

# Proposed Rules

Federal Register

Vol. 73, No. 60

Thursday, March 27, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 226

[FNS–2007–0022]

RIN 0584–AD15

#### Child and Adult Care Food Program: At-Risk Afterschool Meals in Eligible States

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Child and Adult Care Food Program (CACFP) regulations to implement provisions from the Agriculture Risk Protection Act of 2000, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, and the Consolidated Appropriations Act of 2008, that authorize reimbursement to eligible States for a meal (normally a supper) served by at-risk afterschool care programs. The eligible States are Delaware, Illinois, Michigan, Missouri, New York, Oregon, Pennsylvania, and West Virginia. The intent of this proposed rule is to conform CACFP regulations to statutory amendments that provide an additional meal for at-risk children through age 18 who are participating in afterschool programs in the eligible States. The Food and Nutrition Service (FNS) implemented the statutory mandates through written policy guidance upon enactment of the statutory provisions.

**DATES:** To be assured of consideration, written comments must be received or postmarked on or before May 27, 2008.

**ADDRESSES:** FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 640, Food and Nutrition

Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

- *Fax:* Submit comments by facsimile transmission to: (703) 305–2879. Please address your comments to Mr. Eadie and identify your comments as “CACFP: At-Risk Afterschool Meals”.

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

Comments submitted in response to this rule will be included in the record and will be 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. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### 1. What are at-risk afterschool meals?

Afterschool meals in the CACFP are served to at-risk children participating in eligible afterschool care programs in selected States as authorized by law. At-risk afterschool meals were authorized by section 243(i) of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), which amended section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)) (NSLA).

This provision followed an earlier authorization for afterschool snack reimbursements through the CACFP by the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336). Public Law 105–336 expanded the availability of snacks to children ages 13 through 18 in the CACFP through at-risk afterschool care centers that are located in the attendance area of a school where 50 percent or more of the enrolled children are certified as eligible to receive free or

reduced price school meals. Public Law 105–336 also provided for the nationwide availability of snacks in the National School Lunch Program (NSLP). A proposed rule to implement the statutory provisions for afterschool snacks in the NSLP and CACFP was published on October 11, 2000 (65 FR 60502). The proposal had a 90-day comment period; 33 comment letters were received. A final rule, Afterschool Snacks in the Child and Adult Care Food Program, was published on July 31, 2007 (72 FR 41591). A final rule on serving afterschool snacks in the NSLP is expected to be published in 2008.

As stipulated by law, at-risk meals and snacks are available to children through age 18 (or any age if disabled) who are participating in an afterschool care program under the CACFP. The afterschool care program must be located in the geographical area of a school in which at least 50 percent of the children who are enrolled are certified eligible for free or reduced price meals. Although at-risk afterschool snacks are available in all States, at-risk afterschool meals are only available in States authorized by section 17(r)(5) of the NSLA—currently, Delaware, Illinois, Michigan, Missouri, New York, Oregon, Pennsylvania, and West Virginia. To be eligible, afterschool care programs must be organized primarily to provide care to at-risk school children after school, or on weekends, holidays, or school vacations and must provide educational or enrichment activities. At-risk meals and snacks must be served free of charge to the participants and are reimbursed at the applicable free rates for meals and snacks.

###### 2. How were the States selected for at-risk afterschool meals?

Initially, only six States were authorized to be reimbursed for meals served in at-risk afterschool programs. Four of the six States were named in the law (Delaware, Michigan, Missouri, and Pennsylvania); two remaining States were to be selected by the Secretary based upon competitive applications. As described in the following paragraph, the Department selected New York and Oregon through the competitive application process. The seventh State, Illinois, was added by section 771(3) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Appropriations Act, 2002 (Pub. L. 107–76, 115 Stat. 745, November 28, 2001), and the eighth State, West Virginia was added by section 744, division A of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, December 26, 2007). Both laws amended section 17(r)(5) of the NSLA (42 U.S.C.1766(r)).

3. How did USDA select the other two States?

Acting on the statutory requirement to select two States competitively, FNS distributed applications to all CACFP State agencies in August 2000. Eleven State agencies submitted applications by the October 2000 deadline. FNS rated the submissions using the following criteria: demonstration of need; State support of afterschool care programs; and status of at-risk afterschool care programs in CACFP.

