	FY 2023-2032
		\$3,062.3	2023	3%	

Section by Section Analysis

The Consolidated Appropriations Act of 2023 (Pub. L. 117–328) provides flexibility for summer meal sites in rural areas to provide a non-congregate meal service, which means allowing children to take meals off-site, for example, to their homes. The Act also authorized an entirely new method for offering additional summer nutrition assistance for children. The new Summer EBT program will provide benefits on EBT cards so that families can purchase food for their children to eat. Together, these changes will revolutionize how our nation supports the nutritional needs of children during the summer months when school is not in session. Because the Act directed the Summer EBT program to begin operation in 2024 and the non-congregate meal service option in rural areas was made available in 2023, there has not been a formal opportunity for public comment prior to the development of the interim final rule. However, the Food and Nutrition Service (FNS) hosted 24

listening sessions on Summer EBT and 21 listening sessions on non-congregate summer meals with external stakeholders and gathered input from school food authorities and summer meal program sponsors, advocacy groups, program participants, and State agencies administering the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and Child Nutrition Programs. FNS also consulted with Tribal leaders on Summer EBT in May 2023 and attended two conferences to meet with and hear from ITOs administering WIC.

Key Assumptions

Baseline

Non-Congregate Meal Service

The baseline year providing data to predict the 1, 5, and 10-Year costs associated with non-congregate meal service implementation is FY 2022, as this is the most recent year for which complete data on SFSP and SSO

participation is available. Peak program participation from July 2022 was used as a proxy for total participation in summer meal programs, as this month sees the highest participation level across summer months.³⁶ Total rural participation was estimated by applying the percentage of total students enrolled in rural schools, as calculated in a dataset produced by the most recent FNS School Nutrition and Meal Cost Study.³⁷ Estimated SSO meals, total meals, and rural meals were calculated based on the ratio of participation to meals served in SFSP.³⁸ Participation in SFSP has largely returned to pre-pandemic levels (see Table 3) and there is not sufficient evidence to suggest that participation would change in any predictable way over the course of the next five to 10 years in the absence of the rule. For this reason, peak (July) SFSP and SSO participation, meals served, and the proportion of eligible children who live in rural areas are assumed to remain constant in the baseline scenario (see Table 3).

³⁶ Food and Nutrition Service. (2023). *Child Nutrition Tables*. U.S. Department of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/pd/child-nutrition-tables>.

³⁷ Food and Nutrition Service. (2019). *School Nutrition and Meal Cost Study*. U.S. Department of Agriculture, Food and Nutrition Service. <https://>

fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS_Summary-Findings.pdf.

³⁸ Though data was adjusted to exclude any months in which schools may have been utilizing summer meals programs during the regular school year, the 2022 baseline estimate may marginally overestimate participation and meals served due to

the waivers and regulatory flexibilities afforded by the Keep Kids Fed Act, including the Area Eligibility waivers. For example, in FY 2019, peak (July) SFSP participation was 2,685,000 and peak (July) SSO participation was 1,053,641 children, compared with 2,727,000 and 1,425,872 children, respectively, in FY 2022.

TABLE 3. BASELINE ESTIMATES OF SUMMER MEALS PARTICIPATION (2022-2026)

Fiscal Year	2022	2023	2024	2025	2026
Peak (July) SFSP participation	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
Peak (July) SSO participation	1,425,872	1,425,872	1,425,872	1,425,872	1,425,872
Estimated total participation	4,152,872	4,152,872	4,152,872	4,152,872	4,152,872
Estimated rural participation	1,119,175	1,119,175	1,119,175	1,119,175	1,119,175
SFSP meals served	150,800,000	150,800,000	150,800,000	150,800,000	150,800,000
Estimated SSO meals served	78,849,101	78,849,101	78,849,101	78,849,101	78,849,101
Estimated total meals served	229,649,101	229,649,101	229,649,101	229,649,101	229,649,101
Estimated rural meals served	61,889,105	61,889,105	61,889,105	61,889,105	61,889,105

Summer EBT

The baseline year providing data to predict the 1, 5, and 10-Year costs associated with Summer EBT implementation is FY 2023. The number of students certified as eligible for free meals and the number certified as eligible for reduced-price meals FY 2023 is reported on form FNS-10: Report of School

Program Operations.³⁹ The total number of students certified as free or reduced-price eligible is largely consistent with pre-pandemic levels (FY 2019); as there is not sufficient evidence to suggest that they will change significantly over the course of the next five to ten years, they are assumed to remain constant for the sake of the analysis

(see Table 4). However, factors that could affect this assumption are the increased adoption of State policies providing school meals to all children at no charge and the expansion of the Community Eligibility Provision in September 2023. These are discussed further in section VI. (*Uncertainties/Limitations*).

TABLE 4. BASELINE ESTIMATES OF FREE AND REDUCED-PRICE CERTIFIED STUDENTS (2023-2027)

Fiscal Year	2023	2024	2025	2026	2027
Certified Free Students	28,118,331	28,118,331	28,118,331	28,118,331	28,118,331
Certified Reduced-Price Students	1,964,199	1,964,199	1,964,199	1,964,199	1,964,199
Total Free and Reduced-Price	30,082,530	30,082,530	30,082,530	30,082,530	30,082,530

*Interim Final Rule**Non-Congregate Meal Service*
Meal Reimbursement Costs

FNS expects to see a substantial increase in reimbursements for meals served to children during the summer due to increased participation among populations eligible for

non-congregate meals. Because July 2023 SFSP and SSO participation data were unavailable at the time of this analysis, expected participation was estimated using alternate methods. Estimated increases in participation through Year 3 (2025) are based in part on the increase in participation that occurred during the COVID-19 pandemic,

when waivers—most notably, the Child Nutrition Area Eligibility Waivers, which allowed States to waive summer meal programs requirements limiting “open site” meal service to areas in which at least half of all children are from low-income households—were implemented across all summer meals sites (see Table 5).⁴⁰

³⁹ Food and Nutrition Service. (2023). *FNS-10: Report of School Program Operations*. U.S. Department of Agriculture, Food and Nutrition

Service. <https://www.fns.usda.gov/form/report-school-program-operations>.

⁴⁰ Food and Nutrition Service. (2020). *Child Nutrition Area Eligibility Waivers*. U.S. Department

of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/cn/child-nutrition-area-eligibility-waiver>.

TABLE 5. CHANGES IN SUMMER MEALS PARTICIPATION AND MEALS SERVED, FY 2018-2022

Fiscal Year	2018	2019	2020†	2021†	2022
Peak (July) SFSP participation	2,688,000	2,685,000	5,591,000	5,135,000	2,727,000
Peak (July) SSO participation	1,075,662	1,053,641	2,000,236	2,223,674	1,425,872
Estimated total participation	3,763,662	3,738,641	7,591,236	7,358,674	4,152,872
Estimated rural participation	1,014,285	1,007,542	2,045,794	1,983,120	1,119,175
Meals served through SFSP	145,800,000	142,000,000	378,300,190	314,093,522	150,800,000

†Indicates pandemic year in which non-congregate waivers were available to all summer meals sites.

