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## Part III

# Department of Agriculture

**Food and Nutrition Service**

**7 CFR Part 226**

**Child and Adult Care Food Program; Improving Management and Program Integrity; Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 226**

**RIN 0584–AC24**

## Child and Adult Care Food Program; Improving Management and Program Integrity

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes changes to the Child and Adult Care Food Program regulations. These changes result from the findings of State and Federal Program reviews and from audits and investigations conducted by the Office of Inspector General. This rule proposes to revise: State agency criteria for approving and renewing institution applications; certain State- and institution-level monitoring requirements; Program training and other operating requirements for child care institutions and facilities; and other provisions which we are required to change as a result of the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Additional statutory changes resulting from enactment of Public Law 106–224, the Agricultural Risk Protection Act of 2000, will be addressed in one or more future rulemaking actions. The proposed changes are primarily designed to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

**DATES:** To be assured of consideration, comments must be postmarked on or before December 11, 2000. Comments will also be accepted via E Mail submission at the following Internet address: CNDPROPOSAL@FNS.USDA.GOV.

**ADDRESSES:** Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Morawetz or Ms. Melissa Rothstein at the above address or by telephone at (703) 305–2620. A regulatory impact analysis was completed as part of the development of this proposed rule. Copies of this analysis may be requested from Mr. Morawetz or Ms. Rothstein.

**SUPPLEMENTARY INFORMATION:**

### Background

*Why is USDA issuing this proposed rule?*

In recent years, State and Federal Program reviews have found numerous cases of mismanagement, abuse, and, in some instances, fraud by child care institutions and facilities, especially (though not exclusively) in the family day care home component of the Child and Adult Care Food Program (CACFP). These reviews revealed weaknesses in State agency and institution management controls over Program operations, and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of Program funds for non-Program expenditures; and improper meal reimbursements due to incorrect meal counts or to miscategorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP.

*Why did OIG conduct these audits and investigations?*

The Food and Nutrition Service (FNS) asked OIG to conduct an audit of the family day care home component of CACFP because of the results of State and Federal Program reviews. OIG selected five States for inclusion in the audit based on the States' total family day care home sponsor and provider enrollment, program costs, and geographic location. Then, it randomly selected family day care sponsors and providers within those five States to be included in the audits.

*What did the OIG audits reveal?*

In 1995, OIG released a report (No. 27600–6–At) which presented the results of these five audits. The audits evaluated:

- The adequacy of FNS, State agency, and family day care home sponsors' financial and administrative controls over meal claims;
- The accuracy of Program and participation data and claims for reimbursement submitted by family day care home sponsors; and
- Whether State agencies and participating institutions complied with applicable laws, regulations, and guidance.

These audits found serious types of regulatory noncompliance by both sponsors and homes, including:

- Meals claimed for absent children;
- Meals claimed for nonexistent homes and children;
- Lack of documentation for meal counts and/or menu records;
- Failure by sponsors to perform required monitoring visits; and
- Sponsors' failure to require providers to attend training.

Later, OIG conducted additional audits of family day care home and child care center sponsors, many of which State or Federal Program administrators had suspected of having serious management problems.

These targeted audits, which were released in August of 1999 and were referred to collectively as ''Operation Kiddie Care'' by OIG, confirmed the findings of the 1995 audits and developed additional findings as well.

*What were OIG's recommendations to FNS in the 1995 audit?*

Based on its findings, OIG's 1995 audit recommended changes to CACFP review requirements and management controls. Their most significant recommendations were that the CACFP regulations be amended to require that:

- Sponsors and State agencies make unannounced monitoring visits to day care homes;
- Parental contacts be made in order to verify children's Program participation;
- Sponsor reviews of day care homes include, at a minimum, reconciliation of enrollment, attendance, and meal claim data;
- All family day care home providers receive training each year; and
- At a minimum, all State agency reviews include certain specified review elements.

In total, the 1995 audit made fifteen recommendations. We have completed action on the five OIG recommendations from the national audit which do not require regulatory change. The other ten recommendations would require regulatory change, most of which are addressed in this preamble. Recommendations from the 1995 audit which were addressed in Public Law 106–224 will be addressed in a separate rulemaking action.

We agree with the 1995 audit recommendations and believe they will support our efforts to improve CACFP administration. In some cases, we believe that OIG's recommendations

regarding family day care home sponsoring organizations and day care home providers have merit for other types of institutions and facilities participating in the Program as well.

*Is the Department including in this proposal any of the recommendations from OIG's 1999 ''Operation Kiddie Care'' audit?*

Yes. Most of the ''Operation Kiddie Care'' audit's recommendations for regulatory changes also appear in this proposed rule. Those which are not addressed in this rule will be included in a separate rulemaking action, due to the fact that they were included in Pub. L. 106–224. The single exception to this statement is that we have not incorporated, either in this proposal or in the separate rulemaking being developed to implement Pub. L. 106–224, the audit's recommendation for a major Program design change in the way that sponsoring organizations of family day care homes are reimbursed for their administrative expenses. We fully concur with OIG regarding the seriousness of the ''Kiddie Care'' audit's findings, and have already addressed a number of issues raised in that audit in Program training which was provided to State agency staff during the fall and winter of 1999–2000. Nevertheless, we have not received sufficient input from the public and from Program stakeholders to make legislative or regulatory proposals regarding Program design or structure at this time.

Therefore, we would like to use this opportunity to solicit comment on this recommendation from Program stakeholders and others who are knowledgeable of CACFP. The major program design recommendation from the ''Kiddie Care'' audit on which we are seeking public comment is OIG's proposal that we develop a new system of administrative reimbursement for sponsors of family day care homes. The current administrative reimbursement system for sponsors of family day care homes sets a cap on administrative expenses which is based on the total number of homes sponsored. Sponsors are paid the lesser of: the number of homes administered times a per home administrative rate; actual administrative costs; or the sponsor's approved budget. Thus, under the current structure, there is a built-in incentive for day care home sponsors to administer more homes, and a built-in disincentive to terminate homes' CACFP participation, even if the homes are doing a poor job of administering the Program, since a larger number of homes raises the ''ceiling'' on the sponsor's administrative earnings.

The management improvement training provided to State Program administrators addresses this problem by providing State agencies with the tools to perform better and more thorough reviews of sponsors' budgets and budget revisions, administrative costs will be held to reasonable levels, regardless of the ''ceiling'' resulting from the homes times rates calculation. However, even if these budget review techniques are fully implemented and work as intended, the current system may perpetuate some of the incentive for sponsors to administer more homes, because their administrative cost ceiling will continue to be determined by the number of homes administered. We are therefore asking readers of this rule to comment on the following possible alternatives to the current system of administrative reimbursement for sponsors of family day care homes:

- Eliminate ''homes times rates'' as a component of the administrative cost system, instead paying sponsors the lesser of actual costs or approved budget amounts;
- Establish a fixed percentage of the meal reimbursement distributed to providers as the sponsor's administrative payment. In other words, if the sponsor disburses $300,000 per month in meal reimbursements to its providers, they would receive, in addition to the $300,000 in meal reimbursements for its providers, up to some fraction (perhaps 10 to 15 percent) of that amount to cover all of their approved and allowable administrative expenses;
- Pay sponsors a fixed fee for each reimbursable meal served by their providers;
- Lower the per home administrative rates for sponsors of more than 200 homes, to reduce their financial incentive to sponsor more homes; and
- Any other system of administrative reimbursement which commenters might recommend.

Ultimately, we will analyze comments made in response to these possible alternatives to the current administrative reimbursement system, along with input gathered from other Program stakeholders, and either develop legislative proposals for congressional consideration or present a separate regulatory proposal for changes to this aspect of the Program, as appropriate. We plan to offer legislative proposals, and/or to issue another rulemaking or other guidance addressing these issues, as appropriate, no later than March 31, 2001.

*How is the remainder of this preamble organized?*

This rule proposes revisions to CACFP regulations based on the 1995 and 1999 OIG audit recommendations; the results of State and Federal administrative reviews; discussions with OIG and Program administrators regarding reviews, audits and investigations undertaken since 1995; and suggestions offered by Program administrators and included in comprehensive CACFP management improvement guidance which FNS issued in 1997 and 1998.

The preamble is divided into four parts:

I. State agency review of institutions' Program applications;

II. State agency and institution monitoring requirements;

III. Training and other operational requirements; and

IV. Other provisions mandated by Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, Pub. L. 104–193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998.

While many of the changes proposed in Parts I–III of this preamble are discretionary changes designed to improve Program management and streamline Program operations, the Department is also including a number of changes to the CACFP regulations which it is required to make by Pub. Laws 103–448, 104–193, and 105–336. Although the Department encourages public comments on its approach to implementing the changes required by these three laws, commenters are reminded that the provisions of these laws, amending the Richard B. Russell National School Lunch Act (NSLA), *require* that these changes be made. Most of the mandatory changes are located in Part IV of this preamble, though some appear in other parts of the preamble, depending on whether the statutory change was thematically related to the discretionary changes being discussed in another part of the preamble. Non-discretionary provisions will be identified in the preamble discussion.

In addition to the statutory provisions above, on June 20, 2000, President Clinton signed the Agricultural Risk Protection Act (ARPA) of 2000. Section 243 of that Act, entitled ''Child and Adult Care Food Program Integrity'', mandated a number of changes to CACFP designed to reduce the risk of Program fraud, abuse, or mismanagement. To implement these

mandated changes, we will soon address in a separate complementary rulemaking action provisions which relate to many of the issues and provisions which are addressed in this rulemaking. The new statutory changes affecting CACFP to be addressed in the second rulemaking are as follows:

(1) Restructuring of the definition of the term ''institution'' [Sec. 243(a)(1)–(7) of ARPA];

(2) Change to basic institution eligibility criteria:

(a) Institutions must not have been determined ineligible to participate in any publicly-funded program [Sec. 243(a)(8)(A)];

(b) Requirement that sponsors employ an appropriate number of monitoring staff [Sec. 243(a)(8)(B)];

(c) Restrictions on outside employment for sponsor employees [Sec. 243(a)(8)(D)]; and

(d) State bonding requirements [Sec. 243(a)(8)(D)];

(3) Conditions for approval of institutions [Sec. 243(b)(1)] including:

(a) Requiring all institutions participating in CACFP to be financially viable, administratively capable, and have internal controls in place to ensure Program accountability;

(b) Eliminating the participation of private nonprofit institutions which are in a ''moving towards tax exempt'' status; and

(c) Requiring that new sponsors demonstrate a need for their services, by showing that they provide Program benefits to currently unserved facilities or children.

(4) Basic monitoring requirements [Sec. 243(b)(2)];

(5) Provision of Program information to parents [Sec. 243(b)(4)];

(6) Allowable administrative expenses for sponsoring organizations [Sec. 243(b)(5)];

(7) Termination or suspension of participating organizations, corrective action, hearings, disqualified list [Sec. 243(c)];

(8) Funds recovery [Sec. 243(d)];

(9) Limitation on center sponsors' administrative expenses [Sec. 243(e)];

(10) Provider transfers [Sec. 243(f)];

(11) Addition of third State to for-profit demonstration project [Sec. 243(g)];

(12) Training and technical assistance on fraud and abuse identification and prevention [Sec. 243(h)];

(13) At-risk program [Sec. 243(i)]; and

(14) Withholding of State Administrative Expense Funds (SAE) due to State failure to train or monitor [Sec. 243(j)].

**Part I. State Agency Review of Institutions' Program Applications**

**A. State Agency Review of a New Institution's Application**

*What does the law say with regard to the duration of an application?*

Section 204(a)(3) of Pub. L. 101–147 amended section 17(d) of the NSLA (42 U.S.C. 1766(d)) by adding a new paragraph (2)(A) which requires the Department to ''develop a policy that allows institutions providing child care . . . , at the option of the State agency, to reapply for assistance . . . at 2-year intervals.'' It also requires that State agencies choosing this option must ''confirm on an annual basis'' that each participating institution is in compliance with the licensing and approval requirements set forth at section 17(a)(1) (42 U.S.C. 1766(a)(1)). Later, in 1994, section 116(b) of Pub. L. 103–448 amended section 17(d)(2)(A) (42 U.S.C. 1766 (d)(2)(A)) by extending the two-year CACFP reapplication interval to three years. The enactment of these provisions lessened the burden placed on State agencies and institutions by eliminating the requirement for an annual Program application. In addition, the provisions gave State agencies the option of allowing institutions to apply for participation at other than annual intervals.

*Are three-year and one-year applications the only options available to the State agency?*

No. Although the statute requires reapplication for participation at least once every three years, we believe that it does not require annual or biennial applications to be the only alternatives to the triennial option. Therefore, this rule proposes to remove the references to an annual application found in the introductory paragraphs of current sections 226.6(b) and 226.6(f), and in section 226.7(g), and to further revise section 226.6(b) to require each institution to reapply for participation at a time determined by the State agency, as long as not more than three years have elapsed since its last application approval. This proposal would not prevent administering agencies from retaining an annual application process; rather, it would give State agencies the option to consider whether the annual renewal of applications represents the most efficient and effective means of carrying out their Program responsibilities, and to consider any length of application between 12 and 36 months. In addition, if an institution submits a renewal application, and the State agency has not conducted a review of that institution since the last agreement was signed or extended but has reason to believe that such a review is immediately necessary, the State agency may approve the institution for a period of less than one year, pending the completion of such a review.

*Is the Department proposing changes other than giving State agencies the option of using three-year applications?*

Yes. We are aware of the desirability of establishing less burdensome application requirements. The original requirements were promulgated at a time when State agencies and institutions were required to deal with a new and rapidly expanding program. However, by 1990, when we convened the Task Force on Paperwork Reduction in Child Nutrition Programs (which was mandated by section 108 of Pub. L. 101–147, the Child Nutrition and WIC Reauthorization Act of 1989), the CACFP application was frequently cited as including redundant and unnecessary elements, and as requiring the annual submission of information for which updates either are not needed that frequently or are already collected in monthly reports. We therefore believe it is appropriate to consider regulatory changes other than the single change (giving State agencies the option of taking applications on an up to three-year cycle) required by the statute.

*What other general changes to the application process does this rule propose?*

There are four.

First, this rule proposes to reorganize sections 226.6(b) and (f). It proposes that section 226.6(b) set forth the broad requirements for the information which institutions must include in their applications, and that section 226.6(f) specify the frequency with which the institution would be required to update the information contained in its original application.

On September 26, 1995, we issued updated guidance pertaining to the multi-year application renewal option. This guidance gave State agencies an opportunity to implement the statutory changes prior to publication of a regulation, and also enabled them to eliminate from their applications any unnecessary or duplicative information which renewing institutions were previously required to submit. That guidance also provided State agencies with broad parameters for determining how often they need to require institutions to submit updated information concerning various aspects of the institution's Program operations.

Most of the provisions of that guidance are being proposed without change in this rule.