The applicants were notified in December 2000 of the Department’s selections.

4. When were these States authorized to begin at-risk afterschool meal operations?

The four States initially named in the statute, Delaware, Michigan, Missouri, and Pennsylvania, were eligible to reimburse at-risk afterschool care centers for meals beginning on June 20, 2000. The two additional States selected by USDA, New York and Oregon, were eligible to receive reimbursement for afterschool meals in January 2001. The seventh State, Illinois, was notified in November 2001 of its eligibility. The eighth State, West Virginia, was notified in December 2007 of its eligibility.

5. How did USDA help the States implement the at-risk afterschool meal provision?

FNS convened a meeting of the original six at-risk “supper” States (Delaware, Michigan, Missouri, New York, Oregon, and Pennsylvania) on April 4, 2001, at FNS headquarters’ offices in Alexandria, Virginia. The meeting focused on providing technical assistance and exchanging

implementation strategies for at-risk suppers. The exchange of information revealed wide variations in the implementation of the at-risk supper component by the eligible State agencies. For example, strict licensing requirements in one State prevented aging public school buildings from being used as afterschool care centers while other States had no licensing requirements for afterschool care centers. Some jurisdictions even lacked health or safety requirements for afterschool programs.

In 2002 and 2003, FNS continued to provide technical assistance through conference calls with administrators from the eligible at-risk afterschool “supper” States.

Comments and suggestions made by the participants of the April 2001 meeting and subsequent conference calls in 2002 and 2003 provided FNS with valuable insight into operational issues that contributed to the development of policy in the at-risk afterschool care component of the Program as reflected in policy and guidance issued by FNS and in the development of this proposed rule.

6. Why does the proposed rule use the term “at-risk meals” instead of “at-risk suppers”?

To emphasize the eligibility for reimbursement of any one meal served to children attending at-risk afterschool care centers in eligible States when they are not in school, we have dropped the use of the term “at-risk afterschool suppers” in favor of the more accurate term, “at-risk afterschool meals.”

The issue was raised whether at-risk afterschool centers in the eligible States are limited to suppers or whether other meals may be served and reimbursed at the free rate under the at-risk provisions. It was pointed out that the statutory language specifies the provision of at-risk meals, not suppers, and that use of the term “at-risk suppers” may inadvertently restrict eligible at-risk programs that operate on weekends and school holidays to seek

reimbursement for or serve only the supper meal. However, the at-risk meal reimbursement is not limited exclusively to suppers when an eligible at-risk afterschool center provides care when school is closed, such as on the weekends or vacations during the regular school year.

7. What is USDA’s approach to implementing at-risk afterschool meals in the CACFP regulations?

We propose to track the provisions for at-risk afterschool meals as closely as possible to the regulatory requirements already in place for at-risk afterschool snacks; the CACFP at-risk afterschool snack provisions were published in a final rule on July 31, 2007 (72 FR 41591). This is consistent with the treatment of at-risk meals in the statute; both at-risk snacks and meals are authorized under the same at-risk provisions in the NSLA at section 17(r) (42 U.S.C. 1766(r)). In addition, most of the provisions contained in this rule would propose the continuation of requirements that FNS has previously provided to the eligible States on the implementation of at-risk afterschool meals.

8. What proposed provisions are similar to at-risk afterschool snack provisions?

This rule proposes to extend the at-risk snack provisions located in 7 CFR 226.17a and in other sections of the CACFP regulations to include at-risk meals. These requirements include payments to at-risk afterschool care centers, eligible organizations and afterschool care programs, application procedures, participant eligibility for at-risk meals, licensing requirements, State agency approval, data requirements for determining area eligibility, reporting and recordkeeping requirements, and monitoring. The following is a table that provides a summary of the regulatory provisions that we propose to extend to at-risk afterschool meals in the eligible States.

