Changes To The Summer Food Service Program (SFSP) As Mandated By Public Law 103-448

To: STATE AGENCY DIRECTORS (Child Nutrition Programs)

- Colorado ED, Iowa, Kansas, Missouri DH, Montana OPI, Nebraska ED, North Dakota, South Dakota, Utah and Wyoming DHSS

Public Law (P.L.) 103-448, the "Healthy Meals for Healthy Americans Act of 1994", amends a number of provisions in Section 13 of the National School Lunch Act (NSLA). These amendments will affect the participation of private nonprofit (PNP) sponsors in the SFSP, reduce reporting requirements for State Agencies (SAs), allow the SFSP to be operated at nonschool sites during the months of October through April when school is closed due to unusual circumstances, and provide start-up and expansion grants for SFSP sponsors.

Because it is unlikely that regulations implementing these changes could be published in time to affect the 1995 SFSP, we are advising states to follow the guidance provided in this memorandum until interim or final regulations are published. Please be aware that due to the complexity of some of the changes made to the SFSP in P.L. 103-448, we are providing guidance on some, but not all of its SFSP provisions at this time. We will notify you of the proper procedures to follow on the remaining provisions in the near future.

I. Changes to conditions affecting participation of PNPs in the SFSP

SPONSOR PRIORITY SYSTEM

Section 114(a) of P.L. 103-448 revised the sponsor priority system by amending Section 13(a)(4) of the NSLA. The sponsor priority system is used by SAs when more than one SFSP sponsor or potential sponsor wishes to provide meal service at the same site or in the same area. Where previously the NSLA placed PNPs last in the sponsor priority system, Section 114(a) of P.L. 103-448 created a new priority system as follows:

A. Local school food authorities;

B. All other government sponsors and PNPs that successfully administered the program in a prior year;
C. New government sponsors; and

D. New PNPs.

This change establishes congressional intent to modify the view of PNPs which was embodied in the law at the time that PNPs were readmitted to program sponsorship in the Reauthorization Act of 1989. That is, whereas PNPs were previously viewed as the most problematic of potential SFSP sponsors, PNP monitoring results have shown that, with the current safeguards in place, PNP sponsors now administer the program with about the same level of error as other sponsors with comparable experience. This change to the sponsor priority system makes clear that experienced, successful PNP sponsors are now to be considered equal in their ability to administer the program as all other sponsors except school food authorities.

ONE-YEAR WAITING PERIOD

Section 114(b) of P.L. 103-448 deleted Section 13(a)(7)(C) of the NSLA. That section of the NSLA had established a one-year prohibition on PNPs serving a site or an area during the 12 months after that area had been served by a school food authority or governmental sponsor. Although, this "one-year waiting period" could be waived, it was designed to minimize the potential displacement of experienced sponsors by PNPs and to underscore the 1989 Reauthorization Act's intent to readmit PNPs to program sponsorship in order to provide food service in previously unserved areas.

The floor statement accompanying P.L. 103-448 expressed the concern of Congress that the SFSP is under-utilized and that improved program access is desirable. In accordance with that sentiment, P.L. 103-448 eliminated the "one-year waiting period" for PNPs that want to operate programs so that more children can be fed during the summer months.

Consequently, it is no longer mandated that PNPs request a waiver from the SA if they wish to operate in an area where a school food authority or local, municipal or county government has served that area in the prior year's program.

ELIMINATION OF WARNING STATEMENT FROM PNP APPLICATIONS

Section 114(f) of P.L. 103-448 deleted Section 13(q)(2) of the NSLA which mandated that a warning statement be printed on all application forms and other materials used for PNPs. The warning statement explained criminal provisions and penalties and the procedures for termination of program participation if the sponsor was found to be in violation of the law.
We are aware that some SAs have opted to include the warning statement on all sponsor applications and materials, and not strictly on PNP applications and materials. Continuation of this practice is at the SA’s discretion. However, because the intent of the Congress in removing this provision is to eliminate any stigma attached to PNPAs, SAs are discouraged from printing a warning statement only on PNP applications or materials. Please be advised, however, that if SAs already have a stock of 1995 PNP applications or materials printed with the warning statement, we would not object to those applications being used for the summer of 1995.