Second, current Program regulations at sections 226.6(b), 226.6(f), 226.7(g), 226.15(b), 226.16(b) and 226.23(a) all establish various requirements for Program applications. We propose to consolidate these requirements so that State agencies and institutions may more easily refer to them in the regulations during the application process.

Third, we also believe it is useful to differentiate between the application requirements for ''new'' and ''renewing'' institutions. It is appropriate to recognize these distinctions since institutions applying to enter the Program for the first time, or to re-enter the Program after a lapse in participation, should be evaluated on a different basis than those which have been participating for some time. Even greater attention needs to be paid to first-time applicants and applicants re-entering the Program after a lapse in participation, so that they will successfully operate the Program from the start.

We believe that the need to ensure that new applicants are brought into the Program successfully is best served by a regulation which establishes specific minimum requirements for applications submitted by *new* institutions, but which allows State agencies to largely manage the continued participation of *renewing* institutions through the application renewal process in the manner they see fit. Therefore, this rule proposes very specific application requirements for *new* institutions. However, for *renewing* institutions, this rule proposes to specify only that the reapplication be evaluated on the basis of the institution's ability to operate the Program properly, efficiently, and effectively as documented in its management plan (if the institution sponsors child care facilities), its administrative budget, and its prior record in operating the Program. The proposed revisions to section 226.6(f) would specify those information elements which institutions would be required to update on a regular basis, regardless of the duration of time which the State agency allows an application to be in effect.

Fourth, and finally, the results of OIG audit activity have convinced us that State agencies must be explicitly required to consult the seriously deficient list when reviewing any institution's application for participation. In several instances, OIG found that an institution or individual which had been terminated from CACFP for cause and placed on the seriously deficient list by one State was subsequently admitted to participation by another State. Thus, we are proposing to add regulatory language requiring that a State agency consult the seriously deficient list, and deny the application of any institution or individual on the list, whenever it reviews any institution's application to participate.

Accordingly, this proposed rule would remove the requirements for application content and the application process found at section 226.6(b)(1)–(10), section 226.6(f)(2) and (3), section 226.15(b), and section 226.23(a); add definitions of ''new'' and ''renewing'' institutions to section 226.2; revise and reorganize sections 226.6(b) and (f); and make other changes to relocate, revise, or delete the requirements of these and other parts of the current regulations, as follows.

*Won't a shorter Program application give State agencies less information about the institutions whose potential ability to operate the Program is being assessed?*

No. Although some may view less frequent applications and fewer application requirements as contrary to this proposal's stated intent to improve Program management, we do not believe that streamlined, multi-year application procedures for renewing institutions will impede State agencies' ability to improve Program management. In fact, the less frequent processing of renewal applications, coupled with the elimination of unnecessary information on the application, should allow State agencies to devote more time to evaluating applicant institutions' potential ability to operate the Program properly, efficiently, and effectively, especially through review of the administrative budgets submitted by all institutions and the management plans submitted by sponsoring organizations of homes and/or centers.

*What specific application requirements are in the current regulations?*

Section 226.6(b) of the current regulations establishes the broad State agency requirements governing the annual application process for institutions and for the facilities on whose behalf sponsoring organizations apply. As part of the annual application/re-application process, an institution must currently:

- Renew its Program agreement;
- Submit current enrollment and free and reduced price meal eligibility information [centers only];
- Submit enrollment information and an assurance that providers' own children enrolled in the Program are eligible for free and reduced price meals [sponsoring organizations of family day care homes only];
- Issue a nondiscrimination policy statement and media release;
- Submit a management plan [sponsoring organizations only];
- Submit an administrative budget;
- Submit documentation that child care facilities are in compliance with licensing/approval requirements;
- Submit documentation that they are in compliance with the requirements pertaining to receipt of Title XIX or Title XX benefits [proprietary centers only];
- Indicate a preference for commodities or cash-in-lieu of commodities [centers only]; and
- Indicate a preference to receive all, part or none of an advance payment.

Current section 226.6(b)(10) also requires State agencies to:

- Notify institutions within 15 calendar days of receipt of an incomplete application;
- Provide technical assistance to institutions which submitted an incomplete application; and
- Approve or disapprove applications within 30 calendar days of receipt of a complete application.

Current sections 226.6(f)(1)–(3) and 226.7(g) expand upon the requirements of sections 226.6(b)(1), (5), and (6) by describing the information to be included in the Program agreement and the management plan, and by establishing requirements pertaining to the State agency's review and approval of the administrative budget. Current section 226.15(b) reiterates the annual institution application requirements set forth in section 226.6(b) and requires that nonprofit institutions submit evidence of their tax exempt status in accordance with section 226.15(a). Current section 226.16(b) reiterates the annual application requirements pertaining to institutions which are sponsoring organizations of child care facilities, and section 226.23(a) requires that each institution submit, and State agencies approve, a free and reduced price policy statement to be used in all child care and adult day care facilities under the institution's supervision as part of the annual application process.

*What changes to the current requirements does this rulemaking propose, and why?*

Current section 226.6(b), introductory paragraph and (b)(1): Program agreement—

First, all references to the agreement under the current introductory

paragraph to section 226.6(b) would be removed; current section 226.6(b)(1) would be removed and replaced with a new section 226.6(b)(1); and the specific requirements pertaining to agreements which appear at current section 226.6(f)(1) would be relocated to a new section 226.6(b)(2) dealing with agreements.

Second, the basic requirement that State agencies establish an application process, and the general requirements of that process, would be included in the introductory text of proposed section 226.6(b)(1).

In addition, the introductory text would require State agencies to establish a reapplication process and to meet the statutorily mandated deadlines for review of an institution's application. However, this paragraph would only specify that applications be in effect for a maximum of 36 months. Otherwise, State agencies would be free to establish their own reapplication requirements, provided that the requirements of section 226.6(f)—which would specify the timeframes for submitting and re-submitting documentation of compliance with specific Program requirements, as discussed below—are met.

Proposed section 226.6(b)(1)(i) would contain the minimum requirements for new applicants, and would include most of the required elements of the application set forth at current section 226.6(b)(1)–(10), modified slightly as discussed below, as well as the specific language regarding the content of the sponsor's management plan found at current section 226.6(f)(2). The modifications to the wording of the requirements set forth in current section 226.6(b)(1)–(10) are necessitated by the distinctions being drawn in this proposal between new applicants and renewing institutions; these specific items will now only be required of new applicants. In addition, current section 226.6(b)(10), which makes the institution's ''choice to receive all, part, or none of the advance payment'' a part of the application, must be modified due to Pub. L. 104–193's elimination of the requirement that State agencies make advance payments available to Program institutions upon request.

Proposed section 226.6(b)(1)(ii) would require State agencies to establish procedures for reviewing the applications of *renewing* institutions no more than annually and no less than every three years. The proposed rule would allow State agencies to determine the remaining content of the renewal application, provided that institutions continue to update Program information elements as set forth in the proposed revision to section 226.6(f).

As noted previously, under this proposed revision to the application process, State agencies would continue to be responsible for distributing to, and collecting from, participating institutions certain Program information and data, and for ensuring that the CACFP is being operated in compliance with all regulatory requirements. In this proposed rule, these additional State agency responsibilities for information collection or dissemination outside of the application process are grouped into three paragraphs within revised and reorganized section 226.6(f), ''Miscellaneous responsibilities''. Section 226.6(f)(1) would delineate responsibilities, including the collection or distribution of certain information, which State agencies would be required to perform annually; section 226.6(f)(2) would list State agency responsibilities to be performed at least once every three years; and section 226.6(f)(3) would enumerate those State agency responsibilities which could be complied with at intervals established at the State agency's discretion, though not more frequently than annually.

*Current section 226.6(b)(2): Child care center requirements pertaining to free and reduced price eligibility*

The current regulations at section 226.6(b)(2) require that centers submit current free and reduced price eligibility information annually. This requirement would be relocated to proposed section 226.6(b)(1)(i)(A), and new independent centers and new sponsors of centers would continue to be required to submit such information to the State agency with their initial application. In addition, collection of this information by the State agency would be required annually at proposed section 226.6(f)(1) to enable the State agency to use this information to construct an annual claiming percentage or blended rate for each participating child care center in accordance with section 226.9(b) of the current regulations. In States where the administering agency mandates the ''actual count'' method for centers, such information would already be submitted on a monthly basis.

*Current section 226.6(b)(3): Family day care home sponsoring organization requirements for submission of enrollment information—*

Current section 226.6(b)(3) requires sponsors of family day care homes to annually provide aggregate enrollment information for the homes they sponsor and to confirm the eligibility of providers' children for free and reduced price meals. Under this proposed rule, these requirements would be maintained for new sponsoring organizations of family day care homes at revised section 226.6(b)(1)(i)(B), in that sponsors would be required to provide an estimate of their annual aggregate enrollment for planning purposes; State agencies could include or exclude this requirement from sponsoring organizations' renewal applications. The specific data reporting requirements pertaining to tier I and tier II homes and meals, which are currently found at section 226.6(f)(11), have been included in proposed section 226.6(b)(1)(i)(B) as a required part of the application for new family day care home sponsoring organizations, and current section 226.6(f)(11) is proposed to be deleted. These data reporting requirements would only be included in proposed section 226.6(f)(1) indirectly, insofar as the estimated number of homes and children enrolled would be an integral part of the institution's budget which the State agency would collect annually in accordance with proposed section 226.6(f)(1)(vi). The fact that this information will be collected monthly on the FNS–44 form, starting in Fiscal Year 2000, means that sponsoring organizations would far exceed this requirement.

*Current sections 226.6(b)(4), 226.15(b)(5), and 226.23(a): Nondiscrimination policy statement and media release—*

Current sections 226.6(b)(4) and 226.15(b)(5) require the ''issuance of a nondiscrimination policy statement and media release'' as part of the annual application. The wording of this requirement at proposed section 226.6(b)(1)(i)(C) will be altered slightly to require that each new institution submit its free and reduced price policy statement, its nondiscrimination policy statement, and a copy of its media release announcing the Program's availability at participating child care facilities. Because section 722 of Pub. L. 104–193 prohibited institutions from being required to re-submit the policy statement unless it was substantively changed, section 226.6(b)(1)(ii) would prohibit State agencies from requiring resubmission unless the institution has made substantive changes to the statement. However, all institutions would continue to be required, at proposed section 226.6(f)(1), to annually submit to the State agency documentation that they had issued a media release which informed the public of the Program's availability, and State agency collection of the nondiscrimination statement would be done on an ''as needed'' basis (i.e., only when the institution made substantive changes to its free and reduced price

policy) under proposed section 226.6(f)(3). Because these requirements would now be located at proposed section 226.6(f), the current requirements at section 226.15(b)(5) would be removed. Finally, the current requirement at section 226.23(a) for the institution to submit its free and reduced price policy statement with its application would be revised to conform to the new requirements of Pub. L. 104–193.

*Current section 226.6(b)(5): Sponsoring organization management plans—*

The current requirement at section 226.6(b)(5), under which sponsoring organizations must annually submit a management plan as part of their application, would be moved to proposed section 226.6(b)(1)(i)(D), governing the submission of applications by new institutions, as would the substance of current section 226.6(f)(2), which details the specific elements which must be included in a sponsor's management plan. Because it is such a critical document in establishing a sponsoring organization's ability to perform its Program responsibilities, this rule also proposes to specifically require an updated management plan to be part of sponsoring organizations' renewal applications. Because of this proposal to require submission of a current management plan with the renewal application, we propose to leave more frequent updates of the plan to the State agency's discretion if the State agency has chosen to take applications less frequently than annually and to include the management plan update requirement at revised section 226.6(f)(2), meaning that the State agency would be required to collect the amended plan from sponsors no less frequently than every three years.

The only portion of the management plan which would require annual updating would be the sponsoring organization's administrative budget, as discussed in the next paragraph of this preamble. Of course, justification for changes to a sponsoring organization's budget assumptions might also require amendments to other portions of the management plan dealing with staffing, projected growth or decline in the number of providers sponsored, or other factors.

*Current sections 226.6(b)(6) and 226.15(b)(3): Institutions' administrative budgets—*

Current sections 226.6(b)(6) and 226.15(b)(3) require that institutions annually submit administrative budgets with their application. Current sections 226.6(f)(3) and 226.7(g) require the State agency to:

- Review and approve administrative budgets;
- Limit the allowable administrative costs of family day care home sponsoring organizations to the administrative costs in their approved budgets; and
- Establish administrative cost limits for other institutions [*e.g.*, independent centers and sponsors of centers] as it sees fit.

This proposed rule would continue to require, at proposed sections 226.6(b)(1)(i)(E) and (b)(1)(ii), that both new and renewing institutions submit administrative budgets for State agency approval with their applications. In addition, this rule proposes at section 226.6(f)(1) that revised budgets be submitted for State agency review and approval by all sponsoring organizations each year, and at proposed section 226.6(f)(3) that the administrative budgets of independent centers be submitted as frequently as the State agency deems necessary. [**Note:** routine adjustments to annual budget projections are reviewed by State agencies for all CACFP institutions on an ongoing basis, in accordance with section 226.7(g)]. Finally, the reference to ''annual'' budgets currently found in section 226.7(g) would be deleted, since budgets for independent centers would no longer be required on an annual basis. However, all budgets, whenever submitted, would be required to demonstrate the institution's ability to manage Program funds in accordance with this Part, OMB circulars, FNS Instruction 796–2, and the Department's Uniform Financial Management Requirements.

Our September 26, 1995, guidance concerning application requirements permitted institutions which sponsored only centers to submit budget revisions every three years. However, due to concerns raised by OIG in the Kiddie Care audits regarding the amount of administrative costs claimed by some sponsors of centers, this rule proposes to require *all* sponsoring organizations (whether of homes and/or centers) to resubmit their entire budget for annual review by the State agency. The 1995 guidance remains in effect until such time as the Department issues a final version of this proposed rule, but the Department encourages State agencies to review the administrative budgets of center sponsors on a more frequent basis than was required in the 1995 guidance.

Finally, to underscore the importance of the State agency's review of the institution's budget, we propose to specifically state that all approved costs in the budget shall be necessary, reasonable, allowable, and allocable in accordance with Department financial management regulations, OMB circulars, and the CACFP Financial Management Instruction. The audits conducted by OIG revealed State agency budget review to be a particular weakness in a number of States, and it is important to emphasize the purpose of the budget review and the budget amendment process in the regulatory text itself.

*Current sections 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3): Licensing and Approval Information—*

The current application requirements at sections 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3) require documentation of licensing or approval to be submitted each year. As previously noted, section 17(d)(2)(B) of the NSLA requires that State agencies exercising the option to take applications at other than annual intervals are nevertheless required to ''*confirm* on an annual basis that each such institution is in compliance with the licensing or approval provisions of [section 17(a) of the law].'' (emphasis added) Therefore, this rule continues to require (at section 226.6(b)(1)(i)(F)) that facilities submit documentation of their licensure or approval. The Department also proposes that revised section 226.6(f)(1) include the requirement that State agencies annually obtain from institutions or facilities the licensure or approval status of any facility which is required to be licensed or approved.