AT-RISK AFTERSCHOOL CARE PROVISIONS TO INCLUDE AFTERSCHOOL MEALS AND SNACKS

Provision	Description
Eligible organizations 7 CFR 226.2 and 226.17a(a).	For snacks, at-risk afterschool centers must be located in eligible areas and provide afterschool care. For meals, at-risk afterschool centers must be located in eligible areas in one of the eligible States and provide afterschool care.
Restrictions on for-profit center participation 7 CFR 226.2, 226.10(c), 226.11(b)(3), 226.11(c)(4), 226.17(b)(4), 226.17a(a)(2).	For-profit centers may not count at-risk children toward meeting the monthly eligibility criteria (25 percent of the children (enrolled or licensed capacity, whichever is less) must be eligible for free or reduced price meals or Title XX benefits).
Eligible afterschool care programs 7 CFR 226.17a(b).	The primary purpose of the eligible afterschool care program is to provide afterschool care, and it must provide education or enrichment activities.
Eligible children 7 CFR 226.2, 226.17a(c) .....	Children must be 18 and under or meet the CACFP definition of “Persons with disabilities”.
Eligible area 7 CFR 226.2, 226.17a(i) .....	Eligible area is defined as the attendance area of a school in which at least 50 percent of enrolled children are eligible for free or reduced price school meals.

## AT-RISK AFTERSCHOOL CARE PROVISIONS TO INCLUDE AFTERSCHOOL MEALS AND SNACKS—Continued

Provision	Description
Licensing/approval requirements 7 CFR 226.6(d)(1), 226.17a(d).	The center must be licensed or approved if required by State or local licensing authority; otherwise, it must meet State, local, or Federal health and safety requirements.
Application procedures 7 CFR 226.6(b)(1), 226.17a(e).	The organization must submit written application to sponsoring organization or to the State agency (if it is an independent center) and must provide documentation of area eligibility.
Handling renewals or changes 7 CFR 226.6(b)(2), 226.6(f)(2)(ii), 226.6(f)(3)(ii), 226.17a(g).	At-risk afterschool centers must submit changes to sponsor or State agency as appropriate and reapply every 3 years. Area eligibility is valid for 5 years, unless the State agency chooses to incorporate area eligibility decisions into the three-year application cycle.
Cost of at-risk snacks and meals 7 CFR 226.17a(j).	Snacks and meals must be served free of charge.
Limit on daily reimbursements 7 CFR 226.17a(k).	Benefits under the at-risk provisions are one at-risk snack and one at-risk meal (in eligible States) per child per day, which count toward the maximum benefit in CACFP of two meals and one snack or one meal and two snacks per child per day.
Meal pattern requirements 7 CFR 226.17a(l), 226.20(b), 226.20(c).	At-risk afterschool snacks and meals must meet CACFP meal pattern requirements.
Time periods for meals or snacks 7 CFR 226.17a(m).	A snack and/or meal is served after a child's school day. On weekends and holidays, with State agency approval, one snack may be served anytime, and in the eligible States, any one meal (breakfast, lunch, or supper) may be served.
Reimbursement rates 7 CFR 226.17a(n) .....	Centers are reimbursed at the applicable free rate for snacks or meals.
Recordkeeping requirements 7 CFR 226.17a(o)	In addition to other recordkeeping requirements for CACFP centers, at-risk afterschool centers must take daily attendance and count the number of snacks and/or meals served.
Reporting requirements 7 CFR 226.17a(p) .....	In addition to other reporting requirements for CACFP centers, at-risk afterschool centers must report the number of snacks and/or meals served each day.
Monitoring requirements 7 CFR 226.17a(q), 226.6(m), 226.16(d)(4).	Monitoring is the same as for other CACFP center-based programs.

*9. What new provisions affecting at-risk meals and/or snacks are proposed in this rule?*

This rule proposes to add definitions at 7 CFR 226.2 for *At-risk afterschool meal* and *At-risk afterschool snack*. We propose these definitions to distinguish the snacks and meals served under the at-risk afterschool component of the Program from the meals and snacks served under the other components of the Program, such as day care homes, adult day care centers, outside-school-hours care centers, and traditional child care centers. At-risk afterschool meals and snacks must meet the same meal pattern requirements as all other meals and snacks served under the CACFP (as described at 7 CFR 226.20(a)(1) through (a)(4)). However, the at-risk meal and/or snack services differ from other meals and snacks because they are served free to all participants through age 18 and are reimbursed at the applicable free rate. At-risk afterschool meals are further distinguished from at-risk afterschool snacks by being limited to the eligible States. These distinguishing factors necessitate the need for separate definitions of at-risk snacks and at-risk meals.