II. Changes to SA Reporting Requirements

MANAGEMENT AND ADMINISTRATION PLAN (MAP)

Section 114(e) of P.L. 103-448 amended Section 13(n) of the NSLA by deleting several items contained in the SA’s MAP. Because it is the intent of Congress to eliminate unnecessary paperwork, P.L. 103-448 deleted the following items (Section 13(n)(5), (6), (8), (10), and (12) of the NSLA) previously required to be in the MAP:

(5) the State’s schedule for application by sponsors;
(6) the actions to be taken to maximize the use of meals prepared by sponsors and the use of school food service facilities;
(8) the State’s plan and schedule for registering food service management companies (FSMC);
(10) the State’s plan for determining the amounts of program payments to sponsors and for disbursing such payments; and
(12) the State’s procedure for granting a hearing and prompt determination to any sponsor wishing to appeal a State’s ruling to deny the sponsor’s application for program participation or for program reimbursement.

Thus, the following are the remaining items required to be in the MAP:

(1) the State’s administrative budget for the fiscal year, and the State’s plans to comply with any standards prescribed by the Secretary for the use of these funds;
(2) the State’s plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State’s methods for assessing need, and its plans and schedule for informing sponsors of the availability of the Program;
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(3) the State’s best estimate of the number and character of sponsors and sites to be approved, the number of meals to be served, and the number of children who will participate, as well as a description of the estimating methods used by the State;

(4) the State’s plans and schedule for providing technical assistance and training to eligible sponsors;

(5) the State’s plans for monitoring and inspecting sponsors, feeding sites, and FSMCs and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(6) the State’s plan for timely and effective action against program violators;

(7) the State’s plan for ensuring fiscal integrity by auditing sponsors not subject to auditing requirements prescribed by the Secretary;

(8) the State’s plan for ensuring compliance with the FSMC procurement monitoring requirements; and

(9) an estimate of the State’s need for monies available to pay for the cost of conducting health inspections and meal quality tests.

Only the above nine items will be necessary for Fiscal Year 1995 SA MAPs to be considered complete.

REGISTERED FSMC REPORTS

Section 114(d) of P.L. 103-448 amended Section 13(1)(3) of the NSLA by requiring the Secretary to maintain a record of registered FSMCs which have been seriously deficient in their participation in the program and by allowing the Secretary to maintain records concerning other registered FSMCs. Such records are to be made available to all states. Thus, where formerly the NSLA required the maintaining of records of all registered FSMCs, P.L. 103-448 requires only that we maintain the records of those companies which have been deficient in administering the SFSP.

Because the October 15 deadline for SA submission of those records is past, we will not provide guidance for implementing this provision at this time. However, we will address this specific issue in more detail in the future.
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III. Nonschool Sites

PROPOSED RULE ON NONSCHOOL SITES

Section 114(c) of P.L. 103-448 amended Section 13(c)(1) of the NSLA by extending the program to include meal service that is provided at non-school sites to children who are not in school during the months of October through April due to a natural disaster, building repair, court order, or similar causes.

Because of the potential administrative complexity of this provision, we will publish a proposed regulation as soon as possible. In the meantime, we will consider any possible applications of this provision on a case by case basis.

IV. Startup and Expansion Grants

Section 201(d) of P.L. 103-448 provides start-up and expansion grants for the SFSP. Proposed guidance on implementing the SFSP grant provision is being developed, and we will distribute information as quickly as possible.

We hope that this information is helpful to you in understanding the changes affecting the SFSP in Public Law 103-448. If you would like further guidance or have additional questions related to this matter, please feel free to contact our office at (303) 844-0359.

[Signature]
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