The observed increase in participation between 2019 and 2021 (96.8%) is used as a proxy for the expected increase in participation in newly eligible rural areas only during the first three years of the non-congregate option availability (FY 2023–2025).⁴¹ This estimate is considered an upper bound, as the increases in participation during the pandemic may have been due in part to increased levels of financial hardship and food insecurity that were present during this time. It should also be noted that other waivers in place during this time, such as Area Eligibility waivers, which served a purpose distinct from non-congregate meal service and are no longer in effect, may have increased participation rates.⁴² For this reason, we predict this participation increase will happen more gradually than the increase observed during the COVID–19 pandemic.

From Year 1 of implementation (2023), we assume it will take until Year 3 (2025) to reach the expected increase of 96.8% and it will take until Year 5 (2027) to reach expected maximum participation. Expected maximum participation is based on the estimated total number of children eligible for non-congregate meal service (see Table 6). Of all eligible children, we estimate that about 65 percent will participate on an average day. This take-up rate is somewhat higher than general take-up of school meals, measured as the ratio of average daily participation to total enrollment in NSLP schools, but consistent with the percentage of students who choose to take meals when they are made available at no charge to all students via the Community Eligibility Provision (CEP).⁴³

Based on this percentage, the maximum number of eligible students who might be expected to participate in non-congregate summer meals is 4.88 million, and the number of eligible students expected to *newly* participate in summer meals (accounting for the 631,000 students who would be considered eligible but are already participating at baseline) is 4.25 million. See Table 6 for the full list of estimates and assumptions based on program data and outputs from the FNS School Nutrition and Meal Cost Study dataset.¹⁸ For the purpose of the analysis, the cost of meals served is based on Federal SFSP reimbursement rates, rather than SSO reimbursement rates, as SFSP meal pattern requirements are more conducive to “grab and go” packaged meals and will likely be used by most sites choosing to serve non-congregate meals.

TABLE 6. NON-CONGREGATE MEAL SERVICE ELIGIBILITY AND PARTICIPATION ESTIMATES†

Percent of all students in rural schools with $\geq 50\%$ FRP out of rural student enrollment	39.8%
Percent of FRP students in rural schools with $< 50\%$ FRP out of rural student enrollment	16.5%
Percent eligible for non-congregate meal service out of rural student enrollment	56.4%
Percent of rural student enrollment out of total student enrollment	26.9%
Percent eligible for non-congregate meal service out of total student enrollment	15.2%
School Year 2021 enrollment††	49,433,092
Estimated number of eligible students under proposed rule	7,509,822
Estimated participation among eligible students (maximum)	65%
Estimated maximum eligible students participating under proposed rule	4,881,384
Estimated maximum eligible students newly participating under proposed rule	4,250,484

† Percentages based on nationally representative dataset from FNS School Nutrition and Meal Cost Study.

††National Center for Education Statistics 2021 enrollment is the most recent data available at the time of analysis.

⁴¹ Though there is a comparable increase in summer meal program participation between FY 2019 and FY 2020, the first year non-congregate waivers were available, data from FY 2020 is generally considered less reliable due to extenuating circumstances surrounding the COVID–19 public health emergency. For practical purposes,

the calculated participation increase of 96.8% is assumed to occur over the span of one to two years.

⁴² Food and Nutrition Service. (2022). Nationwide Waiver to Extend Area Eligibility Waivers for Summer 2022 Operators—Extension 5. U.S. Department of Agriculture Food and Nutrition

Service. <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-107>.

⁴³ Food and Nutrition Service. (2022). *Summer Food Service Program Integrity Study*. U.S. Department of Agriculture, Food and Nutrition Service. <https://www.fns.usda.gov/sfsp/integrity-study>.

Implementation and Administrative Costs

Administrative reporting and recordkeeping burdens for State agencies resulting from the non-congregate meal provision in Year 1 (2023) include State agency identification, pre-approval (when necessary), approval, reporting and documentation of eligible sites in rural areas.

Sponsor burdens include submission of rural site documentation, information collection to determine child eligibility, conduction of pre-operational site visits for new sites, and reporting on meals distributed. Household burdens, which are expected to be minimal, include providing written consent to participate in the home delivery option of non-congregate meal service. Reporting and

recordkeeping costs associated with administering the non-congregate option are based on the household burden estimates discussed in the Paperwork Reduction Act section of the interim final rule (see Table 7).⁴⁴ Costs attributable to household burden are prorated in Years 1–4 to reflect expected participation levels.

TABLE 7: HOUSEHOLD BURDEN FOR RURAL NON-CONGREGATE OPTION

	Year 1 (2023)	Year 5 (2027)	10 Years (2023-32)
Burden hours	20,378	363,400	
Wage rate	\$7.25		
Estimated Cost (millions)	\$0.1	\$3.0	\$22.0
Total with fringe (0.33)	\$0.2	\$4.0	\$29.2

In addition, there are estimated one-time costs of \$14.0 million associated with shifting State systems to accommodate non-congregate meal service in Year 1 (2023). These costs are based on previous Regulatory Impact Analyses conducted on the proposed revision of Categorical Eligibility in SNAP and are expected to be borne primarily by State agencies.⁴⁵

Summer EBT

Benefit Costs

Projected 1, 5, and 10-year costs of Summer EBT benefits are primarily dependent upon State or ITO participation, the participant take-up rate, and the participant benefit redemption rate. This analysis assumes that all State agencies will implement Summer EBT in the first year of the program (2024) and that participation is sustained at this level through the time horizon of this analysis (2032) resulting in a State agency take-up rate of 100 percent for all years 2024–2032. Although not all States may implement the program in the first year, the analysis presents the full potential impact of the rule as all States are statutorily permitted to implement the program.

Meanwhile, the best estimates of participation among ITOs are derived from demonstration projects and other engagement of ITOs, which indicate that a limited number of ITOs will independently implement Summer EBT in the first year. Best estimates indicate that four ITOs will participate in Year 1 (2024), increasing to 15

ITOs participating by the end of the period of analysis (2032). For the purpose of this analysis, this has minimal impact on overall administrative costs, as administrative costs are calculated as a percentage of benefits distributed, which reflect student participation independent of which entity is administering the program. A sensitivity analysis around these assumptions is included elsewhere in this analysis, which accounts for a more gradual phase-in of the Summer EBT program among States (see section VI. *Uncertainties and Limitations*), Tables 14–15).

Participant take-up (*i.e.*, the share of eligible children who are enrolled and participate by spending any amount of Summer EBT benefits) is estimated based on two studies of Summer EBT demonstration projects.⁴⁶ The first study of Summer EBT demonstration projects occurring between 2011 and 2014 provided a range of participant take-up rates of children who are enrolled in Summer EBT via passive enrollment and a separate range for those enrolled via active enrollment.⁴⁷ This study showed that the average participant take-up rate via passive enrollment was 93.5% (ranging from 90% to 97% in demonstration projects) and the average participant take-up rate via active enrollment was 40% (ranging from 23% to 57%).⁴⁸ It is expected that streamline certification will account for 80% of Summer EBT enrollment and enrollment through Summer EBT applications will account for the remaining 20% of enrollment,

which is reflective of the approximate ratio of students who are certified free or reduced-price to those who are eligible but must apply (*e.g.*, students who have not been certified or submitted applications for the NSLP because they are able to receive free meals through CEP or are enrolled in Provision 2 or 3 schools). Combining the passive enrollment take-up rate (93.5% for the passive enrollment children) and the active enrollment take-up rate (40% for the active enrollment children) results in a weighted average participant take-up of 83%.