In addition, we propose to clarify in 7 CFR 226.17a(m) the times when an at-risk snack or meal may be served. When school is in session, at-risk afterschool care centers must serve the snack or meal after school hours. On each day of a weekend or holiday program during the regular school year, State agencies may approve reimbursement of a snack

served at any time of the day and, in the eligible States, any one meal (breakfast, lunch, or supper). The prohibition of at-risk afterschool snack or meal services during summer vacation (except for centers located in the attendance area of a school operating on a year-round schedule) is unchanged.

## II. Procedural Matters

### *Executive Order 12866*

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

### *Regulatory Impact Analysis*

The Regulatory Impact Analysis completed for this proposed rule is available from: Julie Brewer, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305-2590. The analysis is summarized below.

### *Need for Action*

The CACFP at-risk afterschool meal component was authorized by the Agriculture Risk Protection Act of 2000 (Pub. L. 106-224), and modified by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107-76), and the Consolidated Appropriations Act, 2008 (Pub. L. 110-161). The at-risk meal component has been implemented through FNS

guidelines since its creation. FNS guidelines also govern the CACFP at-risk afterschool snack component; the guidelines for the afterschool snack and meals components of CACFP are largely the same. A final rule for the afterschool snack component was published on July 31, 2007 (72 FR 41591). Relatively minor changes to the regulations as amended by that rule are needed to make the regulations fully applicable to both the snack and meal components of the at-risk afterschool care program. This rule proposes those changes. This rule also contains language that would, when published as a final rule, codify the elements of current guidelines unique to the afterschool meal component.

### *Benefits*

Among the motivating factors to establish the at-risk afterschool snack program was a desire to support educational and enriching afterschool care programs for children up to 18 years of age in at-risk neighborhoods in order to reduce juvenile crime and educational underachievement. FNS cannot quantify the impact of the at-risk meals program on juvenile crime or educational achievement. However, participation in these programs is growing and thus these outcomes are to some extent fostered. In the first four years of the program, growth in afterschool meals served by the seven at-risk States eligible at that time ranged from 2 to 8 percent higher than afterschool meals served by non-participating States. However, data

reported since 2004 suggests that this disparity in growth has ended, at least temporarily, and it is too soon to credit the program with a sustained long-term impact on afterschool program attendance.

Although some at-risk meals served afterschool replaced meals served by outside-school-hours care centers, there is also considerable evidence that the total number of children reached by CACFP has increased, to date, as a result of this program. The percentage of at-risk meals that would have been served in traditional child care centers in the absence of the at-risk program is, of course, uncertain. However, it may be as high as 70 percent. That figure suggests that 30 percent of total at-risk participants, or roughly 37,000 children on an average school day during FY 2006, would not have received a federally-reimbursable supper if not for the at-risk program. The program benefits those 37,000 children by providing them with a meal that conforms to USDA meal patterns. In addition, all children served by the at-risk program, approximately 123,000 per day during FY 2006, benefit from the program's structured educational or enrichment elements.

#### *Costs*

This proposed rule would, when published as a final rule, codify guidelines governing an existing program component that started in 2001 as mandated by statute. As a result, there are no new reimbursement costs associated with the rule. The at-risk afterschool meals program cost the Federal government a total of \$139.8 million in FY 2002 to FY 2006, and is projected to cost a total of \$224.6 million from FY 2007 to FY 2011. Costs include both the reimbursement rate that the Federal government pays for each meal, as well as the commodity assistance given to the program. State reporting data do not clearly detail how many additional meals are being served to new participants of the at-risk afterschool meals program that would not have participated in the outside-school-hours care center program, thus the incremental costs of the at-risk meals program are likely small but cannot be determined.

#### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial

number of small entities. At-risk afterschool care centers in the eligible States choose whether they wish to participate in this additional meal service. Most of these institutions that will choose to add a meal service are already providing snacks under the at-risk component of the CACFP. The additional meal service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and Claim for Reimbursement.