However, with regard to this requirement, the Department wishes to stress that this system would not necessarily have to include the submission of the same ''hard copy'' paper documentation year after year. Some State CACFP agencies have made arrangements with the State licensing agency to provide them with computerized updates, either by providing a list of all licensed facilities or by notifying the CACFP State agency on an ''exception'' basis of any child care facility whose license/approval has lapsed or been terminated. The Department encourages such arrangements in the interest of reducing administrative burden, while maintaining Program integrity and statutory and regulatory compliance.

*Current sections 226.6(b)(7) and 226.15(a): Tax-exempt status information—*

Current regulations at section 226.6(b)(7) and 226.15(a) require institutions to document their tax-exempt status as part of their application. This requirement would be retained for new sponsors at proposed section 226.6(b)(1)(i)(G). However, we

propose to place the periodic resubmission of such documentation at the State agency's discretion at revised section 226.6(f)(3).

Public Law 105–336 amended the provision which allowed institutions to participate after they had applied for, but before they had officially received, their tax-exempt status. Subsequently, Public Law 106–224 removed this provision from the law entirely, meaning that only institutions which have received their tax exempt status under the Internal Revenue Code of 1986 are permitted to participate. This change will be addressed in a second rulemaking.

*Current sections 226.6(b)(8) and 226.15(b)(6): Proprietary center requirements—*

Current regulations at sections 226.6(b)(8) and 226.15(b)(6) set forth the application requirements for proprietary centers. Such centers are permitted to participate in a given month only if at least 25 percent of their licensed capacity or enrolled participants receive funding under Title XX of the Social Security Act (42 U.S.C., section 1397, *et seq*.) The requirement that a new applicant proprietary center document its eligibility would be retained at proposed section 226.6(b)(1)(i)(H). However, no similar requirement would be included for renewing institutions at proposed section 226.6(b)(1)(ii) since, as a condition of their eligibility, such centers are required to document compliance with the 25 percent requirement each month. Therefore, this rule proposes to place the periodic resubmission of such documentation at revised section 226.6(f)(3), since the State agency is already receiving this information on a monthly basis as part of the claiming process.

*Current sections 226.6(b)(9) and 226.6(f)(5)–(6): Information on commodities—*

The current application requirement at section 226.6(b)(9) under which institutions are to indicate their preference for commodities or cash-in-lieu of commodities would be included in the requirements for new applicants at proposed section 226.6(b)(1)(i)(I) and in proposed section 226.6(f)(3) as a general State agency responsibility. This would provide State agencies with the flexibility to allow institutions to change the initial statement of preference submitted with their original application on an ''as needed'' basis. The requirement for annual submission of this information by institutions at current section 226.6(h) would be deleted by removing the first sentence and by making conforming changes to the remainder of the paragraph.

The current provisions at sections 226.6(f)(5)–(6), which require that State agencies determine institutions' preferences with regard to receiving commodities or cash-in-lieu of commodities and make available information regarding foods available in plentiful supply, have been relocated in this proposed rule into revised section 226.6(h), which addresses State agencies' overall responsibilities relating to commodity distribution.

*Current section 226.6(b)(10): Advance payment information—*

The current application requirement at section 226.6(b)(10) governing the institution's election to receive advance payments would be relocated in a new section 226.6(f)(3)(vii) as a general State agency responsibility. As previously noted, section 708(f) of Pub. L. 104–193 amended section 17(f) of the NSLA (42 U.S.C. section 1766(f)) by making payment of advances optional at the State agency's discretion. Because a State agency could elect to issue no advance payments whatsoever, this proposed rule would remove all references to advances at proposed section 226.6(b)(1).

*Current section 226.15(b)(1): Demonstration of nonprofit status—*

The current application requirement at section 226.15(b)(1) pertaining to the annual demonstration of nonprofit status reiterates the requirement at section 226.15(a) that all but proprietary institutions must demonstrate their nonprofit status. As already mentioned above, we are proposing to relocate this requirement at new section 226.6(f)(3) as a general State agency responsibility, to be reviewed by the State on an ''as needed'' basis.

*Current section 226.6(f)(4): Procurement requirements—*

Current section 226.6(f)(4) requires State agencies to annually determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of section 226.22. Because this is an annual requirement on State agencies and has nothing to do with the institution application process, this rule proposes to incorporate the requirement into revised section 226.6(j) dealing with ''Procurement provisions.''

*Current sections 226.6(f)(7)–(10): Other State agency responsibilities—*

This proposed rule would relocate current sections 226.6(f)(7)–(10), which deal with State agency responsibilities regarding information made available to pricing programs, the conduct of verification, and implementation of the two-tiered reimbursement system for family day care homes. Current sections 226.6(f)(7), (f)(9), and (f)(10) would be relocated at proposed section 226.6(f)(1)(i)–(iii), since they relate to information which the State agency must provide annually to some institutions. Current section 226.6(f)(8), which relates to the State agency's collection of verification as part of an administrative review, would be moved to proposed section 226.6(f)(3)(viii), which would require that verification be conducted as part of State agency reviews of institutions conducted in accordance with section 226.6(l).

Accordingly, we propose to reorganize and revise sections 226.6(b) and 226.6(f) as described above; to make conforming changes, as necessary, to current sections 226.15(b) and 226.16(b); and to revise current sections 226.6(j), 226.7(g), and 226.23(a), as described above.

*What do the current regulations say with regard to Program agreements?*

Under the current regulations at sections 226.6(b)(1) and 226.6(f)(1), renewal of an institution's Program agreement is required as part of the annual reapplication process. These provisions were established prior to the change to section 17 of the NSLA which now gives State agencies the option to take applications from participating institutions no less frequently than every three years.

*The law requires that State agencies have the option of renewing applications every three years; what does the law state regarding the length of an institution's agreement?*

The NSLA has never specified the duration of the Program agreement between the State agency and the institution. Recently, however, section 102(d) of Pub. L. 105–336 amended section 9(c) of the NSLA (42 U.S.C. section 1758(c)) by requiring State agencies which administer any combination of the child nutrition programs (*i.e.*, the National School Lunch, School Breakfast, Child and Adult Care Food or Summer Food Service Programs) to enter into a single permanent agreement with a school food authority which administers more than one of these programs. The law is still silent with regard to the length of the agreement between the State agency and non-school institutions.

*What is the Department proposing with regard to the length of the Program agreement for non-school institutions?*

Consistent with section 17(d)(2) of the NSLA (42 U.S.C. section 1766(d)(2)), which permits State agencies to take applications every three years, we propose that Program agreements for

non-school institutions should run for between one and three years. Thus, this proposed rule continues to link the length of the Program application and agreement for non-school institutions, while requiring State agencies to enter into permanent agreements with institutions which are schools and which, in accordance with Pub. L. 105–336, operate more than one child nutrition program administered by the same State agency. This proposed rule would continue to require that any Program agreements covering more than one Federal fiscal year stipulate that the agreement is contingent in subsequent fiscal years upon the availability of Federal funds and would, under the circumstances described in the discussion of renewal applications above, also permit the State agency to renew the institution's agreement for less than one year, pending the completion of a review of the institution by the State agency.

Accordingly, this rule proposes to amend sections 226.6(b), 226.6(b)(1) and 226.6(f)(1) by removing all references to the Program agreement, and by establishing a new section 226.6(b)(2), as described above, covering all Program agreements.

**B. State Agency Notification to Applicant Institutions**

*Prior to 1996, what were the legal requirements regarding a State agency's handling of an institution's application to participate in CACFP?*

There were three requirements in section 17(d)(1) of the law. State agencies were required to:

- Notify institutions in writing of their approval or disapproval within 30 days.
- If an incomplete application was submitted, notify the institution in writing within 15 days.
- If an incomplete application was submitted, ''provide technical assistance, if necessary, to the institution for the purpose of completing its application.''

*What changes to these requirements have been enacted, and how are these changes reflected in this proposed rule?*

First, section 708(c) of Pub. L. 104–193 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended section 17(d)(1) by removing the requirement that State agencies provide an institution with technical assistance when the institution submitted an incomplete Program application. However, the elimination of the statutory requirement did not eliminate the State agency's responsibility to assist applicants; rather, it emphasized the institution's need to take primary responsibility for the initiation of its program.

Accordingly, the Department proposes to amend current section 226.6(b)(10) [proposed section 226.6(b)(1)(iv)] by removing the requirement that State agencies provide technical assistance to institutions submitting incomplete applications, and replacing that with language recommending that State agencies provide this assistance.

Second, with regard to the law's requirement that State agencies notify an institution within 15 days of its submission of an incomplete application, we have observed that, as State agencies experience increased workloads and simultaneous staff reductions, it has become difficult for them to meet this requirement. Since the law has been amended to allow State agencies to take applications every three years, we now believe that it is necessary to provide State agencies with additional time to review *all* applications, and that the up-to-30-day period now prescribed by the law provides a more reasonable amount of time for State agencies to review the application to determine if it is complete and, if it is, to approve or deny it. Renewing institutions would, of course, continue to participate in the Program during the State agency's review of their application.

Therefore, we proposed to amend section 17(d)(1) of the law by eliminating the requirement that State agencies notify institutions that their applications are incomplete within 15 days of receipt. This concept was included in the Administration's 1998 child nutrition reauthorization proposals and later incorporated in H.R. 3666. Ultimately, this concept was included in section 107(d) of Pub. L. 105–336, which amended section 17(d)(1) to require that a State agency notify an institution of its approval or denial ''within thirty days after the date the complete application is received.'' Thus, a State agency has 30 days from its initial receipt of a complete application to either approve or deny the application. The conference report accompanying the bill (H. Report 105–786, October 6, 1998) encouraged State agencies to inform applicants as quickly as possible if their application is incomplete.

Accordingly, this rule proposes to further revise current section 226.6(b)(10) [proposed section 226.6(b)(1)(iv)] to allow States to notify applying institutions of their approval or disapproval within 30 days of receiving a complete application.

**II. State Agency and Institution Review and Oversight Requirements**

*What were OIG's recommendations for changes to the monitoring requirements?*

As discussed above, OIG's national audit of the family day care home component of CACFP made a number of recommendations for changes to the current State agency and sponsoring organization monitoring requirements. Among these were recommendations to require that:

- Some or all sponsor reviews of day care homes and State agency monitoring visits to homes be unannounced;
- Routine parental contacts be made as part of the State agency and sponsor monitoring of day care homes in order to verify children's Program participation;
- Sponsors and day care providers keep more detailed information on enrollment forms, including a record of each child's normal hours of care and normal places (*i.e.*, at day care, school, or home) of receiving meals throughout the day;
- Minimum sponsor review requirements—including reconciliation of enrollment, attendance, and meal claim data—be established;
- Sponsors routinely perform certain ''edit checks'' on all meal claims submitted by their facilities; and
- Minimum standards for State agency review coverage be established.

After the release of this national audit, OIG informally recommended that the Department:

- Address the matter of placing seriously deficient child care facilities (family day care homes and child care centers) on a list of seriously deficient facilities, much as the Department currently maintains a list of seriously deficient institutions; and
- Give State agencies explicit regulatory authority to limit the transfer of family day care home providers from one sponsoring organization to another.

Finally, the ''Operation Kiddie Care'' audit made an additional recommendation related to sponsor monitoring—that the regulations prescribe a maximum number of family day care homes for which each sponsor monitor would have responsibility.

*What is FNS's response to these recommendations?*

We largely concur with these recommendations and believe that their implementation will aid our ongoing efforts to improve Program management.

However, those audit recommendations which are now statutorily mandated as a result of the enactment of Pub. L. 106–224 (specifically, those dealing with unannounced visits, seriously deficient facilities, provider transfer limits, and sponsor monitoring staff) will be addressed in a second rulemaking.

*Does FNS believe that OIG's recommended changes should apply to sponsored centers as well?*

Yes. Although OIG's 1995 audit and recommendations applied specifically to the family day care component of CACFP, many of these findings should be extended to sponsored centers as well. Portions of the ''Operation Kiddie Care'' audit pointed to problems with sponsored centers that, in our opinion, can be addressed by extending some of our regulatory proposals for home sponsors to sponsors of centers as well. In addition, the owner and director of a large sponsor of child care centers were recently convicted of fraud and other felonies for illegally obtaining millions of dollars from CACFP. Coupled with the fact that the center component of the Program still accounts for over 40 percent of CACFP's annual expenditures of roughly $1.6 billion, this case and other recent review and audit findings demonstrate that there is a compelling need for better monitoring and controls in sponsored centers as well.

*Will FNS propose a similar extension of the new monitoring requirements to independent centers or the adult day care component of CACFP?*

To date, we have not had significant audit or review findings which would indicate the existence of similar problems in these types of institutions. Therefore, we do not believe it is necessary to propose all of these changes for all types of institutions and facilities. The preamble and regulatory text will differentiate between those changes which we propose to apply to all facilities or institutions, and those which we propose to apply to a subset of institutions or facilities.

*Aren't CACFP institutions facing new resource constraints? Won't they have difficulty implementing some of these proposed review requirements?*

Yes, many CACFP institutions face funding and resource constraints. For example, as a result of the enactment of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sponsors of family day care homes were required to implement a new, two-tiered system of reimbursement to their providers. That system (which was implemented in an interim rule published at 62 FR 889 (January 7, 1997) and further refined in a final rule published at 63 FR 9087 (February 24, 1998)), went into effect on July 1, 1997, and required family day care home sponsoring organizations to engage in a broad range of new administrative responsibilities.

The cumulative impact of this ''tiering'' system and the changes proposed in this rulemaking will be significant for some family day care home sponsoring organizations. Therefore, we believe that it is necessary to find ways to focus regulatory requirements pertaining to sponsors' reviews of their facilities to increase efficiency and improve Program compliance. Our proposals for changes to the current requirements pertaining to institution monitoring of sponsored facilities appear in Part II(F) of this preamble.

Finally, we are also proposing other modifications to the current monitoring requirements for sponsored child care centers and outside-school-hours care centers These changes are intended to streamline Program administration and to provide CACFP administrators with additional flexibility in the use of their monitoring resources. The proposed changes are also discussed in Part II(F) of this preamble.

**A. Household Contacts**

*What did the OIG audit say about household contacts?*

OIG's audit of family day care home sponsoring organizations revealed that fewer than one in six currently make parental contacts a part of their normal provider reviews. They recommended that household contacts be made a routine part of a sponsoring organization and/or State agency's review protocols in order to confirm their child's enrollment and attendance, and the specific meals routinely received by the child, at the family day care home being reviewed. Such contacts can serve to establish the accuracy and completeness of the provider's claims for reimbursement by identifying providers who inflate meal claims, either by claiming meals for a child not in attendance or by claiming service of a particular meal at times of the day when the child is not in care (*e.g.*, the child routinely eats breakfast at school or at home, not at the day care home).

