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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, 235, 246, and 248

[FNS–2011–0031]

RIN 0584–AE20

Cooperation in USDA Studies and Evaluations, and Full Use of Federal Funds in Nutrition Assistance Programs Nondiscretionary Provisions of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296

AGENCY: Food and Nutrition Service (FNS), USDA

ACTION: Final rule.

SUMMARY: This final rule incorporates into the regulations governing the Programs authorized under the Richard B. Russell National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA) two nondiscretionary provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFK Act). The HHFK Act requires State and local cooperation in Department of Agriculture studies and evaluations related to Programs authorized under the NSLA and the CNA. The HHFK Act also amends the NSLA to stipulate that Federal funds must not be subject to State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions. This final rule amends regulations for the National School Lunch Program; the Special Milk Program for Children; the School Breakfast Program; the Summer Food Service Program; the Child and Adult Care Food Program; State Administrative Expense Funds; the Special Supplemental Nutrition Program for Women, Infants and Children; and the WIC Farmers' Market Nutrition Program.

These provisions will strengthen program integrity by ensuring that sufficient data is made available for studies and evaluations. Additionally, exempting Federal funds from State budgetary restrictions or limitations is intended to increase the ability of State agencies to administer USDA's nutrition assistance programs effectively.

DATES: *Effective Date:* This rulemaking becomes effective on July 29, 2011.

FOR FURTHER INFORMATION CONTACT: For more information contact Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302; (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

The Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, (the HHFK Act), was signed into law on December 13, 2010. The HHFK Act includes Section 305 and 361, which are nondiscretionary and directly affect a number of nutrition assistance programs authorized under the NSLA (42 U.S.C. 1751 *et seq.*) and the CNA (42 U.S.C. 1771 *et seq.*), including: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the WIC Farmers' Market Nutrition Program (FMNP); the National School Lunch Program (NSLP); the School Breakfast Program (SBP); the Special Milk Program for Children (SMP); State Administrative Expense (SAE) Funds; the Summer Food Service Program (SFSP); and the Child and Adult Care Food Program (CACFP). The provisions of sections 305 and 361 also apply to the Fresh Fruit and Vegetable Program. Proposed regulations for that Program are expected to be issued shortly.

First, Section 305 of the HHFK Act added a new provision Section 28(c) of the NSLA, 42 U.S.C. 1760(c), requiring State and local entities and their contractors participating in the programs under the NSLA and the CNA to cooperate in studies and evaluations conducted by or on behalf of the Department of Agriculture (USDA) related to programs authorized under the NSLA or the CNA. USDA conducts studies related to Program operations in order to comply with existing laws or to provide Program information for program management and improvement.

It is essential that such studies reflect an accurate portrait of these Programs on a Program-wide basis. In accordance with Section 445 of the HHFK Act, Section 305 became effective October 1, 2010, and has been implemented via memoranda to Child Nutrition, WIC, and FMNP State agencies, issued March, 2011. This rule amends 7 CFR 210.23(e), 215.7(f), 215.11(f), 220.7(g), 220.13(m), 225.18(j), 226.25(h), 246.26(k), and 248.24(d) to reflect this nondiscretionary statutory requirement.

Second, Section 361 of the HHFK Act amended Section 12(b) of the NSLA by establishing expectations for the use of Federal funds supporting the administration of Programs authorized under the NSLA and the CNA. Specifically, all agreements between FNS and a State agency to administer the Programs affected by this rule must include a provision that supports full use of Federal funds for the administration of the Programs and excludes such funds from State budget restrictions or limitations including, at a minimum, hiring freezes, work furloughs, and travel restrictions. Section 361 also became effective on October 1, 2010, in accordance with Section 445 of the HHFK Act and has been implemented via memoranda to all Child Nutrition, WIC, and FMNP State agencies.

In this final rule, the Department excludes from State budget restrictions State-imposed cost-saving measures of hiring freezes, work furloughs, and travel restrictions affecting USDA Programs under the NSLA and CNA. These limits are the exclusions specified in Section 361 of the HHFK Act. Should the Department determine that expansion of these restrictions is necessary to ensure the ability of State agencies to administer USDA's nutrition assistance Programs effectively, we will initiate a separate rulemaking process.

Because the Federal/State agreement for the Child Nutrition Programs is permanent, the amendment signed in FY 2011 conforms to the requirements of Section 361 for FY 2011 and all subsequent fiscal years. The Federal/State annual agreements for WIC and the FMNP were amended for FY 2011. FNS has begun revising the Federal/State Agreement forms for the WIC and FMNP to include the necessary statement related to the full use of Federal funds in accordance with

Section 361 of the HHFK Act. The revised form is expected to be ready for use for FY 2012. This rule amends 7 CFR 225.5(a)(5), 226.8(e), 235.6(i), 246.3(c)(3), and 248.3(c)(2) to reflect this requirement.

Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. As indicated earlier, Sections 305 and 361 of the HHFK Act adopted as final rules in this rulemaking are nondiscretionary. These provisions are being incorporated as regulations using language taken verbatim from the Act. The nondiscretionary nature of Sections 305 and 361 means that notice and comment would serve no useful purpose in the promulgation of these regulations.