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

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

#### *Executive Order 12372*

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *Executive Order 13132*

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. This rule does not impose substantial or direct compliance costs on State and local governments. 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 when published in final is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph 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. In the CACFP, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures, and at 7 CFR 226.22, 3016, and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

#### *Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis" to identify and address any major civil rights impact the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. The regulations at 7 CFR 226.6(b)(4)(iv) require that CACFP institutions 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 226.6(m)(1), State agencies are required to monitor CACFP

institution compliance with these laws and regulations.

#### 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. Information collections in this proposed rule have been previously approved under OMB #0584-0055. There is no new burden associated with this proposed rule.

#### 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 for citizen access to Government information and services, and for other purposes.

#### List of Subjects in 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.

Accordingly, 7 CFR part 226 is proposed to be amended as follows:

### PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 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).

2. In § 226.2:

a. Add new definitions of “At-risk afterschool meal” and “At-risk afterschool snack” in alphabetical order; and

b. Amend the last sentence of the introductory text of the definition of “For-profit center” by adding the words “and/or meal” after the words “at-risk afterschool snack”.

The additions read as follows:

#### § 226.2 Definitions.

\* \* \* \* \*

*At-risk afterschool meal* means a meal that meets the requirements described in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3), that is reimbursed at the appropriate free rate and is served by an

*At-risk afterschool care center* as defined in this section, which is located in a State designated by law or selected by the Secretary as directed by law.

*At-risk afterschool snack* means a snack that meets the requirements described in § 226.20(b)(6) and/or (c)(4) that is reimbursed at the free rate for snacks and is served by an *At-risk afterschool care center* as defined in this section.

\* \* \* \* \*

3. In § 226.4, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

#### § 226.4 Payments to States and use of funds.

\* \* \* \* \*

(d) \* \* \* For at-risk afterschool meals and at-risk afterschool snacks served to children, funds will be made available to each eligible State agency in an amount equal to the total calculated by multiplying the number of at-risk afterschool meals and the number of at-risk afterschool snacks served in the Program within the State by the national average payment rate for free meals and free snacks, respectively, under section 11 of the Richard B. Russell National School Lunch Act.

\* \* \* \* \*

#### § 226.9 [Amended]

4. In § 226.9, amend paragraph (b)(2) by removing the words “at-risk afterschool snack component” and adding in their place the words “at-risk afterschool care component”.

5. In § 226.10, revise the fourth sentence of the introductory text of paragraph (c) to read as follows:

#### § 226.10 Program payment procedures.

\* \* \* \* \*

(c) \* \* \* However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. \* \* \*

\* \* \* \* \*

6. In § 226.11:

a. Revise the second sentence of paragraph (b)(3);

b. Revise paragraph (c)(2); and

c. Revise the second sentence of paragraph (c)(4).

The revisions read as follows:

#### § 226.11 Program payments for centers.

\* \* \* \* \*

(b) \* \* \*

(c) \* \* \* However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. \* \* \*

(c) \* \* \*

(2) *At-risk afterschool care institutions*. Except as provided in paragraph (c)(4) of this section, State agencies must base reimbursement to each at-risk afterschool care center on the number of at-risk afterschool snacks and/or at-risk afterschool meals that are served to children.

\* \* \* \* \*

(4) \* \* \* However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. \* \* \*

\* \* \* \* \*

7. In § 226.17, revise the third sentence of paragraph (b)(4) to read as follows:

#### § 226.17 Child care center provisions.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be included in this percentage.

\* \* \*

\* \* \* \* \*

8. In § 226.17a:

a. Revise the heading of paragraph (a) and revise paragraph (a)(1) introductory text;

b. Add a new paragraph (a)(1)(v);

c. Revise paragraph (a)(2);

d. Revise paragraphs (c), (j), (k), (l), (m), and (n);

e. Revise paragraphs (o)(2), (o)(3), and (o)(4); and

f. Revise paragraph (p).

The addition and revisions read as follows:

#### § 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals.*

(1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. To receive reimbursement for at-risk afterschool meals, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

\* \* \* \* \*

(v) Organizations eligible to be reimbursed for at-risk afterschool meals must be located in one of the eligible States designated by law or selected by the Secretary as directed by law.

(2) *Limitations.* (i) To be reimbursed for at-risk afterschool snacks and/or at-risk afterschool meals, all organizations must:

(A) Serve the at-risk afterschool snacks and/or at-risk afterschool meals

to children who are participating in an approved afterschool care program; and  
 (B) Not exceed the authorized capacity of the at-risk afterschool care center.