The second study of the Summer EBT demonstration projects occurring between 2015 and 2018 yielded an overall participant take-up rate of 84.5%.⁴⁹ Though similar to the estimate generated by the prior study, this does not account for the small number of students that may participate via ITOs and will therefore utilize a food package model (rather than electronic benefits), which yields lower participation rates. For this reason, the lower estimate of 83% is used in the analysis. Alternative scenarios presented in section VI. *Uncertainties and Limitations*, Tables 14–15 estimate the potential impacts of lower participant up-take rates.

Finally, the study of Summer EBT demonstration projects occurring between 2011 and 2014 found that among enrolled participants, between 92 and 93 percent of all benefits issued are redeemed, resulting in an average benefit redemption rate of 92.5

⁴⁴ Costs exclude ongoing reporting and recordkeeping for State agencies as those costs will be absorbed through normal funding streams. Costs also exclude administrative burden for sponsors and program operators as those costs are factored into per meal reimbursements.

⁴⁵ Food and Nutrition Service. (July 24, 2019.) (AE62) Revision of Categorical Eligibility in SNAP Regulatory Impact Analysis (FNS–2018–0037–0002). U.S. Department of Agriculture Food and Nutrition Service. <https://www.regulations.gov/document/FNS-2018-0037-0002>.

⁴⁶ While demonstration projects were not nationally representative, they were implemented in a broad set of communities in numerous States (Connecticut, Michigan, Missouri, Oregon, and

Texas beginning in 2011; Delaware, Nevada, and Washington beginning in 2012) and ITOs (Cherokee Nation and Chickasaw Nation beginning in 2012).

⁴⁷ During the SEBT demonstrations, grantees chose a process to enroll eligible children. Grantees with active enrollment asked households to return a form indicating they wanted to participate in the demonstration. Households that did not return the form were excluded from the demonstration. Under permanent SEBT, eligible children who are not individually certified as such, including those enrolled in CEP or Provision 2 or 3 schools, can submit a Summer EBT application to indicate their interest in participating. For passive enrollment under the demonstrations, eligible children were automatically included in the demonstration unless

they returned a form saying that they did not want to be included. Similarly, in permanent SEBT, many eligible children will be enrolled through administrative data (streamlined certification) and can then choose to opt out of receiving benefits.

⁴⁸ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

⁴⁹ Food and Nutrition Service. (2016). *Summer Electronic Benefit Transfer for Children (SEBTC) Demonstration: Summary Report*. U.S. Department of Agriculture, Food and Nutrition Service. https://fns-prod.azureedge.us/sites/default/files/ops/sebtc_finalreport.pdf.

percent.⁵⁰ Benefits not redeemed are expunged according to the procedural methods and timelines determined by State agencies, in accordance with the regulations provided within the rule, and are therefore not included in the total benefit cost.

The total annual cost of benefits to the Federal Government is then calculated as follows:

$$(\text{Number of free and reduced-price participants}) \times (\% \text{ State take-up rate}) \times (\% \text{ Participant take-up rate}) \times (\% \text{ Benefit redemption rate}) \times (\$ \text{ Monthly benefit}) \times (\text{Months of benefits})$$

All estimates assume participating children receive three months of benefits. For FY 2024, benefit amounts are \$40 per month. These estimates are adjusted for inflation according to the Thrifty Food Plan estimates in the 2024 President's Budget.⁵¹

Implementation and Administrative Costs

The anticipated implementation and administrative costs of the Summer EBT program were estimated based on programs serving similar populations and operating with similar systems and technology, including the Summer EBT demonstration projects, Pandemic EBT benefit program, and SNAP. Estimates assume that Year 1 (2024) implementation costs will be higher, equal to 30% of total benefits issued, due to the wider scope of activities required to set up Summer EBT, including establishing or modifying data systems to identify eligible children and process Summer EBT benefits, developing Summer EBT applications and establishing procedures to determine eligibility, developing new promotional materials and communication plans to reach families with eligible children, developing and implementing training for staff and partners, and entering into written agreements with the Federal Government and partner State agencies. The first-year implementation cost estimate of 30% is based on evidence from the most recent Summer EBT demonstration project, which found a first-year cost equal to 43% of benefits issued, and has been scaled down to 30% account for the fact that demonstration projects (a) Served smaller populations, with evidence that administrative costs decrease with increases in population size; and (b) Included the cost of demonstration project evaluation in administrative costs, which will not be the case for the Summer EBT program. This was scaled down based on the assumption that the cost of demonstration project evaluations accounted for approximately one third of total administrative costs.

By Year 3 (2027), only recurring administrative costs will remain, causing administrative costs to level off at 7% of benefits issued. Ongoing administrative burdens for State, local, and Tribal governments will include submitting an annual Plan for Operations and Management,

program budget, State Systems Advance Planning Document, and other data reporting requirements, as well as notification, verification, and enrollment of eligible children and maintenance of systems required for benefit issuance. The anticipated ongoing administrative cost estimate of 7% was determined to be a reasonable midpoint estimate between calculated Pandemic EBT administrative costs as a share of benefits issued (1.4%) and the proportion of EBT-related SNAP administrative costs as a share of benefits issued (11.3%).

The ratio of Pandemic EBT administrative costs to benefits was calculated using State reporting data on total Federal share of administrative costs (form FNS-425) and total benefit issuance (form FNS-388).⁵² Data were compiled from School Year (SY) 2020–2021 and SY 2021–2022, cleaned to remove missing data and outliers, and used to generate average administrative costs as a percentage of benefits issued (1.4%). Pandemic EBT administrative costs were covered by Federal funds at 100%. Because implementation and administrative costs were calculated as a percentage of benefits issued in the 1, 5, and 10-Year cost estimates of the Summer EBT program, it was not necessary to apply an additional inflation factor to these costs.

The EBT-related SNAP costs represented in the ratio of administrative costs to benefits issued (11.3%) include certification, issuance, Automated Data Processing development costs, as well as Automated Data Processing operations costs, and exclude costs related to Employment and Training programs or workfare programs and fraud control.⁵³ For reference, the total administrative cost to benefits issued ratio for SNAP was 14.8% in FY 2019.

In addition to State and Federal costs for implementation and ongoing operation of Summer EBT, retailers and households will incur costs related to administrative burden. Administrative costs to retailers due to verification and reporting requirements are estimated at \$8.92 million in Year 1 (2024), based on the product of a total burden of 479,000 hours, an average hourly rate of \$14.01, and an overhead factor of 0.33. Administrative costs to households who need to complete applications for free and reduced-price eligible students and who are not already certified as such through school meal programs are estimated at \$149 million, based on the product of a total burden of 15.4 million hours, an average hourly rate of \$7.25, and an overhead factor of 0.33.