Executive Order 12866 and Executive Order 13563

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 rule has been designated a "not significant regulatory action." Accordingly, the rule will not be reviewed by the Office of Management and Budget.

Regulatory Impact Analysis

This rule has been designated as non-significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act at 5 U.S.C. 601–612, FNS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule incorporates into the regulations governing the Programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, as amended, two statutory provisions set forth in the Healthy, Hunger-Free Kids Act of 2010.

The HHFK Act requires State and local cooperation in USDA studies and evaluations related to programs authorized under the NSLA and the CNA. The HHFK Act also amends the NSLA by stipulating that Federal funds available for Programs authorized in the NSLA and CNA must not be subject to State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

The provision implementing Section 305 is applicable to States, WIC and FMNP State agencies, State educational agencies, local educational agencies, local WIC and FMNP agencies, schools, institutions, facilities, and contractors; however, the provision simply requires cooperation with studies and evaluations and will not have a significant economic impact on affected parties. The provision implementing Section 361 are applicable to all State agencies, and, in the case of the WIC Program and the FMNP, local agencies that administer the Programs authorized under the NSLA or the CNA and will not have a significant economic impact on a substantial number of small entities.

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, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Executive Order 12372

The nutrition assistance programs affected by this rulemaking are listed in the Catalog of Federal Domestic Assistance as follows:

- WIC No. 10.557
- FMNP No. 10.572
- NSLP No. 10.555
- SBP No. 10.553
- SAE No. 10.560
- SMP No. 10.556
- CACFP No. 10.558
- SFSP No. 10.559

For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

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. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

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

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, "Civil Rights Impact Analysis," and 1512–1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability, nor is it intended to have a differential impact on minority-owned or operated business

establishments, and woman-owned or operated business establishments that participate in the Programs affected by this rulemaking.

Federal WIC regulations specifically prohibit State agencies that administer the WIC Program, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 246.8 for the nondiscrimination policy in the WIC Program; 7 CFR 248.7 for the nondiscrimination policy in the FMNP).

In the NSLP, the regulation in 7 CFR 210.23(b) seeks to ensure non-discrimination in the operation of the school meals programs by prohibiting the denial of meal benefits to any child because of race, color, national origin, age, sex, or disability. It also requires State agencies and school food authorities to 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 113-6. Other regulatory provisions (7 CFR 210.9(b)(11), 7 CFR 210.18(h)(1)(iii), 7 CFR 220.7(e)(5), 7 CFR 220.7(e)(15), and 7 CFR 220.13(f)(4)) also require nondiscrimination in the operation of the lunch and breakfast programs or refer to the Department's nondiscrimination regulations (7 CFR part 15b).

In the Special Milk Program, 7 CFR 215.13a(d)(5) requires program operators to have a free milk policy statement that includes an assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin. In addition, 7 CFR 215.14 requires that the school food authority's agreement with the State agency contain the assurances required by Department's regulations on nondiscrimination (7 CFR part 15b). Other regulatory provisions (7 CFR 215.7(d)(3), 215.11(b)(2)) also require nondiscrimination in the operation of the milk program or refer to the Department's nondiscrimination regulations (7 CFR part 15b).

In the SFSP, the regulations at 7 CFR 225.7(g)(1) require institutions to agree to operate the Program in compliance with applicable Federal civil rights laws, including 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). At 7 CFR 225.6(c)(4)(i), each sponsor applying to participate in the SFSP must submit a statement of nondiscrimination in its policy for serving meals to children.

In the CACFP, the regulations at 7 CFR 226.6(b)(4)(iv) require that sponsors 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).

The provisions in this rule have no direct impact upon or involvement with Program participants.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

E.O. 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. In early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

We are not aware of any current Tribal laws that could be in conflict with this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public 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 final rule has no new information collection requirements. The information collection burdens associated with the signing of Federal-State agreements in this final rule have been previously approved under OMB No. 0584-0332, Form FNS-339, Federal-State Supplemental Nutrition Programs Agreement, and OMB No. 0584-0006, 0584-0005, 0584-0012, 0584-0280, 0584-0055, 0584-0067, Form FNS-74. The information collection burdens associated with participating in a study or an evaluation will be covered under separate Information Collection Packages that are specific to a particular study or evaluation that will be submitted to OMB for approval.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. Also, State agencies may provide Program information, as well as their financial reports, to FNS electronically.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

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.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and

recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Nutrition education, Public assistance programs, WIC.

7 CFR Part 248

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR parts 210, 215, 220, 225, 226, 235, 246 and 248 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Section 210.23 is amended to add a new paragraph (e) as follows:

§ 210.23 Other responsibilities.

(e) Program evaluations. States, State agencies, local educational agencies, school food authorities, 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 and the Child Nutrition Act of 1966.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 3. The authority citation for 7 CFR Part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 4. Section 215.7 is amended by adding a new paragraph (f) to read as follows:

§ 215.7 Requirements for participation.

(f) Program evaluations. Local educational agencies, school food authorities, schools, child care institutions 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 and the Child Nutrition Act of 1966.