*Is USDA proposing to require that sponsoring organizations or State agencies make household contacts?*

Only under certain specific circumstances.

We do not agree that household contacts should be made routinely. In addition to being extremely time-consuming when it proves difficult to contact a household, we have concerns regarding the privacy of households with children in care and the efficacy of using this technique on a routine basis. Since households with children in care rarely have contact with representatives from the sponsoring organization, it seems less likely that they would be willing to respond to telephone inquiries regarding their children's care arrangements.

At the same time, we are deeply concerned with OIG's finding that ''block claiming'' (*i.e.*, claiming the same number and type of meals served every day) by child care facilities often goes unchallenged by their sponsoring organizations. We therefore believe that, in order to deter the type of fraud documented in recent audits and investigations, it is necessary to propose that, under certain circumstances, household contact be a required part of sponsoring organization and State agency reviews of child care facilities.

*Under what circumstances does USDA propose to require that sponsoring organizations make household contacts?*

We propose to require that, when facilities claim the same number and type of meals served for ten or more consecutive days, or claim an unusually high number of meals for more than one day in a claiming period, sponsoring organizations contact at least one half of the households of children in care at that facility (not including family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal service(s) which those children routinely receive in care.

We realize that using this 10-day claiming ''trigger'' could alert unscrupulous providers, and cause them to ''block claim'' their meals for a period of less than 10 days. We are therefore proposing additional language which encourages sponsoring organizations to utilize household contacts whenever they note suspicious claiming patterns by their sponsored facilities, and not only in the two circumstances described above which *require* household contacts.

Accordingly, we propose to add a new paragraph, Section 226.16(d)(5) entitled ''Household Contacts'', which specifies the circumstances under which sponsoring organizations would be required to contact one-half of the households of children in care in a sponsored facility, excluding the

provider's household in a family day care home. This paragraph would also encourage the use of household contacts whenever sponsors note suspicious claiming patterns by their facilities.

We further propose to require that sponsoring organizations observe the following guidelines in making household contacts:

(1) Household contacts should be made in writing or by telephone. If a sponsor chooses to contact a household by telephone, it would be required to first notify the household in writing that they should expect a call from a particular sponsor employee for the purpose of verifying their children's receipt of meals in day care. This notice would also provide written assurance that any information provided will be confidential and that the sponsor will only use the information for Program purposes.

We believe that these precautions will help to address possible parental concerns regarding the provision of information about their child's day care schedule, and will also allow the sponsoring organization some flexibility in determining which method of household contact is likely to yield a higher and more accurate rate of response. Public Law 106–224 requires that households with children in CACFP-supported child care facilities receive information about CACFP, along with the name and address of the sponsor and State administering agency, from either the sponsor or the facility. Prior receipt of this information should help parents understand that their provider receives Federal reimbursement for meals served to their children, and that that may be contacted by the State or local administering agency to verify their children's participation and attendance. The requirement to inform parents about CACFP will be addressed in a subsequent rule which addresses the changes mandated by ARPA.

(2) If contact cannot be made with *one-quarter* of the selected households in a center or with *all* of the selected households in a family child care home, *or* if any of the households in the sample fails to support the validity of the provider's claim, the sponsoring organization must make an unannounced visit to the sponsored center or home within one week, in order to review the validity of the facility's meal counting and claiming procedures.

Although Public Law 106–224 mandated the use of unannounced visits by sponsoring organizations, it did not specifically consider the use of unannounced visits as a way of ''following up'' on the results of household contacts. We believe, however, that the use of an unannounced visit under this circumstance will be an effective means of establishing the validity of a provider's, or a sponsored center's, monthly claim.

*What if households do not respond to the written or telephone inquiries? How will the sponsor meet its requirement to contact a particular number of households if some households refuse to respond?*

We recognize that parents may not respond to the sponsor's inquiry and that, in cases of ''ghost children'' (*i.e.,* fictitious children), no parent exists to be contacted. Thus, in some cases, factors beyond the sponsoring organization's control would prevent it from contacting the requisite number of households. Therefore, this rule will propose to count an unsuccessful contact toward meeting the required number of households to contact if the sponsoring organization makes two documented attempts at contact over a two-week period. Because the household contact requirement was triggered by a suspicious meal claiming pattern, we would still require that an unannounced visit take place if a center sponsor could not contact one-quarter of the selected households in their sample, or if a home sponsor could not contact all of the households in its sample.

Accordingly, this rule further proposes to add to Section 226.2 a definition of ''household contact'' and to further amend new Section 226.16(d)(5). Both of these sections would require adherence to the procedures described in the paragraphs above whenever household contacts are utilized.

*How many households will a sponsoring organization usually be required to contact?*

It depends on the type of facility which the organization sponsors.

In the case of sponsoring organizations of family day care homes, the average CACFP home serves only seven or eight children, including the provider's own (Source: ''Early Childhood and Child Care Study'', 1997). Excluding the provider, a requirement to contact one-half of the households of children in care would usually entail contact with between two to three households, depending on the number of provider's children in care and the number of households with more than one child in care at the home.

In the case of sponsored CACFP child care centers, which average about 66 enrolled children (Source: ''Early Childhood and Child Care Study'', 1997), the requirements for household contact would probably be in the neighborhood of 15–20 households, again depending on the number of households with more than one child in care at the center. However, this increased workload is commensurate with the increased risk of Program abuse and financial loss to the government if a center is not accurately reporting its meal claims.

*Under what circumstances does USDA propose to require that State agencies make household contacts?*

This rule also proposes to require that State agencies include some level of parental contact in their reviews of sponsored day care homes or centers when, as part of their review of the sponsoring organization's records, they detect block claiming or inordinately high meal counts. As with the household contact requirement described for sponsors in the preceding paragraphs, we are proposing that State agencies be required to contact one-half of the households of children in a sponsored child care facility (excluding the provider's own children in a family day care home) when one of these claiming patterns is detected. The purpose of this requirement would be to deter fraudulent claims for ''ghost'' children by providers, centers, or sponsors, a practice found by OIG in a disturbing number of its audits. Like sponsoring organizations, unannounced State agency visits to the facility would be triggered if one-quarter of the households selected in a sponsored center, or any of the selected households in a family day care home, could not be contacted, or if any of the households contacted failed to corroborate the facility's meal claim. We propose that the procedures for the conduct of household contacts by a State agency be identical to those described above for household contacts made by sponsoring organizations. Finally, in order to ensure that sponsors are properly implementing these requirements, this rule also proposes that State agencies be required to include a review of a sponsor's records of household contact as part of its normal review of a sponsor.

*Would State agencies also be required to conduct household contacts if suspicious claiming patterns were discovered in an independent center?*

Yes. Although OIG attention has focused on sponsoring organizations and their facilities, the same potential for improper claiming exists among

independent centers. If a State agency review or its edit check of a claim reveals block claiming or an unusually high meal claim for one or more days, this will also trigger a requirement for household contact by the State agency.

Accordingly, this rule would further amend proposed sections 226.6(l)(2) and 226.6(l)(4) by adding the requirement that State agency reviews of institutions include a review of the institution's conduct of household contacts. This rule proposes to further amend section 226.6(l)(4) to require that State agencies make household contacts under the same circumstances, and utilizing the same procedures, as those described for sponsoring organizations.

**B. Enrollment Forms**

*What are the current regulatory requirements pertaining to children's enrollment forms?*

Current regulations at sections 226.15(e)(2) and (3) require that each institution keep a record of each child's enrollment and copies of all income eligibility forms used to establish a child's eligibility for free or reduced price meals in child care centers or tier I reimbursements in mixed tier 2 family day care homes. Current section 226.16(a) specifically extends these requirements to sponsoring organizations, while sections 226.17(b)(7), 226.18(b) and (e), 226.19(b)(8), and 226.19a(b)(8) state that child care centers, family day care homes, outside-school-hours care centers, and adult day care centers, respectively, must maintain documentation of enrollment for each Program participant.

*What did the OIG audit find regarding enrollment forms?*

In its audit of family day care homes, OIG noted several serious problems related to the information contained on enrollment forms. The most serious of these involved inaccurate meal counts for breakfasts and suppers. OIG noted that daily meal counts were often inflated by claiming that children regularly received a breakfast or supper in care when, in fact, that meal was normally received elsewhere. In addition, OIG noted that, in many of the family day care homes reviewed, enrollment forms which parents are required to complete when their child enters care were often inaccurate, out-of-date, or incomplete. The audit attributed these problems to shortcomings in the current regulatory requirements pertaining to enrollment forms.

*What regulatory changes did the OIG audit recommend?*

The audit noted that there is no current requirement that enrollment forms be updated on a regular basis or that they contain an indication that the child's parents have seen the form and verified its accuracy. OIG also noted that other useful information—such as a record of each child's normal hours of care and the place (*i.e.,* at day care, school, or home) where each child normally receives each meal service throughout the day—is not required to be on the enrollment forms. The audit recommended that enrollment forms be updated annually, be signed by parents, and include information which would enable reviewers to verify the number of children enrolled and in attendance at the home, and the number and type(s) of meals normally consumed by each child.

*What action has the Department taken in response to these recommendations?*

To address these concerns, we have developed and distributed to State agencies an optional prototype enrollment form to be signed by the child's parent or guardian and updated at least annually. The prototype includes information not currently required on the enrollment form, such as normal days and hours of care and the meals to be received at the family day care home and at school, where applicable.

Although this rule does not propose requiring that this prototype be used, it does require that all enrollment forms capture certain information which will allow reviewers to compare the data on the enrollment forms to attendance records and meal claims. Specifically, this rule proposes to require that the enrollment form include the child's normal hours in care and the meals usually received in care by that child, and that the form be updated annually and signed by a parent at each update. We believe that requiring this information on all enrollment forms will improve Program management by facilitating reviewers' comparison of current enrollment against attendance records and meal claims. In addition, based on the findings of recent audits and investigations, we believe that these new requirements should also be extended to enrollment forms kept on file for children in child care centers.

Accordingly, we propose to amend sections 226.15(e)(2) and (3) to require that all enrollment forms be signed by a parent, be updated annually, and include information on each child's normal days and hours of care and the meals normally received in care. We are also proposing that identical changes regarding the content of enrollment forms be added to sections 226.17(b)(7), 226.18(e), and 226.19(b)(8)(i). Finally, this rule proposes to amend the first sentence of section 226.18(e) to clarify that family day care homes, like all other types of facilities participating in the Program, must retain enrollment records for each child in care.

**C. Standard Review Elements Required for Sponsor Review of Facilities**

*What are the current regulatory requirements pertaining to sponsor monitoring?*

Current regulations at section 226.16(d)(4) require sponsors to review centers or homes at least three times per year, but do not specify the areas to be covered during the review.

*What were OIG's general suggestions regarding sponsoring organization monitoring requirements?*

In addition to the recommendations for unannounced visits and household contacts discussed above, OIG also made three more general suggestions intended to improve sponsor monitoring of family day care homes:

- Requiring that each sponsoring organization review of a family day care home cover certain basic elements of Program management (such as recordkeeping, attendance at training, and menus), including a reconciliation of enrollment and attendance records with provider meal claim data;
- Requiring each sponsoring organization to hire enough staff to adequately perform the monitoring function, and to express ''adequate monitoring staff'' in terms of a number of homes which a monitor could reasonably be expected to oversee; and
- Using routine computerized or manual edit checks to detect errors when processing their facilities' monthly meal claims.

The first of these recommendations is addressed in this section of the preamble, while the third is addressed in section II(D) below. It should be noted with respect to the first of these recommendations that, although FNS Instruction 786–5, Rev. 1 (''Provider Claim Documentation and Reconciliation'', November 8, 1991), establishes that sponsoring organizations should reconcile meal claims submitted by family day care home providers with enrollment and attendance records, it does not establish how often such reconciliations should be done; does not require that they be part of the normal review process; and

does not state that they should be utilized in reviews by sponsors of child care centers.

*What has USDA done in response to the recommendation concerning the second OIG recommendation: that USDA establish staffing standards for the monitoring function performed by sponsoring organizations of family day care homes?*

Because that recommendation is also included among the statutory changes required by Pub. L. 106–224, it will be addressed in a separate rulemaking which will include other changes required by the new law.

*What has USDA done in response to the recommendation concerning standard review elements?*

We have developed separate optional prototype forms for use by sponsoring organizations in monitoring their sponsored family day care homes and child care centers. Before the development of these prototype review forms, there was only one prototype review form (FNS 345–1) for all facilities participating in CACFP. Based on input from OIG and Program administrators, we have concluded that the current review form is not sufficient to identify inflated meal counts and other significant Program problems. The 1995 audit recommended that a more detailed prototype be developed which would detect material Program weaknesses at child care facilities.

Although this proposed rule does not require CACFP sponsors to employ the prototype review forms, we have made the forms available to State agencies and will require that, if State agencies or sponsors wish to develop different review forms, they include, at a minimum, a review of compliance with Program requirements pertaining to licensing or approval; health, safety and sanitation; attendance at training; day of review meal service; meal counts; meal pattern requirements; and menu and meal records. In addition, we propose to further amend section 226.16(d)(4)(i) to require that each review of a sponsored facility include an assessment of whether the facility has corrected problems noted on the previous review(s).

With regard to the recommendation for reconciliation of meal claims with attendance and enrollment records, this rule proposes to require that each on-site review include a thorough examination of the meal claims recorded by the facility for at least five days of operation during the current or previous claiming period. For each day examined, reviewers must use enrollment and attendance records to determine the number of children in care during each meal service and to compare these numbers to the numbers of breakfasts, lunches, suppers, an/or supplements claimed for that day. Based on that comparison, the reviewers must determine whether the claims were accurate. If there is a discrepancy between the number of children enrolled or in attendance on the day of review and prior claiming patterns, the reviewer must attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary. In addition, after the on-site review has been conducted, the sponsoring organization must analyze the review findings to determine whether household contacts, as defined in the proposed definition at section 226.2, should be initiated to determine the validity of providers' previous meal claims. As with other proposed changes, we also believe that these changes should be applied to sponsors of child care centers as well as to sponsors of family day care homes.

Accordingly, we propose to further amend section 226.16(d)(4)(i) to require that sponsors' reviews of child care facilities include an assessment of: licensing or approval; health, safety and sanitation; attendance at training; day of review meal service; meal pattern requirements; menu and meal records; and compliance with the requirements pertaining to the annual update and content of enrollment forms. A facility review must also include a thorough examination of the facility's meal claims and a determination, based on the procedures described above, of whether the claims were accurate. In addition, we propose to further amend section 226.16(d)(4)(i) to require that each review of a sponsored facility include an assessment of whether the facility has corrected problems noted on the previous review(s).

*Does this rule propose any additional changes to the requirements governing the content of sponsoring organizations' reviews?*

Yes. We are proposing two additional changes to clarify the minimum requirements for sponsors' reviews of facilities.