(ii) In any calendar month, a for-profit center must be eligible to participate in the Program as described in the definition of For-profit center in § 226.2. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility.

\* \* \* \* \*

(c) *Eligibility requirements for children.* At-risk afterschool snacks and/or at-risk afterschool meals are reimbursable only if served to children who are participating in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of *Persons with disabilities* in § 226.2.

\* \* \* \* \*

(j) *Cost of at-risk afterschool snacks and meals.* All at-risk afterschool snacks and at-risk afterschool meals served under this section must be provided at no charge to participating children.

(k) *Limit on daily reimbursements.* Only one at-risk afterschool snack and (in eligible States) one at-risk afterschool meal per child per day may be claimed for reimbursement. A center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the at-risk afterschool snack and the at-risk afterschool meal. All meals and snacks must be claimed in accordance with the requirements for the applicable component of the Program.

(l) *Meal pattern requirements for at-risk afterschool snacks and at-risk afterschool meals.* At-risk afterschool snacks must meet the meal pattern requirements for snacks in § 226.20(b)(6) and/or (c)(4); at-risk afterschool meals must meet the meal pattern requirements for meals in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3).

(m) *Time periods for snack and meal services—(1) At-risk afterschool snacks.* When school is in session, the snack must be served after the child's school day. With State agency approval, the snack may be served at any time on weekends and vacations during the regular school year. Afterschool snacks may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(2) *At-risk afterschool meals.* When school is in session, the meal must be served after the child's school day. With State agency approval, any one meal may be served (breakfast, lunch, or supper) per day on weekends and vacations during the regular school year. Afterschool meals may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(n) *Reimbursement rates.* At-risk afterschool snacks are reimbursed at the free rate for snacks. At-risk afterschool meals are reimbursed at the respective free rates for breakfast, lunch, or supper.

(o) \* \* \*

(2) The number of at-risk afterschool snacks prepared or delivered for each snack service and/or (in eligible States) the number of at-risk afterschool meals prepared or delivered for each meal service;

(3) The number of at-risk afterschool snacks served to participating children for each snack service and/or (in eligible States) the number of at-risk afterschool meals served to participating children for each meal service; and

(4) Menus for each at-risk afterschool snack service and each at-risk afterschool meal service.

(p) *Reporting requirements.* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of at-risk afterschool snacks and/or (in eligible States) the total number of at-risk afterschool meals served to eligible children based on daily attendance rosters or sign-in sheets.

\* \* \* \* \*

Dated: March 18, 2008.

**Nancy Montanez Johner,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. E8-6235 Filed 3-26-08; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1230

[Docket No. AMS-LS-07-0143]

### Pork Promotion, Research and Consumer Information Program; Section 610 Review

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

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This action announces the Agricultural Marketing Service's (AMS)

review of the Pork Promotion, Research, and Consumer Information Program (Program), which is conducted under the Pork Promotion, Research, and Consumer Information Order (Order), under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice must be received by May 27, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Fax: (202) 720-1125; or, online at [www.regulations.gov](http://www.regulations.gov). All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the internet at [www.regulations.gov](http://www.regulations.gov) or during regular business hours at the address above.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch; Telephone: (202) 720-1115; Fax: (202) 720-1125, or E-mail [Kenneth.Payne@usda.gov](mailto:Kenneth.Payne@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Order (7 CFR part 1230) is authorized under the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*). As part of a comprehensive strategy to strengthen the pork industry's position in the marketplace, this national pork program maintains and expands existing domestic and foreign markets and develops new markets for pork and pork products. The program is funded by a mandatory assessment of \$0.40 per hundred-dollars of market value. All producers owning and marketing swine, regardless of the size of their operation or the value of their swine, must pay the assessment. A comparable assessment is collected on all imported swine, pork, and pork products. Assessments collected under this program are used for promotion, research, consumer information, and industry information.

The national program is administered by the National Pork Board (Board), which is composed of 15 producer members. Board members serve 3-year terms, but no individual may serve more than two consecutive 3-year terms. Producer members are selected by the National Pork Producers Delegate Body, a group of 163 producer and importer members that represent all 50 States and importers. The program became