Impacts

Children and Households Affected

Non-Congregate Meal Service

By Year 5 (2027) of rule implementation, an estimated 4.25 million children in 2.36 million households in rural areas will be newly participating in summer meal

programs during peak as a result of the rule (assuming 1.8 participating children per household, based on FNS administrative data). At this time, there will be a total of 4.88 million children participating in eligible rural areas—631,000 of whom were already participating at eligible sites before the rule—and a total of 8.40 million children participating in SFSP and SSO in both rural and non-rural areas nationwide. It is expected that these participation levels will be sustained through Year 10 (2032) following implementation of the rule (see Table 8).

Summer EBT

There are an estimated 25.0 million children in 13.4 million households who will receive Summer EBT benefits each year beginning in FY 2024 as a result of the rule (based on an average 1.87 children per household in Summer EBT demonstration projects). The number of children receiving benefits is not expected to change over the period of analysis (FY 2024–2032), as the overall number of children certified as free and reduced-price is not expected to change significantly (see Table 10). Participation in Summer EBT would hypothetically increase or decrease with a corresponding increase or decrease in certification for free and reduced-price meals; see section VI. (*Uncertainties/Limitations*) for further discussion of this and other factors that could affect Summer EBT participation estimates.

Costs

Benefit and Meal Costs

Non-Congregate Meal Service

Federal reimbursements for summer meals resulting from increased participation in rural areas under the non-congregate meal service option are expected to total \$7.35 billion over the course of ten years (FY 2023–2032). Annual Federal reimbursements attributable to the rule are estimated at \$1.02 billion by Year 5 (2027), when peak participation is reached, and are estimated at \$1.14 billion by Year 10 (2032) due to inflation. See Table 9 for annual estimates of meal reimbursement costs attributable to the rule over the ten-year period of analysis.

Summer EBT

The total cost of benefit payments administered through the Summer EBT program between FY 2024–2032 is estimated at \$28.0 billion. Annual cost of benefit payments range from \$2.8 billion in 2024 (Year 1) to \$3.4 billion in 2032 (Year 9); as participation is expected to remain consistent, annual increases in costs are due to inflation only. See Table 11 for annual estimates of benefit payment costs attributable to the Summer EBT program over the nine-year period of analysis.

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⁵⁰ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

⁵¹ White House, United States. (2023). *The 2024 Mid-Session Review*. White House, United States.

<https://www.whitehouse.gov/omb/briefing-room/2023/07/28/the-2024-mid-session-review/>.

⁵² Food and Nutrition Service. (2023). *National Data Bank (NDB)*. U.S. Department of Agriculture, Food and Nutrition Service. <https://afnazre3ws08.usda.net/NDB8/Home/Home.aspx>.

⁵³ Food and Nutrition Service. (2019). *Exploring the Causes of State Variation in SNAP Administrative Costs*. U.S. Department of Agriculture, Food and Nutrition Service. <https://fns-prod.azureedge.us/sites/default/files/media/file/SNAP-State-Variation-Admin-Costs-FullReport.pdf>.

TABLE 8. INCREASES IN SUMMER MEAL PROGRAM PARTICIPATION DUE TO RURAL NON-CONGREGATE OPTION, FY 2023-2032

	Number of Children (Millions)									
Fiscal Year	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Estimated Participation in SFSP and SSO	4.39	4.58	4.76	6.58	8.40	8.40	8.40	8.40	8.40	8.40
Estimated Participation in eligible rural areas	0.87	1.06	1.24	3.06	4.88	4.88	4.88	4.88	4.88	4.88
Increase due to non-congregate provision	0.24	0.42	0.61	2.43	4.25	4.25	4.25	4.25	4.25	4.25

TABLE 9. MEAL REIMBURSEMENT COSTS AND ADMINISTRATIVE COSTS RELATED TO RURAL NON-CONGREGATE OPTION, FY 2023-2032

Annual Cost (\$ Millions)											
Fiscal Year	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total
Reimbursement costs due to rule	\$52.3	\$93.1	\$134	\$533	\$932	\$932	\$932	\$932	\$932	\$932	\$6,405
Inflation†		2.4%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	
Total costs, meal reimbursements	\$52.3	\$95.3	\$140	\$571	\$1,022	\$1,045	\$1,069	\$1,094	\$1,119	\$1,145	\$7,354
Administrative costs (SFSP and SSO)											
State agencies††	\$14.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$14.0
Households	\$0.2	\$0.4	\$0.5	\$2.2	\$4.0	\$4.1	\$4.2	\$4.4	\$4.5	\$4.7	\$29.2
Total costs, administrative	\$14.2	\$0.4	\$0.5	\$2.2	\$4.0	\$4.1	\$4.2	\$4.4	\$4.5	\$4.7	\$43.2
Total annual cost	\$66	\$96	\$141	\$573	\$1,026	\$1,049	\$1,073	\$1,098	\$1,124	\$1,150	\$7,397

† Benefit costs are inflated based on estimated increases in the value of the Consumer Price Index for Food Away From Home, used in preparation of the FY 2024 President's Budget.

†† Sum of \$83.58 in administrative reporting and recordkeeping costs (Table 7) and \$14.0 million in one-time State agency costs for systems changes (pg. 17).

Implementation and Administrative Costs
Non-Congregate Meal Service

Implementation and administrative costs attributable to the non-congregate meal service provision are expected to total \$43.2 million over the course of ten years (FY 2023–2032). Annual administrative costs are largely reflective of the requirement for households to provide written consent to participate in the home delivery option of non-congregate meal service, while a one-time cost to State agencies in Year 1 (2023) accounts for systems changes required to accommodate shifting to increased non-congregate meal service operation. The administrative burden estimates are discussed in more detail in the Paperwork

Reduction Act section of this interim final rule. See Table 9 for annual estimates of administrative costs attributable to the non-congregate provision.
Summer EBT

Federal and State implementation and administrative costs are estimated at a total of \$3.6 billion over the nine-year period of analysis (FY 2024–2032). In accordance with statute, these costs will be shared equally (50%) between States and the Federal Government. Implementation and administrative costs are highest during the first year of program implementation (2024) due to anticipated start-up costs, reaching a steady state by the fifth year of program operation. Total State and Federal

implementation and administrative costs are estimated at \$849 million in 2024, \$217 million in 2028, and \$238 million in 2032, including inflation.
See Table 11 for annual estimates of administrative costs attributable to the Summer EBT program. As previously discussed, additional administrative costs to retailers due to verification and reporting requirements are estimated at \$8.9 million in the first year, while administrative costs to households who need to complete Summer EBT applications are estimated at \$149 million annually. Retailer costs will be primarily limited to the first year of program implementation.