The first change would require that at least one of the sponsor's annual visits include the observation of a meal service. We understand that many States and sponsoring organizations already include the observation of a meal service in *all* facility reviews. By proposing this requirement, we do not wish to discourage this practice. However, this proposed requirement will ensure that all sponsors observe at least one meal service per year at each facility and will provide additional scheduling flexibility to sponsors which are conducting more in-depth facility reviews . This proposal underscores our desire to ensure that the nutritional, as well as the fiscal, integrity of the meal service is being properly monitored.

Accordingly, we propose to further amend section 226.16(d)(4)(iii) by adding the requirement that at least one review per year at each sponsored facility include the observation of a meal service.

Second, we are proposing a slight alteration to the current requirements regarding meal counts. The current regulations at section 226.15(e)(4) require institutions to keep ''[d]aily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements) served to participants.'' However, this requirement has been broadened in FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program'') to require that ''point of service meal counts'' be taken in all child care facilities. Although we believe that point of service counts are crucial for the conduct of institutional meal service in schools, they are not really feasible in all child care facilities. For child care centers, we propose to require that meal counts be taken at the *time of meal service;* for family day care homes, which serve meals to a limited number of children whose attendance varies only slightly from day to day, counts may be taken either at the time of meal service or at another time during the day.

This clarification is being proposed in recognition of the realities of conducting home-based day care. The needs of the children in home-based child care are often more immediate and compelling than the need to record a meal count, meaning that it may not be feasible for a day care home provider to record meal counts at the time of meal service. Centers, on the other hand, generally conduct meal service in a way which facilitates time-of-service counting. Any delay in taking the meal count in a center would inevitably lead to estimates and errors due to the larger number of children typically being served. At the same time, we wish to *strongly* emphasize the need to require that, at a minimum, day care home providers record meal counts on a *daily* basis. One of the most serious and persistent problems noted by OIG was a failure to record meal counts until a full week, or even a month, after the fact. Therefore, we also wish to re-emphasize

to sponsor and State agency reviewers of day care homes that meals served prior to the day of review must be disallowed for reimbursement when they have not been recorded as of the day of review.

Accordingly, we are proposing to amend sections 226.11(c)(1), 226.15(e)(4), and 226.17(b)(8) to require time of service meal counts in child care centers. No change is proposed to section 226.18(e), which requires *daily* meal counts in family day care homes, but the Department does propose to explicitly require daily meal counts for family day care homes at sections 226.13(c) and 226.15(e)(4). The Department will later revise FNS Instruction 796–2 to clarify that daily meal counts (not point of service counts) are required in family day care homes and that meals served prior to the day of review may not be included in the claim for reimbursement when they have not been recorded by the time that the review is conducted.

**D. Meal Claim Edit Checks**

*What regulatory requirements now exist to help ensure that the claims being submitted by facilities accurately reflect their actual meal service?*

Section 226.10(c) of the current regulations requires all institutions to report claims information in accordance with the State agency's financial management system and in sufficient detail to justify the amount of reimbursement claimed. However, these regulations establish no specific procedures which sponsors must utilize to determine the validity of facility claims, or which State agencies must utilize to determine the validity of institutions' claims.

*What are edit checks?*

Edit checks are methods of comparing the information that appears on a claim for reimbursement with other information about the claiming facility's normal operations (*e.g.,* enrollment, attendance, approved meal types) in order to help determine the claim's validity. An edit check by itself may identify erroneous claims, but more often will identify claiming patterns which raise ''red flags'' for those reviewing the claim (that is, areas calling for a closer examination and followup prior to payment of the claim). For example, one common edit check would be to compare the total number of meals claimed by a facility to the product of the number of children enrolled at the facility, times the number of serving days in the month, times that facility's number of approved meal services per day.

*What were OIG's findings regarding claim edit checks?*

OIG's audit of the family day care home component found that very few sponsoring organizations make use of claim edit check techniques. In several cases, day care homes routinely claimed the maximum number of meals for each child each month, or regularly claimed weekend meal service, without being questioned or reviewed by their sponsor. In most other cases, sponsors performed a single edit check (*e.g.,* comparing meals claimed against enrollment) which was not sufficient to detect many significant errors in the claiming process.

*What is the Department doing in response to this finding?*

We share OIG's concerns. Therefore, we are proposing that sponsors be required to perform routine edit checks of monthly claims prior to submitting their consolidated claim to the State agency for payment.

Specifically, we are proposing that sponsoring organizations be required to perform edit checks in order to detect and minimize inaccurate or fraudulent meal claims. Edit checks must:

- Verify that the facility has been approved to serve the types of meals claimed;
- Compare the number of children enrolled for care (taking an expected rate of absences into account) to the number of meals claimed; and
- Detect block claiming (*i.e.*, no daily variation in the number of meals claimed).

Edit checks must be performed for every day meals are claimed by a facility. Meal claims which cannot be reconciled with enrollment (taking an expected rate of absences into account) must be subjected to more thorough review to determine if the meal claims were accurate. The expanded amount of enrollment information proposed in Part II(B) of this preamble will allow sponsoring organizations to perform the meal claim edit checks which this rule proposes to require. In addition, we encourage State agencies to develop, and require the use of, any other edit checks they deem appropriate.

In summary, this rule proposes to require two types of meal claim reviews:

- The five-day reconciliation of claims to enrollment and attendance data which will be accomplished during an on-site review, and which may be followed up with household contacts by the sponsoring organization; and
- The monthly meal claim edit checks performed by the sponsor when preparing its consolidated claim for reimbursement, and which will often be part of the sponsor's automated claims processing system.

Both of these meal claim reviews will help to identify and resolve potential problems in facilities' meal claiming patterns. These internal controls in the payment process are being proposed in order to curtail the type of routine over-claiming of meals which OIG has reported in both of its national audits.

Thus, this rule proposes to require that the reconciliation of meal counts against enrollment and attendance occur during on-site facility reviews, as discussed in section II(C) of this preamble, and whenever sponsors analyze their facilities' monthly meal counts as part of the sponsoring organization's claims preparation process. This system of internal controls in the payment process is necessary in order to curtail the inappropriate payments identified in the OIG audit and in other recent audit and review activity. Because many sponsors utilize computerized claim processing, and some will need to update their systems to reflect these proposed requirements, the final rule implementing this change would provide for some period of time during which sponsoring organizations could reprogram their claims payment systems.

Accordingly, we propose to amend sections 226.10(c), 226.11(b), and 226.13(b) to require that, prior to submitting their consolidated monthly claim to the State agency, sponsoring organizations compare facilities' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services, for each meal type being claimed on each day of operation.

*Are State agency edit checks of institutions' claims needed as well?*

Yes. Management evaluations have recently revealed several instances in which State agencies lack edit checks when processing institutions' monthly claims. In one instance, a State agency had made payments for suppers served when no facilities sponsored by that institution were approved to serve suppers. In another instance, the total number of meals claimed by an institution and paid for by the State agency in that month exceeded the product of operating days times children times approved meal types. For that reason, we believe it is also necessary for State agencies to employ edit checks when processing institutions' claims.

*What are USDA's proposals regarding State agency edit checks?*

At a minimum, State-level edit checks should ensure that payments are made only for authorized meal types, and that increases in the number of facilities claiming meals, or the total number of meals being claimed, are consistent with the sponsoring organization's report of new facilities entering the Program and the number of serving days in the month (*Note:* section 226.16(b)(2) and (3) require sponsoring organizations to submit to the State agency an application to participate, as well as documentation of licensure or approval, for each child and adult care facility which it sponsors).

We recognize that not all family day care homes claim Program meals each month, and that there will therefore be a normal monthly fluctuation in the number of meals being claimed by a sponsor. Nevertheless, it is reasonable to require that State agencies establish certain ''flags'', or indicators, in their automated claims processing systems which will alert them to the possibility of erroneous claims and trigger further efforts by the State agency to establish the claim's accuracy.

Accordingly, we are proposing to revise section 226.7(k) to require State agencies to establish and utilize edit checks when processing claims.

**E. Minimum State Agency Review Elements**

*What are the current regulatory requirements pertaining to State agency reviews of institutions?*

The current regulations governing State agency reviews of institutions are located at section 226.6(l). This section addresses the frequency of State agency reviews and requires that they ''assess institutional compliance with the provisions of this part and with any applicable instructions of FNS and the Department.'' However, current regulations do not specify the broad subject areas to be examined in these reviews, nor do they mandate any specific tests to determine the validity of meal claims.

*What were OIG's findings and recommendations regarding State agency monitoring requirements?*

OIG found that State agencies' reviews of family day care home sponsoring organizations and day care home providers ''generally did not include sufficient tests to identify recordkeeping deficiencies and inflated meal claims, and to assess the adequacy of sponsor monitoring of [day care homes].'' We believe it is necessary to propose changes to existing review requirements in order to ensure a consistent, minimum national standard of State-level review of institutions.

*What has USDA done in response to these recommendations?*

We have developed new prototype forms for State agency review of child care institutions (sponsoring organizations, independent child and adult care centers, independent outside-school-hours care centers, and proprietary title XIX and XX centers). These forms include sections covering required Program documents on file, facility licensing or approval, meal counts, administrative costs, sponsor training and monitoring of facilities, observation of meal service, and other Program requirements. This rule does not propose requiring State agencies to utilize these particular forms in conducting their reviews of participating institutions. However, State agencies will need to review their forms in order to ensure that the new minimum review requirements are captured on their review forms.

Accordingly, we propose to further amend section 226.6(l)(3) to require that each State agency review of an institution also include State review of a sample of sponsored facilities in order to compare enrollment records, attendance records, and day-of-review meal counts observed during sponsor reviews to meal counts submitted by the facility on its monthly claim. In addition, this rule proposes to require that State agency reviews of institutions include a review of: required Program documents on file; documentation of facility licensing or approval; meal counts; administrative costs; sponsor training and monitoring of facilities; and observation of meal service.

**F. Review Cycle for Sponsored Facilities**

*What are the current requirements for sponsoring organization review of facilities?*

The current regulations at section 226.16(d)(4) establish the requirements for sponsoring organization reviews of their facilities. Specifically, the regulations establish separate minimum requirements for facility reviews by sponsors of child and adult day care centers, family day care homes, and outside-school-hours care centers.

The current regulations governing the review of sponsored centers and homes are similar in most respects. Both require that:

- The sponsored facility (except for outside-school-hours care centers) be reviewed three times per year;
- No more than six months elapse between reviews; and
- New facilities be reviewed during the early stages of their operation.

However, there are some differences in the current requirements for reviewing different types of sponsored facilities:

- New *homes* are currently required to be reviewed in their first four weeks of operation, whereas new sponsored *centers* are to be reviewed during their first six weeks of operation;
- With State agency approval, sponsoring organizations of family day care homes are currently permitted to review each home an *average* of three times per year, meaning that they may devote a greater share of their review resources to the review of new or problem day care home providers, provided that the average number of annual visits per home is at least three. This allows family day care home sponsors more flexibility than sponsors of centers; and
- Sponsored outside-school-hours care centers are required to be reviewed six times per year although the Department on January 11, 1993, issued guidance reducing this to three times per year for school-sponsored outside-school-hours care centers.

*What changes are being proposed in this rule?*

We believe that different requirements for reviews of different types of sponsored facilities are not warranted. We are therefore proposing that sponsoring organizations of any type of facility be required to:

- Review each of its sponsored facilities three times per year;
- Allow no more than six calendar months between reviews; and
- Review each new facility within its first four weeks of Program operation.

We also believe that *all* sponsoring organizations (not just sponsors of family day care homes) should have greater flexibility in their conduct of reviews. Due to the additional sponsor responsibilities being proposed in this rule, and the new administrative requirements resulting from the implementation of ''tiering'' in the family day care component of the Program, we believe that sponsors need greater flexibility in order to better target and utilize their monitoring resources. We are therefore proposing that, if two facility reviews in a review cycle have been conducted without uncovering substantive problems (*e.g.*, non-compliance with the meal pattern,

missing or inaccurate meal counts, submission of inaccurate claims, failure to keep required records, or a provider's unexplained absence), the sponsor should have the option of either not conducting a third review of that facility or of using the third review solely as an opportunity to conduct training at the facility. We also propose that sponsoring organizations be allowed to employ this option without State agency approval, provided that the average number of annual visits per home is three. This proposed change will allow sponsoring organizations the flexibility to target their reviews to newer facilities or facilities with a history of operational problems, as they see fit, while ensuring that there is no reduction in the sponsor's overall monitoring efforts.

Accordingly, we propose to further amend section 226.16(d)(4) to:

- Make uniform the basic requirements for sponsors' review of all of their child and adult care facilities, regardless of the type of facility being reviewed;
- Permit sponsors to waive a third review at a facility, or to use the third review solely for on-site training, if the sponsor has conducted two reviews of the facility during the review cycle without discovering substantive problems; and
- Allow all sponsors to conduct an average of three reviews per facility per year across their sponsorship (*i.e.*, the third review at one facility could be deferred in favor of performing an additional review at a facility experiencing more Program problems).

**G. Disallowing Payment to Facilities**

*What were OIG's recommendations with regard to disallowing payments to facilities?*

The OIG audit of the family child care component of CACFP found that, in some instances where a provider had submitted claims for reimbursement for meals served to absent or nonexistent children, they still received Program payment for these meals. The audit stated ''that State agencies and sponsors may be reluctant to disallow payments and/or request repayment of total meal claims made during a period when it was determined that a [day care home] * * * claimed meals [fraudulently] for absent and/or nonexistent children'' due to the wording of the current regulations at section 226.10(f). That section states that, ''If a State agency has reason to believe that an institution or food service management company has engaged in unlawful acts with respect to Program operations, evidence found in audits, investigations, or other reviews shall be a basis for non-payment of claims for reimbursement.'' According to OIG, this passage's failure to mention child and adult care facilities, as well as institutions and food service management companies, discouraged some State agencies and sponsors from withholding or recovering funds which had been improperly paid to facilities.

We believe that State agencies and sponsors of child or adult care centers and/or day care homes clearly possess the authority to deny payment for improper claims, either at the time of submission or retroactively, in accordance with the sponsor-facility agreement, which requires the facility to operate the CACFP in accordance with Program regulations. When meals are served which do not conform to Program requirements, or when inaccurate claims are submitted, the State agency and sponsor have the authority and the responsibility to disallow payment for those meals.

Nevertheless, we are aware that some State appeals officers are reluctant to uphold disallowances when the regulations do not specifically require such action on the part of the administering agency. This may be the case in section 226.10(f), which specifically mentions ''institutions and food service management companies'' without mentioning facilities.

Therefore, we are proposing to amend section 226.10(f) to specify that facilities participating in CACFP shall have claims denied when audits, investigations, or other reviews reveal that they have claimed meals for absent or nonexistent children, claimed meals which did not meet the meal pattern, or otherwise engaged in unlawful acts with respect to Program operations.

**H. Change to Audit Requirements**

*What change is the Department proposing?*

We are updating the language of the regulations at section 226.8(a) to reflect recent changes to government-wide auditing rules.