■ 5. Section 215.11 is amended by adding a new paragraph (f) to read as follows:

§ 215.11 Special responsibilities of State agencies.

(f) Program evaluations. States, State agencies, 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 and the Child Nutrition Act of 1966.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 7. Section 220.7 is amended by adding a new paragraph (g) to read as follows:

§ 220.7 Requirements for participation.

(g) Program evaluations. Local educational agencies, school food authorities, 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 and the Child Nutrition Act of 1966.

■ 8. Section 220.13 is amended by adding a new paragraph (m) to read as follows:

§ 220.13 Special responsibilities of State agencies.

(m) Program evaluations. States, State agencies, 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 and the Child Nutrition Act of 1966.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 9. The authority citation for 7 CFR 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).

■ 10. Section 225.5 is amended by adding a new paragraph (a)(5) to read as follows:

§ 225.5 Payments to State agencies and use of Program funds.

(a) * * *

(5) Full use of Federal funds. States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including, hiring freezes, work furloughs, and travel restrictions.

■ 11. Section 225.18 is amended by adding a new paragraph (j) to read as follows:

§ 225.18 Miscellaneous administrative provisions.

(j) Program evaluations. States, State agencies, sponsors, sites 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 and the Child Nutrition Act of 1966, as amended.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 12. The authority citation for 7 CFR Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 13. Section 226.8 is amended by redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively; and by adding a new paragraph (e) to read as follows:

§ 226.8 Audits.

(e) Full use of Federal funds. States and State agencies must support the full use of Federal funds provided to State agencies under 226.4(j) of this part to support State audit activities, and exclude such funds from State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

■ 14. Section 226.25 is amended by adding a new paragraph (h) to read as follows:

§ 226.25 Other provisions.

(h) Program evaluations. States, State agencies, institutions, facilities 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 and the Child Nutrition Act of 1966.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 15. The authority citation for 7 CFR Part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 16. Section 235.6 is amended by adding a new paragraph (i) to read as follows:

§ 235.6 Use of funds.

* * * * *

(i) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 17. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 18. Section 246.3 is amended to add a new paragraph (c)(3), as follows:

§ 246.3 Administration.

* * * * *

(c) * * *

(3) The written agreement must include a statement that supports full use of Federal funds provided to State agencies for the administration of the WIC Program, and excludes such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 19. Section 246.26 is amended by adding a new paragraph (k) to read as follows:

§ 246.26 Other provisions.

* * * * *

(k) *Program evaluations.* State and local WIC agencies 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 and the Child Nutrition Act of 1966 (42 U.S.C. 1786).

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ 20. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 21. Section 248.3 is amended by redesignating paragraph (c) introductory text as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 248.3 Administration.

* * * * *

(c) * * *

(2) The written agreement must include a statement that supports full use of Federal funds provided to State agencies for the administration of the FMNP, and excludes such funds from State budget restrictions or limitations, including hiring freezes, work furloughs, and travel restrictions.

* * * * *

■ 22. Section 248.24 is amended by adding a new paragraph (d) to read as follows:

§ 248.24 Other provisions.

* * * * *

(d) *Program evaluations.* State and local FMNP agencies 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 and the Child Nutrition Act of 1966 (42 U.S.C. 1786).

Dated: June 23, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011-16282 Filed 6-28-11; 8:45 am]

BILLING CODE 3410-30-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-3220; File No. S7-25-10]

RIN 3235-AK66

Family Offices

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting a rule to define "family offices" that will be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and thus will not be subject to regulation under the Advisers Act.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah ten Siethoff, Senior Special Counsel, or Vivien Liu, Senior Counsel, at (202) 551-6787 or IArules@sec.gov,

Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting rule 202(a)(11)(G)-1 [17 CFR 275.202(a)(11)(G)-1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the "Advisers Act" or "Act").¹

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I. Background

On October 12, 2010, the Commission issued a release proposing new rule 202(a)(11)(G)-1 that would exempt "family offices" from regulation under the Advisers Act.² We proposed this rule in anticipation of the Dodd-Frank Wall Street Reform and Consumer Protection Act's (the "Dodd-Frank Act")³ repeal of the private adviser exemption from registration contained in section 203(b)(3) of the Advisers Act, effective July 21, 2011, upon which many family offices currently rely.⁴

The Dodd-Frank Act creates in its place a new exclusion from the Advisers Act in section 202(a)(11)(G) under which family offices, as defined by the Commission, are not investment advisers subject to the Advisers Act.⁵ Historically, family offices that fell outside the private adviser exemption have sought and obtained from us orders under the Advisers Act declaring those offices not to be investment advisers within the intent of section

¹ 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified.

² See *Family Offices*, Investment Advisers Act Release No. 3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)] ("Proposing Release"). "Family offices" are entities established by wealthy families to manage their wealth and provide other services to family members. See section I of the Proposing Release for a discussion of family offices.

³ Public Law 111-203, 124 Stat. 1376 (2010), at section 403.

⁴ 15 U.S.C. 80b-2(b)(3). This provision exempts from registration any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company.

⁵ See section 409 of the Dodd-Frank Act.