TABLE 10. PROJECTED ANNUAL SUMMER EBT PROGRAM PARTICIPATION BASED ON FREE AND REDUCED-PRICE CERTIFICATION, FY 2024-2032

[illegible]

TABLE 11. PROJECTED STATE AND FEDERAL 9-YEAR BENEFIT AND ADMINISTRATIVE COSTS OF SUMMER EBT PROGRAM, FY 2024-2032

Fiscal Year	Annual Cost (\$ Millions)									Total
	2024	2025	2026	2027	2028	2029	2030	2031	2032	
Federal benefit costs	\$2,765	\$2,765	\$2,765	\$2,765	\$2,765	\$2,765	\$2,765	\$2,765	\$2,765	
Inflation†	2.4%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	
Inflation-adjusted benefit costs	\$2,831	\$2,896	\$2,963	\$3,031	\$3,101	\$3,172	\$3,245	\$3,320	\$3,396	\$27,955
Administrative costs										
State costs	\$425	\$351	\$274	\$193	\$109	\$111	\$114	\$116	\$119	\$1,811
Federal costs	\$425	\$351	\$274	\$193	\$109	\$111	\$114	\$116	\$119	\$1,811
Retailer costs	\$8.9									
Household costs	\$149	\$149	\$149	\$149	\$149	\$149	\$149	\$149	\$149	\$1,341
Total administrative costs	\$1,007	\$851	\$697	\$535	\$366	\$371	\$376	\$381	\$386	\$4,973
Total annual costs	\$3,838	\$3,747	\$3,660	\$3,567	\$3,467	\$3,564	\$3,621	\$3,701	\$3,783	\$32,927

† Benefit costs are inflated based on estimated increases in the value of the Thrifty Food Plan, used in preparation of the FY 2024 President's Budget.

Benefits of the Interim Final Rule

Food Security and Diet Quality

Though food insecurity among households with children has returned to pre-pandemic levels, it remains significant: In 2022, about one in six (17.3%) households with children were affected by food insecurity.⁵⁴ Broadly speaking, the economic consequences of food insecurity include higher average health care costs, lost productivity, increased crime rates, and costs associated with lower educational outcomes. The sum of these costs has been estimated at more than \$160 billion each year in the United States.⁵⁵ There is evidence to suggest that the introduction of both the non-congregate option in rural areas and the Summer EBT Program will help to address this challenge. The option to provide non-congregate meal service in rural areas may reduce food insecurity among children by way of increasing participation in summer meal programs, as previous research has shown summer meal programs are likely to be effective in reducing food insecurity.⁵⁶ The provision of Summer EBT has also been found to generate substantial and statistically significant reductions in food insecurity. In Summer EBT demonstration projects, a \$60 monthly benefit reduced the prevalence of food insecurity among children by one-fifth and reduced the most severe form of food insecurity (Very Low Food Security, or VLFS) among children by one-third.⁵⁷ A smaller \$30 benefit was found to have similar impact on VLFS. The ability to use Summer EBT concurrently with other summer meal programs may prove particularly protective against food insecurity in periods of severe economic downturn or other social and environmental disruptions that may otherwise increase food insecurity rates.

Summer EBT has also been shown to improve diet quality among participating children. Demonstration projects providing a \$60 monthly benefit increased daily fruit and vegetable intake during summer months by one-third of a cup per day, whole grains intake by one-half ounce equivalent per day, and decreased intake of sugar-sweetened beverages. A \$30 monthly benefit level was also found to produce statistically significant improvements in diet quality across the same measures.⁵⁸

Economic Benefits From EBT Retail

Because the redemption of Summer EBT benefits largely mirrors the redemption of traditional SNAP benefits, we expect the economic impacts of SNAP benefit redemption will apply to the Summer EBT program. USDA research has consistently shown that SNAP spending helps to stabilize the economy during economic downturn and generates income for individuals and businesses producing, transporting, and marketing food purchased by SNAP recipients. The impact of each SNAP dollar spent is also multiplied throughout the economy; recent estimates indicate that for each \$1 in government spending, the Gross Domestic Product increases between \$0.80 and \$1.50, depending on current economic conditions.⁵⁹ The multiplier effect may be greater when spending is focused on low-income households, such as those eligible for SNAP, because these households tend to spend more of the money received soon after receiving it compared with higher-income households. In this way, government spending on programs such as SNAP and Summer EBT generate economic benefit not only for program participants, but also for individuals who participate in the economies in which program dollars are spent.

Program Integrity

The provisions that are described as follows were included to address program integrity concerns either identified during COVID P-EBT operations or mentioned during listening sessions.

Summer EBT benefits are subject to integrity requirements found in the Food and Nutrition Act of 2008 established for SNAP. USDA has determined that the SNAP regulations implementing sections 12, 14, and 15 of the Food and Nutrition Act are also appropriate for Summer EBT, and adopting these same requirements is preferable to developing different requirements for Summer EBT. This approach is also the least burdensome for administering agencies because it does not require agencies to develop new implementation approaches.

The ITO Summer EBT Agencies must also ensure that Summer EBT program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from Summer EBT-enrolled vendors that have been approved for participation in the WIC Program.

To ensure effective vendor integrity, the ITO Summer EBT agency must set forth a system which ensures:

- Requirements and restrictions on the participation of vendors and the transaction of food benefits described in IFR apply to activities involving Summer EBT benefits;
- Vendors are subject to the actions and penalties described in the IFR for

- noncompliance or violations involving Summer EBT benefits; and
- The standards for determination and disposition of claims described at IFR apply to Summer EBT benefits; or
- Set forth an alternate system to ensure effective vendor management and vendor integrity.

In order to ensure program quality and integrity, Summer EBT agencies must also have adequate processes to correctly determine the eligibility of children for Summer EBT benefits. As with NSLP/SBP applications, the Summer EBT verification process will align with the typical Child Nutrition Program approach to verification, which is conducted after the eligibility determination. USDA heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State Agencies that implemented P-EBT that up-front verification (verification of income at the time of application) was burdensome for both program administrators and households. In contrast, other child nutrition programs like NSLP, SBP, and CACFP do not require up-front household income verification but rather they require verification on a subset of applications after certification. Summer EBT applications (or alternative income applications for Summer 2024) will be subject to verification for cause, a process through which questionable applications are verified on a case-by-case basis.

Integrity Measures for Non-Congregate Feeding

Based on stakeholder feedback, experience gained under COVID-19 operations, and summer 2023 implementation, USDA is codifying the use of several meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components to meet the needs of children in rural areas. While USDA is codifying the use of these meal service options, integrity safeguards have been added around the permitance and use of these options to ensure Program access for eligible children while maintaining Program accountability. Through the listening sessions, USDA received varied feedback from stakeholders regarding the different meal service options when used for non-congregate feeding during the COVID-19 pandemic. Many of the comments focused on the difficulty of balancing Program integrity with Program access. Some stakeholders, including a few State agencies, stated that that these options are essential for providing non-congregate meals in rural areas and praised the benefits to the community, such as the ability to provide children meals for the weekend.

Under this IFR, the meal service options mentioned above may only be used by sponsors considered to be in good standing, as determined by the State agency. In addition, a State agency may only prohibit sponsors from using these meal service options on a case-by-case basis and without regard to sponsor type if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal service at their sites.