*What are the changes to these government-wide auditing rules?*

The current regulations at section 226.8(a) state that, unless exempt, State- and institution-level audits must be carried out in accordance with Office of Management and Budget (OMB) Circulars A–128 and A–110 and with 7 CFR Part 3015, the Department's Uniform Federal Assistance Regulations. However, audit requirements for States, local governments, and nonprofit organizations can now be found in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'', and the Departmental regulations at 7 CFR Part 3052. These requirements apply to audits of State agencies and institutions for fiscal years beginning on or after July 1, 1996.

Accordingly, we propose to update the references at section 226.8(a).

*What, if any, substantive changes have occurred in the audit requirements for State and local governments and for private nonprofit organizations?*

State agencies have already been informed of these changes. The most significant changes involved the threshold for the conduct of audits, which was raised from $25,000 to $300,000 and the express prohibition on using Federal funds for audits not required by 7 CFR Part 3052. That means that, if an institution expended less than $300,000 in total Federal resources (which includes both CACFP operating and administrative reimbursements, as well as the value of USDA commodities), it is now exempt from the Federal requirement to have an organization-wide audit or, in some cases, a program-specific audit.

In addition, the Department is proposing two changes to sections 226.8(b) and (c) which will bring those sections into conformance with the Department's regulations at 7 CFR Part 3052. Specifically, we propose to revise the language at section 226.8(b), which describes the circumstances under which a State agency may make a portion of audit funding available to institutions for the conduct of organization-wide audits, to reference the new Departmental regulations governing such funds use. Also, we propose to revise the language at section 226.8(c), which describes the circumstances under which the State agency may use audit funds for program-specific audits, to clarify that the funds may also be used for agreed-upon procedures engagements, as described at 7 CFR Part 3052.230(b)(2).

*What rules govern audits for proprietary institutions?*

The current regulations state that proprietary (for-profit) institutions not subject to organization-wide audit requirements must be audited by the State agency at least once every two years. Our policy has been to exempt proprietary institutions from this requirement if they received less than $25,000 per year in Federal Child Nutrition Program funds. Institutions were (and still are) also required to comply with the audit requirements of all other Federal departments or

agencies from which they receive funds or other resources.

Now, Departmental regulations at 7 CFR Part 3052.210(e) provide State agencies with the authority to establish audit policy for proprietary institutions. Given the cost of these audits, we believe that States should raise the audit threshold for proprietary centers above the previously-established $25,000 figure.

Accordingly, we propose to further amend section 226.8(a) with regard to audits of proprietary institutions; to amend the language at section 226.8(b) to include references to Departmental regulations governing the funding of organization-wide audits; and to amend the language at section 226.8(c) to clarify that 1½ percent audit funds may also be used for agreed-upon procedures engagements, as described at 7 CFR Part 3052.230(b)(2).

**I. Income Eligibility of Family Day Care Home Providers Based on Food Stamp Participation**

*What did the Operation Kiddie Care audit reveal regarding family day care home providers claiming income eligibility on the basis of food stamp participation?*

The Operation Kiddie Care audit also uncovered problems regarding the CACFP participation of family day care home providers whose income eligibility is based on participation in the Food Stamp Program. OIG sampled 24 providers in two States who claimed reimbursement for meals served to their own children based on their food stamp participation (NOTE: These findings were developed by OIG prior to the July 1, 1997, implementation of the two-tiered reimbursement system for family day care home providers). Of these 24 providers, OIG determined that 14 had not revealed, or had understated, their self-employment income from providing child care. In these cases, the provider either should have received a lower food stamp allotment, or would have been ineligible to receive food stamps at all. In some cases, this would also have prevented them from claiming reimbursement for meals served to their own children in CACFP.

Since the implementation of tiering, the fiscal consequences of underreporting child care income are potentially far greater. Providers qualify to receive Tier I rates for reimbursable meals served to all children in their care if they live in an eligible, low-income area, or if their household income is at or below 185 percent of the Federal income poverty guidelines. Providers claiming income eligibility on the basis of food stamp participation are only required to provide their name and food stamp case number to their sponsor in order to receive the higher, Tier I benefit for all children in their care. Furthermore, although sponsoring organizations are required to verify the information submitted by providers claiming Tier I eligibility based on income, there are no verification requirements, *per se*, for a provider claiming eligibility on the basis of food stamp participation. Therefore, if providers are improperly receiving food stamps, and if their actual household income exceeds 185 percent of the Federal income poverty guidelines, they would not be eligible to receive tier I reimbursement for CACFP meals served to all of the children in their care.

*What did OIG recommend to address this problem?*

The Kiddie Care audit recommended that FNS take steps to minimize the possibility of this improper claiming of food stamp and CACFP benefits. In a number of cases, the office making the food stamp eligibility determination had been unaware that the household included a day care provider. Therefore, OIG recommended that sponsors share information concerning CACFP providers claiming eligibility on the basis of food stamp participation with the State agency, which would then provide the information to the State agency administering the food stamp program. In this way, food stamp eligibility offices would know which households included an individual self-employed as a CACFP day care home provider, and would be better able to discern the household's actual income. If some of these households were determined to be ineligible to receive food stamps, they would then be required to submit income eligibility statements detailing their household income, including their child care income and expenses, in order to qualify for tier I benefits in CACFP.

*What is FNS proposing in this rule?*

We agree with this recommendation. We are therefore proposing to add, effective 6 months after issuance of the final rule, a requirement that sponsoring organizations of family day care homes provide to the State agency a list of all of their sponsored providers who qualify for tier I eligibility on the basis of food stamp participation. Within 30 days of receipt, the State agency would be required to provide this information to the State agency responsible for the administration of the Food Stamp Program. Once this information was provided to the State Food Stamp agency, they are required, under 7 CFR Part 273.12(c) to use the information in determining the household's food stamp eligibility. That information will be available to FNS for review during the normal course of conducting management evaluations, and review of the State agency's implementation of this requirement will be included in our Management Evaluation guidelines.

Accordingly, we propose to amend revised section 226.6(f)(1) by adding a new paragraph, (x), requiring that State agencies annually collect from each sponsoring organization of family day care homes a list of day care home providers qualifying to receive tier I benefits on the basis of their participation in the Food Stamp Program. This proposed new paragraph will also require State agencies to share this information with the State agency administering the food stamp program within 30 days of receipt.

**III. Training and Other Operational Requirements**

As discussed in the ''Background'' section of this preamble, OIG's national audit of family day care homes made recommendations for changes to the current requirements for the training of day care providers by sponsoring organizations. Specifically, OIG recommended that the CACFP regulations be strengthened to require that all participating child care providers attend a minimum number of hours in Program and child care training each year, and that minimum content requirements be established for such training. Current section 226.18 requires that the agreement between a sponsoring organization and a family day care home provider include a statement of the sponsor's responsibility to train the day care home provider; however, this provision has, in some cases, been interpreted to mean that training must be offered to day care home providers, and not that providers are actually required to attend the training. OIG also recommended that sponsor monitors receive, at a minimum, training on the same content areas provided to sponsored facilities.

We are also proposing a number of other miscellaneous changes that have been suggested by Program administrators in recent years. These include:

- Giving State agencies the authority to place restrictions on meal service times;
- Providing State agencies with greater flexibility on payment procedures for new child care and outside-school-hours care centers;

• Stating expressly that State agencies are required to issue and enforce the provisions of all Program guidance issued by FNS;

• Stating expressly that sponsoring organizations of family day care homes may neither use temporarily nor retain any portion of providers' food reimbursement, except as specified in section 226.13(c); and

• Eliminating obsolete language with regard to the participation of adult day care centers.

**A. Training Requirements for Sponsored Facilities and Sponsor Monitors**

*What are the current regulatory requirements for sponsor training of facility staff?*

The current regulations at section 226.15(e)(11) require institutions to maintain records which document:

• The date(s) and location(s) of all training sessions conducted;

• The topics covered at the session(s); and

• The attendees at each training session.

In addition, sections 226.16(d)(2) and (3) require sponsors to provide training to all sponsored child and adult care facilities in Program duties and responsibilities *prior* to beginning Program operations, and to provide additional training sessions not less frequently than annually afterwards. These requirements are designed to ensure that facility staff are familiar with Program requirements prior to beginning their work with CACFP, and that the staff of facilities participating in CACFP continue to receive additional training on a regular basis.

*What were OIG's findings and recommendations with regard to facility training?*

OIG found that compliance with these training requirements is not uniformly monitored and enforced by State agencies and institutions. Some CACFP administrators have interpreted current regulations to require that sponsoring organizations *offer* training to day care home providers, rather than requiring that the providers actually *attend* the training. In fact, section 226.18 is not entirely clear on this point; currently, the agreement between providers and sponsors must simply include a statement of the sponsor's responsibility to train the day care home's staff. OIG recommended that all participating family day care home providers receive a minimum number of hours in Program and child care training each year, and that sponsors and State agencies verify that providers receive training at least annually.

*What does the Department propose in this rule?*

We believe it is imperative that staff at sponsored child and adult care facilities *receive* training both before and during their CACFP participation. Therefore, we propose to clarify that day care providers are required to *attend* training prior to participation in the CACFP, and at least annually thereafter.

However, within these broad parameters, we also believe that it is necessary to provide State agencies with some flexibility in defining the format, content, length, frequency, and other aspects of the required training process. For example, some State agencies may wish to impose Statewide policies on how sponsors of centers and homes handle missed training sessions, or whether technical assistance provided during monitoring visits can be counted towards meeting minimum training requirements. Other State agencies may prefer to handle these matters on a case-by-case basis. Some State agencies may choose to require that facility staff receive training in the provision of ''quality child care,'' whereas others may be unwilling to mandate training not directly related to the CACFP. Finally, since State CACFP administrators will be familiar with what training requirements, if any, are imposed by their State licensing authorities, they will be in the best position to determine how CACFP training might complement any training provided to child care staff as a result of licensing-related or other State requirements.

Accordingly, we propose to amend sections 226.16(d)(2)–(3) to require that sponsors provide training to, *and* require the attendance of, key staff from all sponsored child care facilities in Program duties and responsibilities *prior* to the facility's participation in CACFP, and no less frequently than annually thereafter. We also propose to amend sections 226.17(b), 226.18(b)(2), 226.19(b)(7), and to add a new section 226.19a(b)(11), to clarify that key child care home, child care center and adult day care center staff (as defined by the State agency) are required to attend Program training prior to the facility's participation in CACFP, and at least annually thereafter, on content areas established by each State administering agency.

*Will the Department establish requirements on training content to State agencies?*

Recognizing that some State agencies will want to have Federal guidance on training, we have developed materials designed to help sponsors of child care facilities provide training on quality program operations. This guidance, entitled ''Guide to Provider Standards'' and ''Guide to Center Standards,'' can be used by State agencies and sponsors to measure the proficiency of facility staff in conducting their CACFP (and broader child care) responsibilities, and by sponsors to train facility staff in areas in which they may be deficient. The three standards established in the guidance are that facility staff:

• Comply with CACFP administrative requirements;

• Comply with CACFP meal service requirements and serve nutritious meals; and

• Promote the health, safety and well-being of the children in care.

This guidance was developed in a cooperative effort with State administrators and its use is strongly encouraged.

In addition, we are proposing in this rule that certain content be covered in the training of all sponsored child care facilities. Although we wish to provide as much flexibility as possible to State agencies, it is clear that all sponsored facilities must be thoroughly familiar with Program requirements if they are to properly operate the Program. These basic Program requirements must be included in all training of sponsored facilities:

• Serving meals which meet the CACFP meal patterns;

• An explanation of the Program's reimbursement system;

• Taking accurate meal counts;

• Submitting accurate meal claims, including an explanation of how the sponsor will review the facility's claims; and

• Complying with recordkeeping requirements.

*Does the Department expect providers to receive the same training every year?*

No, but we expect that even providers with long experience in CACFP can use ''reminders'' regarding these basic features of the Program. Although sponsors may want to design their training to experienced providers differently, a review of these Program features must be a part of every provider's annual training.

*Don't sponsor monitors need the same training?*

Yes. A sponsor monitor can hardly be expected to ensure Program accountability if he/she is not thoroughly familiar with these Program requirements. Therefore, we are also proposing that sponsor monitors receive the same training as providers, both before they begin their monitoring duties and on an annual basis thereafter.

*Does the Department also propose to adopt the OIG recommendation to require that State agencies and sponsoring organizations verify that facilities have received training?*

Yes. The OIG audit recommended that day care home sponsors and State agencies verify, at least annually, that participating providers actually received required training. As discussed in Parts II(C) and (E) of the preamble above, we have developed prototype sponsor and State agency review forms which include a section on verifying that appropriate facility personnel have received training in accordance with regulatory requirements. Although use of these prototype forms is optional, we propose to require that, at least once a year, sponsor reviews of all child care facilities include an assessment of compliance with training requirements and that State agency reviews of sponsors always include this component.

Accordingly, we propose to further amend section 226.6(l) to require that, as part of their administrative reviews, State agencies assess the compliance of sponsoring organizations with the training requirements set forth at section 226.16(d). In addition, we propose to further amend section 226.16(d) to require that at least annually, as part of a review, sponsoring organizations verify that one or more staff from each child care facility has attended the training offered by the sponsor and that these staff receive training on CACFP meal patterns, an explanation of the Program's reimbursement system, meal counts, the claims process and claim review, and Program recordkeeping requirements, before entering the Program and on an annual basis thereafter. Finally, we also propose to add a new paragraph, section 226.15(e)(15), which would require that sponsor monitoring staff be trained on these same content areas.

**B. Times of Meal Service**

*What are the current restrictions on the time of meal service?*

Except for outside-school-hours care centers, current regulations do not require that meals be served at particular times of day, or that a certain amount of time must elapse between meal services. Even for outside-school-hours care centers, the regulations place restrictions on the time of meal service for suppers only.

*Who has asked for changes to these requirements?*

In the past, some Program administrators have requested us to propose definite times of service for each meal type (*e.g.*, breakfasts only to be served between 6:00 and 9:00 AM), or to require that a certain amount of time elapse between meal services.

*How has the Department responded to these requests?*

We remain reluctant to establish such requirements on a national basis, for fear of restricting Program access. Single parents working the night shift, for example, often have tremendous difficulty finding suitable care for their children; it would be counterproductive to mandate rules that make it even harder for parents in this type of job situation to find appropriate, licensed or approved care for their children.

However, recent audits and reviews have found child care facilities which regularly serve apparently unnecessary meals in order to maximize their claims for reimbursement (*e.g.*, serving and/or claiming service of a snack at 4:30 and a supper at 5:45 to an after-school child who is to be picked up by a parent at 6). Therefore, we are concerned about the potential for Program abuse. Although the proposed requirement to provide more information about children's hours of care and meals received on enrollment forms (see Part II(B) of the preamble, above) and to conduct edit checks of enrollment forms against monthly claims (see Part II(D) of the preamble) will certainly help identify these practices, it will only do so during reviews or monthly reconciliations, *after* the meal has been inappropriately served and claimed.

*What is the Department proposing?*

We are sympathetic to State agencies' requests to have specific regulatory authority to impose limits on meal services. In States where Program reviews have uncovered patterns of abuse involving claiming of multiple meals to children in care for a brief amount of time, or where main meals such as breakfasts and lunches are routinely served only a short time apart, we wish to provide State agencies with appropriate tools for eliminating such mismanagement. In these circumstances, it is appropriate for State agencies to have regulatory authority to support their attempts to limit this type of abuse.

However, we ask State agencies to exercise care in implementing restrictions on meal service times that might limit the amount of quality care available to children whose parents work unusual hours or experience unique circumstances. In the example cited above, the child receiving a supplement at 4:30 p.m. may need one as soon as he arrives at day care if he ate lunch at school at 11:30 a.m.; similarly, he may also need to receive a supper prior to leaving care if his commute home is a particularly long one. In addition, homes and centers serving infants and toddlers may need to provide meals more frequently given these children's tendency to eat smaller portion sizes more frequently throughout the day. State agencies may wish to limit their use of this authority to particular sponsorships or particular facilities which have been found to be providing meals inappropriately to children.

Accordingly, we propose to add section 226.20(k), entitled ''Time of meal service'', to provide State agencies with the authority to require that child care facilities allow a certain amount of time between meal services or that meal services not exceed a specified duration. We further propose to redesignate current paragraphs (k)–(p) as (l)–(q), respectively.

**C. Reimbursement to Institutions When Approved for Participation**

*What are the current rules pertaining to reimbursement of new institutions?*

Current section 226.11(a) states that payment for meals served in child and adult care centers may only be made to institutions operating under an agreement with the State agency for meal types specified in the agreement. State agencies have the option to reimburse child and adult care centers for meals served in the calendar month preceding the calendar month in which the agreement is executed, provided that the center has records to document participant eligibility, the number of meals served, and that the meals met Program requirements. The State agency does not have a similar option with regard to reimbursing family day care homes for meals served prior to execution of an agreement.

*Why is the Department proposing a change to this provision?*

State agencies have expressed concern that the current regulation's wording limits their flexibility by:

• Setting up an expectation that centers will *always* be paid for meals served in the calendar month preceding execution of the agreement; and

• Not specifically citing the State agency's authority to *defer* payments for a period of time after the execution of an agreement with an institution and/or its facilities.

We did not intend to establish an expectation that new centers would always be reimbursed for meals served in the month prior to execution of their agreement. However, we do not agree with State agencies which wish to defer reimbursement to approved centers until *after* the date they sign the Program agreement. Rather, we believe the regulations should clarify that State agencies are required to begin reimbursing centers for meals when a Program agreement is signed and all Program requirements are being met.

Accordingly, we propose to add language to section 226.11(a) to clearly establish State agencies' authority to defer payment for meals served in centers until the day on which the center executes a Program agreement with the State agency.

**D. Regulations and Guidance**

*Are State agencies required to ensure compliance with Federal guidance as well as regulations?*

Yes. Section 226.6(l) makes State agencies responsible for monitoring institutions' compliance with Program regulations ''and with any applicable instructions of FNS and the Department.'' Although this requirement and case law have demonstrated that State agencies have the authority and the responsibility to apply Federal guidance which interprets the regulations and the law, we believe it is necessary to clarify this fact. Comparable regulatory language already exists in other programs, such as the Summer Food Service Program (see 7 CFR section 225.15(a)).

Accordingly, we propose to further amend section 226.6(l) to clarify State agencies' authority in this regard, and to add a new paragraph, section 226.15(m), which requires institutions to comply with all regulations, instructions, and guidance materials issued for the CACFP.

**E. Sponsor Disbursement of Food Service Payments to Family Day Care Providers**

*What are the rules governing sponsors' disbursement of meal service payments to family day care homes?*

The regulations at sections 226.13(c) and 226.18(b)(7) state that sponsoring organizations of family day care homes shall disburse the full amount of meal service earnings to providers, except that, with the provider's prior written consent, the sponsor may deduct the costs of providing meals or foodstuffs to the provider. In recent years, we have been asked whether the regulations would permit sponsors:

• To temporarily retain some portion of the providers' meal service payments; or

• With or without prior written consent, to subtract the costs of other goods or services (*e.g.,* liability insurance premiums, toys, or educational materials) provided to the family day care provider.

The intent of the current regulations is to *prohibit* any retention of meal service payments by the sponsoring organization, except in the single instance described in the regulations (a written agreement for the provision of meals or foodstuffs by the sponsor to the provider). We are well aware that sponsors often sell related goods or services to family day care home providers, including providers they do not sponsor. However, because sponsoring organizations of family day care homes are required to be public entities or to have nonprofit status under the Internal Revenue Code, such sales must generally be handled through a separately-incorporated proprietary subsidiary of the sponsoring organization. There is no reason for the government to facilitate proprietary transactions through the retention of food service payments provided under the CACFP. We intend there to be no exceptions save that specified in the current rule.

*What if the sponsor retains the providers' payments temporarily?*

This practice amounts to interest-free ''borrowing'' by the sponsor from the provider, and is prohibited by the regulations. Provider payments are not the property of the sponsor. Sponsors that improperly retain provider payments for any period of time have misappropriated these funds, in violation of the statute authorizing CACFP.

Accordingly, we propose to amend sections 226.13(c) and 226.18(b)(7) to further clarify the limitations on sponsoring organizations' temporary or permanent retention of meal service payments, except when it is expressly permitted by the regulation or permitted by the State agency due to questions concerning the legitimacy of the provider's claim.

**F. Technical Change: Elimination of Obsolete Adult day Care Provision**

*Why is the Department proposing this change?*

In 1988, Pub. L. 100–175, the Older Americans Act Amendments of 1987, permitted adult day care centers to participate in the CACFP under certain circumstances. Although the law was enacted on November 29, 1987, its provisions with regard to these centers' participation in CACFP were retroactively effective back to October 1, 1987. Therefore, we published an interim rule (53 FR 52584, December 28, 1988) which amended section 226.25 to establish the guidelines under which adult day care centers could claim reimbursement for meals served between October 1 and November 29, 1987. The sole purpose of these provisions was to deal with the one-time circumstance of making retroactive payments to adult day care centers.

Accordingly, we propose to remove section 226.25(g).

**IV. Non-Discretionary Changes Required by Public Laws 104–193 and 105–336**

*What is a ''non-discretionary change''?*

A ''non-discretionary'' change is a specific change to the regulations that is mandated by law. That is, if a law is enacted which eliminates one of the previously-reimbursable meal services in a child nutrition program, a Federal administering agency literally has ''no discretion'' with regard to whether it will change the regulations to implement the law and eliminate the meal service. If it fails to make this change, the Federal agency is in violation of the law.

Most of the other changes being proposed in this rule are ''discretionary'', in that they are designed to carry out the law's intent but were not specifically mandated by law. Thus, CACFP reimbursement must be made only for eligible meals served to participants, but the law does not specifically mandate that USDA ensure this by establishing a system of performance standards for institutions, as it proposed in Section I of this preamble.

*Why is USDA including non-discretionary changes in a proposed rule?*

Generally, because changes to the statute must be implemented in the regulations, non-discretionary changes are published in an ''interim'' or ''final'' regulation, which has the force of law upon publication. However, this

proposed rule includes a number of non-discretionary changes to the CACFP which were mandated by Pub. L. 104–193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998. Although not all of these changes relate to Program management, the primary focus of this rule, it is expedient to include these changes in this proposal.

Commenters are encouraged to respond to the specific way in which we are proposing to implement these changes, but are asked not to comment on the changes themselves, which we are required by law to incorporate into the Program regulations.

**A. Issuance of Advances to Institutions Participating in CACFP**

*How did the law change the rules governing advance payments to institutions?*

Prior to the passage of Public Law 104–193, section 17(f)(4) of the NSLA required State agencies to ''provide advance payments* * * * to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation.'' Section 708(f)(2) of Public Law 104–193 amended section 17(f)(4) to make issuance of advances discretionary, at the State agency's option.

*How does USDA propose to implement this change to the law?*

We believe that the law intended to provide State agencies with broad discretion in this area, and that State agencies may choose one of a number of options. State agencies may choose to:

- Issue advances to all institutions;
- Issue advances to no institutions;
- Issue advances to those institutions with records of adequate Program administration; or
- Issue advances to one or more type(s) of institution (*e.g.,* issue advances only to independent centers).

However, we also believe that, if a State agency chooses the third or fourth option listed above, it must have valid reasons for distinguishing between types of institutions, or between individual institutions, to which it will/will not issue advances. We also wish to note that a State agency's decision to employ the third option (not to issue advances to one or more institutions due to their record in administering the Program) is an appealable action in accordance with section 226.6(k).

Accordingly, we propose to amend section 226.10(a) of the regulations to make State agency issuance of advances to institutions optional.

**B. Change to Method of Rounding Meal Rates in Child Care and Adult Day Care Centers**

*How did the law change with regard to the method of rounding meal rates?*

Section 704(b)(1) of Public Law 104–193 amended section 11(a)(3)(B) of the NSLA by changing the method to be used by the Department in making annual adjustments to the national average payment rate for paid meals served in the NSLP and SBP. This change also affected the method of rounding used to calculate the annual adjustment to the rate for paid meals served in child care centers and adult day care centers participating in the CACFP because, under sections 17(c)(1)–(3) and 17(o)(3) of the NSLA, these rates are linked to the rates and rounding methods established in section 11(a)(3)(B). Later, section 103(b) of Public Law 105–336 extended the same rounding procedure to the free and reduced price meal rates in NSLP, SBP, and the center-based component of CACFP, effective July 1, 1999.

Prior to this change, the Department rounded all meal rates paid to child and adult day care centers in the same manner. Each year, the previous year's rate was adjusted for inflation and then rounded up or down to the nearest one-quarter cent. This rounding methodology for meals served in centers is set forth in the regulations at section 226.4(g)(2). Public Law 104–193 changed this rounding method for meals served at the paid rate in child and adult day care centers by requiring that the unrounded amount for the preceding 12-month period be adjusted for inflation, then rounded down to the nearest whole cent. Later, Public Law 105–336 extended the same rounding procedure to the free and reduced price meal rates in NSLP, SBP, and the center-based component of CACFP, effective July 1, 1999.

Accordingly, this rule proposes to modify the language at section 226.4(g)(2) regarding the rounding of meals served in child and adult day care centers to conform to the requirements of Pub. Laws 104–193 and 105–336. In addition, this rule proposes to change the word ''supplements'' to ''meals'' at section 226.4(g)(2) of the regulations since this paragraph is clearly intended to describe the method of adjusting and rounding the rates for *all* meals (not just supplements) served in child and adult day care centers.

**C. Elimination of the Aid to Families With Dependent Children (AFDC) Program**

Perhaps the most significant change made by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 was the elimination of the Aid to Families with Dependent Children, or AFDC, Program. This Federally-run entitlement program was replaced by a series of State-run programs with different requirements, all funded under a Federal block grant called the Temporary Assistance to Needy Families (TANF) program.

*What effect did this change have on CACFP?*

In regulatory terms, this change had little impact on the Child Nutrition Programs. Section 109(g)(1)(B)(i) of Public Law 104–193 made conforming changes to the statutes governing the Child Nutrition Programs which required that households which were categorically eligible for free meal benefits in these programs by virtue of their AFDC recipiency would also be categorically eligible for free meals based on their receipt of TANF benefits.

Accordingly, we propose to remove the definition of ''AFDC assistance unit'' at section 226.2 and replace it with a definition of ''TANF recipient''. In addition, we propose to remove all references to ''AFDC assistance unit'', ''AFDC case number'', and all other references to ''AFDC'' throughout the Part 226 regulations and to replace them with references to ''TANF recipient'', ''TANF case number'', and ''TANF'', respectively.

**D. State Agency Outreach Requirements**

*What changes did Public Law 104–193 make relating to Program outreach?*

Section 708(a) of Public Law 104–193 amended the statutory ''purpose statement'' for CACFP by amending section 17(a) of the NSLA. Previously, the law had required us to assist States to ''initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care.'' Section 708(a) deleted the words ''and expand'' from this sentence. In addition, section 708(h) of Pub. L. 104–193 revised section 17(k) of the NSLA in its entirety. Previously, this section of the law had required State agencies to ''facilitate expansion and effective operation of the Program'' and to annually notify each nonparticipating institution of the Program's availability, the requirements for participation, and the procedures for application. As a result of Public Law 104–193, this section of the law now requires State

agencies to ''provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program.''

*Did this change eliminate outreach from the CACFP?*

No. State agency outreach is still an allowable and desirable Program activity. Although Public Law 104–193 removed two specific requirements for State agency outreach, it nonetheless maintained, and even reinforced, the State agency's responsibility to foster Program expansion in low-income and rural areas.

Previously, Public Law 101–147 had made additional funds available to sponsoring organizations of day care homes for expansion into rural or low-income areas. Public Law 103–448 had permitted day care home sponsors to use their administrative funds to defray the licensing-related costs of non-participating low-income day care home providers. Public Law 104–193 underscored Congress' commitment to these provisions by mandating that we publish interim regulations implementing these changes and giving them the force of law, which was done in 1998 (63 FR 9721, February 26, 1998). Thus, although the specific requirement to notify non-participating institutions was removed, the law continues to promote program expansion among rural and low-income family day care home providers, and the regulations continue to require State agencies to perform outreach activities, especially in rural and low-income areas.

*What changes to the rule is the Department proposing?*

Accordingly, we propose to amend:

- Section 226.6(a) to require that State agencies continue to commit sufficient resources to facilitate Program expansion in low-income and rural areas; and
- Section 226.6(g), entitled ''Program expansion'', to eliminate the language requiring that State agencies take specific actions to facilitate expansion, while retaining the broader requirement that State agencies take action to expand the availability of Program benefits, especially in low-income and rural areas.

**E. Prohibition on Payment of Incentive Bonuses for Recruitment of Family Day Care Homes**

*What change did the law make with regard to employee payments by family day care home sponsoring organizations?*

Section 708(b) of Public Law 104–193 amended section 17(a)(2)(D) of the NSLA by prohibiting any family day care home sponsoring organization which employs more than one person from basing payment to employees on the number of family day care homes recruited.

Because these terms were not narrowly defined by Congress, we have broadly construed the terms ''employee'' and ''payment''. For example, sponsoring organizations often pay individuals (including family day care home providers whom they sponsor for CACFP) to perform specific program functions, such as training, monitoring, or recruitment. Although that person is not a full-time employee of the family day care home sponsoring organization, we nevertheless believe that they were intended to be covered by this prohibition. We also believe that Congress intended to prohibit any form of payments (including bonuses, free trips, or any other perquisite or gratuity) based solely on recruitment made to any full-time or part-time employee, contractor, or family day care home provider.