⁵⁴ Economic Research Service. (2023.) Household Food Security in the United States in 2022. U.S. Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/webdocs/publications/107703/err-325.pdf?v=9638.3>.

⁵⁵ Cook, J., & Poblacion, A.P. (2015). *Estimating the Health-Related Costs of Food Insecurity and Hunger*. Bread for the World Institute. <https://www.hungerreport.org/costofhunger/fullstudy.html>.

⁵⁶ Food and Nutrition Service. (2021). USDA Summer Meals Study Summary. U.S. Department of Agriculture, Food and Nutrition Service. <https://fns-prod.azureedge.us/sites/default/files/resource-files/SummerMealsStudy-2018-SummaryofFindings.pdf>.

⁵⁷ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

⁵⁸ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of

Agriculture, Food and Nutrition Service. Publication forthcoming.

⁵⁹ Economic Research Service. (2019.) *The Supplemental Nutrition Assistance Program and the Economy: New Estimates of the SNAP Multiplier*. U.S. Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/publications/pub-details/?pubid=93528>.

Integrity safeguards for multi-day meal issuance and parent or guardian meal pick-up includes requiring sponsors to provide documented procedures to ensure the proper number of meals are distributed to each eligible child and duplicate meals are not distributed. Lastly, integrity safeguards have been codified for bulk foods to ensure the safety of the children who consume Program meals. Sponsors are required to ensure that food items meet the meal pattern requirements, foods are clearly identifiable, menus must be provided to indicate the food items and portion sizes for all meals provided, and only minimal to no preparation is required. In addition, any sponsor using bulk foods can only provide a maximum of 5 days' worth of meals at a time, or less if the State agency establishes a shorter calendar period on a case-by-case basis.

Finally, it is worth noting that all program regulations, including existing compliance and oversight requirements of the SFSP and NSLP, apply to non-congregate meals served under the Summer Nutrition Programs. Under this rule, with a few exceptions, the basic monitoring requirements will not change. However, to ensure all Program operations, both congregate and non-congregate, are properly adhering to Program requirements, USDA is amending the regulations to incorporate operational changes to reflect the introduction of non-congregate meal service and ensure that such meal services are adequately reviewed for compliance.

Uncertainties/Limitations

There are numerous uncertainties and limitations inherent to this analysis. The limitations most likely to affect the analysis are noted below, accompanied by sensitivity analyses where relevant. Some of these uncertainties and limitations result from the interim final rule being developed in a time immediately following the COVID-19 public health emergency, which introduced challenges collecting timely and accurate data due to other urgent priorities and numerous disruptions to trends in Child Nutrition Program participation. Both of these challenges present unique complexities in the projections of participation and costs.

Program Participation

Non-Congregate Meal Service

There are several limitations to the calculated increase in summer meal program participation following the implementation of the non-congregate meal service provision.

The projected increase in participation is guided by two key data points. The first data point is the 96.8% increase in summer meal

participation that was observed between FY 2019 and FY 2021, when waivers provided all SFSP and SSO sites with the ability to utilize non-congregate meal service during the COVID-19 pandemic. Table 6 demonstrates that peak (July) participation and meals served approximately doubled during this time, and then returned to pre-pandemic levels in FY 2022 following the expiration of the non-congregate waivers. However, the COVID-19 public health emergency ushered in a variety of other waivers and regulatory changes related to Child Nutrition Program operations, including Area Eligibility waivers,²⁴ making it difficult to isolate the impact of the non-congregate waiver on SFSP and SSO participation. In addition, many households were experiencing higher than usual levels of financial hardship and food insecurity during this time, which may have increased their likelihood to utilize programs providing meals at no cost. Our analysis partially addresses these external factors by assuming that this 96.8% increase will occur more gradually, over a period of three years (FY 2023–2025), as opposed to the period of one to two years observed during the COVID-19 pandemic.

The second data point guiding the analysis is the expected maximum participation in SFSP and SSO among eligible rural sites, which is estimated at 4.88 million children (see Table 7). As described in the Key Assumptions Section of section IV. (*Section by Section Analysis*), the expected maximum participation among eligible sites is the product of the total number of rural students eligible for non-congregate meal service (7.51 million) and the percentage of students who choose to receive school meals via NSLP (65%) when meals are available at no charge (e.g., through CEP). Accounting for the 631,000 children already participating in school meals at eligible rural sites prior to the rule, the expected maximum number of new SFSP and SSO participants is 4.25 million, representing a substantial 574% increase in the number of children participating in eligible areas. Although this increase is significant, conversations with State agencies, sponsors, and other stakeholders suggest that this increase may be achievable with robust communications efforts and technical assistance on behalf of FNS. As such, the analysis projects that expected maximum participation in eligible rural sites will occur at Year 5 (2027).

Due to these uncertainties, sensitivity analyses were conducted to assess the cost implications of more gradual or more rapid participation increases (Tables 12–13). The first scenario assumes more rapid increase in participation, in which maximum expected

participation is achieved by Year 3 (2025), resulting in a 24% increase in Federal reimbursements over the course of 10 years as compared to the primary estimates. The second scenario assumes a more gradual increase in participation in which maximum expected participation is achieved by Year 10 (2032), resulting in a 43.8% decrease in Federal reimbursements over 10 years as compared to the primary estimates. The third scenario assumes a more gradual increase in participation in which only half of maximum expected participation is achieved by Year 10 (2032), resulting in a 70.8% decrease in Federal reimbursements over 10 years. Note that participation increases are not linear, as each scenario assumes that early increases in participation are more gradual and achieve the 96.8% participation increase observed during the COVID-19 pandemic by either Year 1 (2023), Year 3 (2025), or Year 5 (2027), depending on the scenario.

Summer EBT

As previously described, participant take-up (*i.e.*, the share of eligible children who are enrolled and participate in the Summer EBT program) is estimated at 83% based on results from Summer EBT demonstration studies.

The Summer EBT demonstration studies completed by FNS show that the average participant take-up rate via passive enrollment is 93.5% (ranging from 90% to 97% in demonstration projects) and the average participant take-up rate via active enrollment is 40% (ranging from 23% to 57%).¹¹ Combining the passive enrollment take-up rate (93.5% for the passive enrollment children) and the active enrollment take-up rate (40% for the active enrollment children) results in a weighted average participant take-up of 83%. However, it is possible that the participant take-up rate will be lower than expected, as a growing number of States are offering school meals to all students at no cost and households may be less incentivized to submit applications for free and reduced-price meals, thereby lowering the percentage of students that would be enrolled in Summer EBT via active enrollment. For this reason, a sensitivity analysis was conducted assuming participant take-up was at the low end of the ranges provided in the Summer EBT Demonstration Study, resulting in a participant take-up of 23% via active enrollment and 90% via passive enrollment for an overall participant take-up rate of 77% in Year 1 (2024). This would result in an 2.1% decrease in Summer EBT benefit costs over the period of analysis (2024–2032) compared to the primary estimates (see Tables 13–14).

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TABLE 12: SENSITIVITY ANALYSIS: PARTICIPATION INCREASES IN ELIGIBLE AREAS UNDER NON-CONGREGATE PROVISION SCENARIOS

Scenario	Number of Children Participating Due to Rule (Millions)									
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Scenario 1										
Maximum participation by Year 3 (2025)	0.61	2.43	4.25	4.25	4.25	4.25	4.25	4.25	4.25	4.25
Primary Estimate										
Maximum participation by Year 5 (2027)	0.24	0.42	0.61	2.43	4.25	4.25	4.25	4.25	4.25	4.25
Scenario 2										
Maximum participation by Year 10 (2032)	0.24	0.33	0.42	0.52	0.61	1.34	2.07	2.79	3.52	4.25
Scenario 3										
Half of max. participation by Year 10 (2032) [†]	0.24	0.33	0.42	0.52	0.61	0.85	1.09	1.33	1.57	1.81

[†] Half of maximum participation in eligible rural areas is $4.88 * 0.50 = 2.44$ million children. Accounting for children already participating in eligible areas prior to the rule, the maximum number of newly participating children is $2.44 - 610,000 = 1.8$ million children.

TABLE 13: SENSITIVITY ANALYSIS: 1, 5, AND 10-YEAR REIMBURSEMENT COSTS UNDER NON-CONGREGATE PROVISION SCENARIOS

Meal Reimbursement Cost (\$ Millions)				
Scenario	1-Year Cost	5-Year Cost	10-Year Cost	% Change (10-Year)
Scenario 1				
<i>Maximum participation by Year 3 (2025)</i>	\$134	\$3,677	\$9,149	24.4%
Primary Estimate				
<i>Maximum participation by Year 5 (2027)</i>	\$52.3	\$1,881	\$7,354	
Scenario 2				
<i>Maximum participation by Year 10 (2032)</i>	\$52.3	\$493	\$4,134	-43.8%
Scenario 3				
<i>Half of max. participation by Year 10 (2032)</i>	\$52.3	\$420	\$2,147	-70.8%

State Participation in Program
Summer EBT
 As previously noted, it is the expectation of FNS that all States will implement Summer EBT in the first year of the program (2024) and that participation is sustained at this level through the lifespan of this analysis

(2032). However, there may be some States that are prevented from fully implementing the program in the initial year(s); for example, several States that plan to participate have noted that there may be challenges implementing the program beginning in 2024 due to the timing of budget cycles. For this reason, a sensitivity analysis has been conducted to assess the impact of delayed State take-up. A lagging State take-up rate starting at 75% in Year 1 (2024) and reaching 100% by Year 5 (2028) with annual linear increases would result in a 7.1% decrease in Summer EBT benefit costs over the nine-year period of analysis (2024–2032) (see Tables 14–15).

TABLE 14: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT PARTICIPATION DUE TO LAGGING STATE OR PARTICIPANT TAKE-UP

Scenario	Number of Children Participating In Summer EBT (Millions)								
	2024	2025	2026	2027	2028	2029	2030	2031	2032
Current estimate†	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
Lagging participant take-up	23.2	23.6	24.1	24.5	25.0	25.0	25.0	25.0	25.0
Lagging State take-up	18.7	20.3	21.8	23.4	25.0	25.0	25.0	25.0	25.0

† Current estimate participant take-up rate: Y1: 83%, Y3: 83%, Y5: 83%; Current estimate State take-up rate: Y1: 100%, Y3: 100%, Y5: 100%
 Lagging participant take-up rate: Y1: 77%, Y3: 80%, Y5: 83%; Lagging State take-up rate: Y1: 75%, Y3: 87.5%, Y5: 100%

TABLE 15: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT BENEFIT COSTS DUE TO LAGGING STATE OR PARTICIPANT TAKE-UP

Scenario	Benefit Cost (\$ Millions)			
	1-Year Cost	5-Year Cost	9-Year Cost	% Change (9-Year)
Current estimate†	\$3,680	\$17,526	\$31,578	
Lagging participant take-up	\$3,405	\$16,852	\$30,904	-2.1%
Lagging State take-up	\$2,760	\$15,278	\$29,330	-7.1%

† Current estimate participant take-up rate: Y1: 83%, Y3: 83%, Y5: 83%; Current estimate State take-up rate: Y1: 100%, Y3: 100%, Y5: 100%
Lagging participant take-up rate scenario: Y1: 77%, Y3: 80%, Y5: 83%; Lagging State take-up rate scenario: Y1: 75%, Y3: 87.5%, Y5: 100%

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Implementation and Administrative Costs
Summer EBT
Because Summer EBT is a new program, there is some uncertainty inherent to the administrative costs the program will incur, particularly on behalf of State and Federal governments and Tribal Organizations. As

previously described, the analysis assumes that implementation costs will equal 30% of benefits issued in year 1 of operation (2024), decreasing to a constant 7% of benefits issued by year 5 of operation (2028). However, because these estimates represent reasonable averages or midpoints among a range of potential values, the true cost may be higher or lower; therefore, a sensitivity

analysis was conducted to assess the impact of potential variation in implementation and administrative costs (see Table 16). The results show that an initial start-up cost equal to 40% of benefits issued, decreasing to a constant 10% by 2028, would increase administrative costs by 29.7% over nine years compared to the primary estimate, while an initial start-up cost equal to 20% of

benefits issued, decreasing to a constant 5%

by 2028 would decrease administrative costs by 31.4% over nine years.

TABLE 16: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT IMPLEMENTATION AND ADMINISTRATIVE COSTS

Implementation and Administrative Cost (\$ Millions)				
Scenario	1-Year Cost	5-Year Cost	9-Year Cost	% Change (9-Year)
Higher administrative cost	\$1,132	\$3,655	\$4,968	29.7%
Current estimate†	\$849	\$2,703	\$3,623	
Lower administrative costs	\$566	\$1,827	\$2,484	-31.4%

† Current estimate of administrative costs: Y1: 30%, Y5: 7%; Higher administrative cost scenario: Y1: 40%, Y5: 10%; Lower administrative cost scenario: Y1: 20%, Y5: 5%. All scenarios assume linear increase between Y1 and Y5.

Alternative(s)

Throughout the development of the interim final rule, various regulatory options were weighed and discussed with the goal of identifying provisions that would optimize outcomes for all stakeholders. Alternatives to key provisions of the interim final rule are described below, along with the rationale favoring the provisions selected.

Coordinated Services Plan

Each State agency will need to establish a Coordinated Services Plan (CSP), to coordinate the statewide availability of services offered through the Summer Food Service Program (SFSP) and the Summer EBT Program (and the National School Lunch Program Seamless Summer Program, if appropriate). Initial plans will need to be submitted to FNS no later than January 1, 2025. They will need to be submitted annually when significant updates are made—otherwise, at least every three years. States will need to consult with other agencies (as applicable) on their plans and must share them publicly on a website.

The alternative would have been to include the CSP as part of a combined Management and Administration Plan (MAP) for SFSP and Summer-EBT. Due to the programs being on different planning schedules for summer operations and considering how different State agencies may administer the programs, a combined MAP would have required the same or greater time and effort as required for the CSP, despite condensing the number of required documents. States administering the SFSP will continue to submit a MAP, and a separate Plan for Operations and Management (POM) will be required for S-EBT. The CSP will give a general overview of statewide programming while keeping each program's operational details to the MAP/POM.

Non-Congregate Meal Service

Throughout the development of the non-congregate provisions for this interim final rule, various regulatory options were weighed and discussed with the goal of identifying provisions that would optimize outcomes for all stakeholders. Two such provisions were the regulatory definition of

rural and the meal service options available for non-congregate feeding. The alternatives to these key provisions are discussed below.

The definition of “rural” under the Program was expanded to include other Federal classification schemes to create an approach that more expansively covers rural population and territory to the satisfaction of stakeholders while upholding established measures of rural. The alternative would have been to maintain the current regulatory definition of rural, which is based solely on metropolitan and non-metropolitan classification. This classification scheme presents identification challenges for the purposes of the Program as metropolitan and non-metropolitan areas are defined at the county level, and thus, the different levels of rurality within counties are not accurately delineated.

The current regulatory definition does provide discretion to designate any “pocket” within a Metropolitan Statistical Area that is determined to be geographically isolated from urban areas with FNS Regional Office (FNSRO) approval. However, this has led to inconsistent application of *rural pockets* across the States and resulted in increased burden on the State agencies to identify and receive approval for these designations. Incorporating additional Federal classification schemes into the regulatory definition to define what rural is under the Program will allow State agencies to more effectively identify and target rural populations and territories for outreach and non-congregate provision purposes and will ease administrative burden and streamline the site identification and approval process for State agencies and Program operators. Because using the current regulatory definition may have increased administrative burden, it may have also been associated with marginal increases in administrative costs.

Under this interim final rule, USDA will allow operators to use meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components to meet the needs of children in rural areas. Based on stakeholder feedback, experience gained under COVID–

19 operations, and summer 2023 implementation, the use of these flexibilities is imperative to children in rural communities accessing meals during the summer months when school is out of session. The alternative to this provision would have been to require sites to distribute meals to children in-person, in limited quantities, for each meal service during the approved meal service times, similar to a congregate meal service. Such restrictions defeat the purpose and efficacy of non-congregate service in rural communities which may benefit from the use of these options where children would otherwise have to travel long distances to receive a meal, for instance. While the USDA is codifying these meal service options, integrity safeguards have been included around the use of these options to ensure Program access for eligible children while maintaining Program accountability. These integrity safeguards are discussed under the Program Integrity section of this Regulatory Impact Analysis.

Summer EBT

Structure of ITO Food Benefits

ITO Summer EBT agencies may choose the benefit delivery model they prefer: a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The alternative would have been to limit ITO Summer EBT agencies to only the food benefit models typically available to them through the WIC program. It is important to allow ITO choice of benefit delivery model so they may best serve their populations. Participants in the Summer EBT demonstration projects indicated they appreciated the greater flexibility and choice in the food package items and quantities.⁶⁰ The alternative would have likely been cost-neutral relative to the interim final rule provision, as there are not significant differences between the value of cash-value

⁶⁰ Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report)*. U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

Summer EBT benefits and the value of a food package.

ITO Enrollment Procedures

ITO Summer EBT agencies receive priority consideration to serve eligible children within their service areas, meaning that children from the ITO service area who can be enrolled through streamlined certification will automatically be enrolled in the ITO-administered Summer EBT program. If the eligible child wants to participate in the State-administered program, they must notify the ITO and the State and request this change. The alternative options would be to require all participants in ITO service areas to participate in the ITO-administered program, or to automatically enroll all children in the State Summer EBT Program. Households may prefer ITO or State-administered programs for a variety of reasons. Automatically enrolling children in ITO-service areas in the ITO program while allowing them to opt into the State-administered program permits households to decide how and from whom they want to receive benefits based on their individual circumstances. The selection of this alternative would not have impacted overall program costs, as the number of children served by the program would remain unchanged.

Structure of the Program

FNS will provide States with the flexibility to name which agency will have the written agreement with FNS (i.e., the coordinating Summer EBT agency) and to decide how Summer EBT responsibilities are delegated across their respective State and local agencies. The alternative option is for FNS to name which agency within a State will be responsible for the overall administration of the Summer EBT program, as well as the roles and responsibilities of each agency within a State. Allowing States maximum flexibility to delegate Summer EBT program responsibilities will ease program administration and facilitate the Federal

grant process. This is expected to have little impact on overall program costs.

Expungement

FNS will require Summer EBT benefits to become unavailable to households 4 months after issuance. This approach will provide households a reasonable amount of time after the summer operational period to finish spending their benefits. With timely issuance, benefits will exist for the summer period and be expunged soon thereafter, consistent with congressional intent. The alternative model is “expungement from last use,” meaning Summer EBT benefits could exist well into the school year. This model would run counter to the congressional intent of the program: to provide food benefits during the summer to help reduce food insecurity while kids are out of school. The current requirement may result in slightly lower program costs than the alternative, due to the fact that unused benefits will be expunged in a more timely fashion.

Verification for Cause

FNS will allow States or LEAs to conduct verification for cause on all Summer EBT applications in FY2024. The guidance instituted for verification for cause means that States or LEAs will only need to target applications that they think present a higher than normal risk of error. The alternative option is requiring that States or LEAs verify three percent of all Summer EBT applications beginning in FY 2024. However, FNS heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State agencies that this requirement would place undue burden on Summer EBT agencies in the first year of program administration. FNS will require that three percent of all Summer EBT applications be verified beginning in FY 2025, in alignment with other school meal programs.

Required Statewide Database

FNS will require that States and ITOs administering the Summer EBT program implement a statewide database with school meal enrollment data by FY 2025. Requiring a statewide database will facilitate the data sharing and enrollment processes, detect and prevent duplicate benefit issuance, and increase data integrity across the Summer EBT program. One grantee under the Summer EBT demonstrations established a centralized database that contained households that were eligible for free and reduced price meals. This system annually compiled all household information from multiple sources for households that were already eligible for free and reduced-price meals into one file to upload to its benefit issuance system, thereby efficiently automating the benefit issuance process. Requiring a statewide database will also reduce burden on LEAs, although the burden will shift to State agencies. Delaying this requirement until FY 2025 will allow Summer EBT agencies time to acquire necessary funding and for database development.

Benefit Funds Process

In FY 2024, FNS will disburse benefit funds through the Federal grant process. The alternative option is to disburse Summer EBT benefit funds through the Account Management Agent (AMA) process. FNS decided on the grant process to give States more flexibility and to reduce the cost and administrative burden related to modifying the AMA process to support a separate, permanent program beginning in 2024. Additionally, Summer EBT benefits must be tracked separately from SNAP benefits, or other benefit types, but are subject to the same oversight, restrictions, and requirements as SNAP benefits. The Federal grant funding and issuance model supports these requirements.

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