*Can a family day care home sponsor still pay persons to perform recruitment functions?*

Yes. The recruitment of family day care home providers to participate in CACFP is not prohibited. In fact, as noted in the previous section of this preamble, the law continues to encourage recruitment of new providers in low-income and rural areas. This means that family day care home sponsors are permitted to pay employees or contractors to perform recruitment functions. However, the person being paid cannot be reimbursed *solely* on the basis of the *number* of homes recruited. Similarly, including the number of homes recruited as an evaluation factor when measuring an employee or contractor's performance is permissible, whereas providing a bonus or award for recruiting a certain number of homes would not be permissible.

*How does USDA propose to implement this change?*

Accordingly, we propose to amend section 226.15 by adding a new paragraph (g) which prohibits sponsoring organizations of family day care homes from making payments to employees or contractors solely on the basis of the number of family day care homes recruited, and by redesignating current sections 226.15(g)–(k) as sections 226.15(h)–(l), respectively.

**F. Pre-Approval Visits by State Agencies to Private Institutions**

*What change did the recent reauthorization make to the rules for State agency visits to new private institutions?*

Section 107(c) of Public Law 105–336 amended section 17(d) of the NSLA (42 U.S.C. section 1766(d)) to require State agencies to visit private institutions (both non-profit and for-profit) applying for the first time *prior* to their approval to participate in CACFP. Section 107(c) further requires State agencies to make ''periodic site visits to private institutions that the State agency determines have a high probability of program abuse.''

*How does USDA propose to implement these changes in the regulations?*

It is clear that Congress intended to exclude from this pre-approval visit requirement both public institutions and institutions which are adult day care centers, and to focus additional State agency resources on child care institutions, especially on sponsors of more than one child care facility. The conference report language (Conf. Report 105–786, October 6, 1998) focuses throughout on the Program management problems documented in OIG audits. These audits have been confined to sponsors of family child care homes and/or child care centers because these organizations account for such a large share of Program reimbursements.

*Why require a pre-approval visit to private independent centers?*

We recognize that requiring State agencies to conduct a pre-approval visit of each new independent center could, especially in geographically large and rural States, result in delays in approving such centers. In large, rural States, the remote location of some centers might require State agencies to delay pre-approval visits until such time as other duties brought them to that part of the State. Given Congress' documented concern with Program access in low-income and rural areas, we have addressed this issue in Program guidance issued on July 14, 1999. That guidance sets forth various ways in which the pre-approval requirement might be met for independent centers (including obtaining information gathered by the State licensing agency in its previous visit(s) to the center), and also describes certain circumstances under which we would be willing to entertain State agency requests to delay the pre-approval requirement for one or more independent centers. Thus, the

guidance provides State agencies with options for meeting the legal requirement with respect to independent centers, but ensures that a pre-approval visit to sponsoring organizations by the State agency will always occur.

Accordingly, we propose to further amend revised section 226.6(b)(1)(i) to require State agencies to conduct pre-approval visits to new private child care institutions.

**G. Provision of Information on the WIC Program**

*What does the law require with regard to distribution of information on the WIC Program?*

Section 107(i) of Public Law 105–336 requires us to provide State agencies with information concerning the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program. It also requires State agencies to ''ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours) receive materials'' that explain WIC's importance, its income eligibility guidelines, and how to obtain benefits. In addition, State agencies must provide these facilities with periodic updates of this information and must ensure that the parents of enrolled children receive this information.

*How does USDA propose to implement this change?*

On April 14, 1999, we provided the required information to each State agency administering the CACFP. We propose to require State agencies to distribute this information to each institution participating in the Program, to require that the institution make this information available to each sponsored facility (except sponsored outside-school-hours care centers), and to ensure that institutions and/or facilities make this information available to the households of participating children.

Accordingly, we propose to amend section 226.6 by adding a new paragraph (q) which includes the requirements for State agencies with respect to dissemination of WIC information. We also propose to amend section 226.15 by adding a new paragraph (n) which sets forth the institution's requirements for dissemination of WIC information to parents.

**H. Audit Funding**

*What change did the law make to audit funds available to State agencies?*

Section 107(e) of Public Law 105–336 amended section 17(i) of the NSLA (42 U.S.C. section 1766(i)) by reducing the amount of audit funding made available to State agencies. Prior to this change, State agencies could receive up to two percent of Program expenditures during the preceding fiscal year to conduct Program audits. This was changed to one and one-half percent of Program expenditures in the previous fiscal year, beginning in fiscal year 1999. In addition, in order to meet mandatory ten-year budget targets, the law also mandated a further reduction (to one percent) in fiscal years 2005 through 2007; however, the conference report made clear Congress' intent to restore funding which would maintain the level at one and one-half percent in those three years.

*How does USDA propose to implement this change?*

Accordingly, we propose to amend section 226.4(h) by removing the words ''2 percent'' and substituting in their place the words ''1½ percent''.

*Executive Order 12866*

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

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. When implemented, this proposed rule will primarily affect the procedures used by State agencies in reviewing applications submitted by, and monitoring the performance of, institutions which are participating or which wish to participate in the Child and Adult Care Food Program. Those proposed changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

*Executive Order 12372*

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published in 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984). Over the past five years, the Department informally consulted with State administering agencies, Program sponsors, and CACFP advocates on ways to improve Program management and integrity in CACFP. Discussions with State agencies took place in the joint Management Improvement Task Force meetings held between 1995 and 2000; in three biennial National meetings of State and Federal CACFP administrators (1996 in Seattle, 1998 in New Orleans, and 2000 in Chicago); at the December 1999 meeting of State Child Nutrition Program administrators in New Orleans; and in a variety of other small- and large-group meetings. Discussions with Program advocates and sponsors occurred in the Management Improvement Task Force meetings held in 1999–2000; in annual National meetings of the Sponsors Association, the CACFP Sponsors Forum; the Western Regional Office-California Sponsors Roundtable from 1996–2000; and in a variety of other small-and large-group meetings.

*Public Law 104–4*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service must usually prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in new annual expenditures of $100 million or more by State, local, or tribal governments or the private sector. When such a statement is needed, section 205 of the UMRA requires the Food and Nutrition Service to identify and consider regulatory alternatives that would achieve the same result.

This rule contains no Federal mandates (as defined in Title II of the UMRA) that would lead to new annual expenditures exceeding $100 million for State, local, or tribal governments or the private sector. Therefore, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 proposed rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions. This includes any administrative procedures provided by State or local governments. In the CACFP, the administrative procedures are set forth at:

(1) 7 CFR 226.6(k), which establishes appeal procedures; and

(2) 7 CFR 226.22 and 7 CFR 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this notice invites the general public and other public agencies to comment on the information collection. Written comments on the information collection requirements proposed in this rule must be received on or before November 13, 2000 by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 3208 New Executive Office Building, Washington, DC 20503, Attention: Ms. Brenda Aguilar, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their remarks on information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information proposed in this rule between 30 to 60 days after its publication in the **Federal Register**. Therefore, a comment to OMB is most likely to be considered if OMB receives it within 30 days of the publication of this proposed rule. This does not affect the 90-day deadline for the public to comment to the Department on the substance of the proposed rule.

Comments are invited on: (a) Whether the collection of information is necessary for the Agency to perform its functions of the agency and will have practical utility; (b) the accuracy of the Agency's estimate of the burden of collecting the information, including whether its methodology and assumptions are valid; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The title and description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* 7 CFR Part 226, Child and Adult Care Food Program.

*OMB Number:* 0584–0055.

*Expiration Date:* October 31, 2001.

*Type of request:* Revision of existing collections.

*Abstract:* This rule proposes to revise: the application process for institutions applying to participate in the CACFP; State- and institution-level monitoring requirements; Program training and other operating requirements for child care institutions and facilities; and other provisions which we are required to change as a result of the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. The proposed changes are primarily designed to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

| Description of change | Section | Annual number of respondents | Annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|---|
| Enrollment documentation shall be updated annually, signed by a parent or legal guardian, and include information on child's normal days & hours of care & the meals normally received while in care | | | | | |
| Total Existing Households | 0 | 0 | 0 | 0 | 0 |
| Total Proposed Households | 7 CFR 226.15(e)(2) | 1,490,770 | 1 | .33 | 491,954 |
| Total Existing Recordkeeping Burden. | 0 | 0 | 0 | 0 | 0 |
| Total Proposed Recordkeeping Burden—+491,954 | | | | | |
| Change—+491,954 | 0 | 0 | 0 | 0 | 0 |

**List of Subjects in 7 CFR Part 226**

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs—health, 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, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In part 226:

a. All references to ''AFDC'' are revised to read ''TANF''.

b. All references to ''AFDC assistance unit'' are revised to read ''TANF recipient''.

3. In § 226.2:

a. Remove the definition of *AFDC assistance unit.*

b. New definitions of *Household contact*, *New institution*, *Renewing*

*institution*, and *TANF recipient* are added in alphabetical order.

The revision and additions specified above read as follows:

**§ 226.2 Definitions**

* * * * *

*Household contact* means a contact made by a sponsoring organization or a State agency to a household with a child(ren) in a family day care home or a child care center (excluding family day care home providers' households when the provider's own children are in care). Such contact may be made in writing or by telephone; however, a telephone contact must be preceded by written notice to the household explaining the reason for the call, providing the name of the sponsor employee who will make the call, and providing assurance that any information provided will be confidential and will be used solely for Program purposes. The household contact shall ask an adult member of the household to verify the attendance and enrollment of the household's children and the specific meal service(s) which the children routinely receive while in care.

* * * * *

*New institution* means an institution which is applying to participate in the Program for the first time, or an institution which is applying to participate in the Program after a lapse in Program participation.

* * * * *

*Renewing institution* means an institution which is participating in the Program at the time the State agency requires the institution to submit a renewal application.

* * * * *

*TANF recipient* means an individual or household receiving assistance (as defined in 45 CFR § 260.31) under a State-administered Temporary Assistance to Needy Families program.

* * * * *

4. In § 226.4:

a. Paragraph (g)(2) is amended by removing the word ''supplements'' and adding in its place the word ''meals'', and by removing the second sentence and adding two new sentences in its place.

b. Paragraph (h) is amended by removing the words ''two percent'' and adding in their place the words ''one and one-half percent''.

The addition specified above reads as follows:

**§ 226.4 Payments to States and use of funds**

* * * * *

(g) * * *

(2) * * * Such adjustments shall be rounded to the nearest lower cent, based on changes measured over the most recent twelve-month period for which data are available. The adjustment to the rates shall be computed using the unrounded rate in effect for the preceding year.

* * * * *

5. In § 226.6:

a. Paragraphs (a) and (b) are revised.

b. Paragraphs (f) (1) through (f)(3) are revised, and paragraphs (f)(4) through (f)(11) are removed.

c. Paragraph (g) is revised.

d. Paragraph (h) is amended by revising the first sentence and by adding a new second sentence immediately thereafter.

e. Paragraph (j) is revised.

f. Paragraphs (l) and (m) are revised.

g. A new paragraph (q) is added.

The additions and revisions specified above read as follows:

**§ 226.6 State agency administrative responsibilities.**

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical, and managerial personnel to:

(1) Administer the Program;

(2) Provide sufficient training and technical assistance to institutions;

(3) Monitor Program performance;

(4) Facilitate expansion of the Program in low-income and rural areas; and

(5) Ensure effective operation of the Program by participating institutions.

(b) *Program applications and agreements.* (1) Application review process. Each State agency shall establish an application review process to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations. In its review of any institution's application to participate in the Program, the State agency shall consult the list of seriously deficient institutions and shall deny the application of any institution on that list. The State agency shall enter into written agreements with institutions in accordance with paragraph (b)(2) of this section.

(i) *Application procedures for new institutions.* Each State agency shall establish application procedures to determine the eligibility of new institutions under this part. At a minimum, such procedures shall require that institutions submit information to the State agency in accordance with paragraph (f) of this section. For new private child care institutions, such procedures shall also include a satisfactory pre-approval visit by the State agency to confirm the information in the institution's application and to further assess its ability to manage the Program. In addition, such procedures shall include:

(A) For both sponsored and independent child care centers, adult day care centers and outside-school-hours care centers, submission of the number of enrolled children eligible for free, reduced price and paid meals;

(B) For sponsoring organizations of day care homes:

(*1*) Submission of the current total number of children enrolled;

(*2*) An assurance that day care home providers' children enrolled in the Program are eligible for free or reduced price meals;

(*3*) The total number of tier I and tier II day care homes that it sponsors;

(*4*) The number of children enrolled in tier I day care homes;

(*5*) The number of children enrolled in tier II day care homes; and

(*6*) The number of children in tier II day care homes that have been identified as eligible for free or reduced price meals;

(C) For all institutions, submission of the institution's nondiscrimination policy statement, free and reduced price policy statement, and media release;

(D) For all sponsoring organizations, submission of a management plan which includes:

(*1*) Detailed information on the sponsoring organization's administrative structure;

(*2*) The staff assigned to Program management and monitoring;

(*3*) An administrative budget;

(*4*) The procedures to be used by the sponsoring organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship; and,

(*5*) For sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement;

(E) For all institutions, submission of an administrative budget which the State agency shall review in accordance with § 226.7(g);

(F) Submission of documentation that all independent or sponsored child care centers, adult day care centers, and outside-school-hours care centers, and all day care homes for which application is made by a sponsoring organization, are in compliance with Program licensing/approval provisions;

(G) Except for any public organization or any proprietary title XIX and title XX

centers and organizations which solely sponsor proprietary title XIX and title XX centers, submission of evidence of tax-exempt status in accordance with § 226.15(a);

(H) For proprietary title XX child care centers, submission of:

(*1*) Documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act; and

(*2*) Certification that not less than 25 percent of enrolled children or 25 percent of the licensed capacity, whichever number is less, in each such center during the most recent calendar month were title XX beneficiaries.

(I) For proprietary title XIX or title XX adult day care centers, submission of:

(*1*) Documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act; and

(*2*) Certification that not less than 25 percent of enrolled adult participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries; and

(J) Submission of a statement of institutional preference to receive commodities or cash-in-lieu of commodities.

(ii) *Application procedures for renewing institutions.* Each State agency shall establish application procedures to determine, under this part, the eligibility of renewing institutions.

(A) At a minimum, such procedures shall include the renewing institution's submission of:

(*1*) A management plan and administrative budget, in accordance with paragraphs (b)(1)(i)(D), (b)(1)(i)(E), and (f)(1)(vi) of this section; and

(*2*) Such other documentation as the State agency shall determine necessary to ensure an institution's ability to manage the Program properly, efficiently, and effectively in accordance with this part.

(B) Renewing institutions shall not be required to submit a free and reduced price policy statement unless they make substantive changes to that statement.

(C) The State agency shall require each renewing institution participating in the Program to reapply for participation at a time determined by the State agency, except that no institution shall be allowed to participate for less than 12 or more than 36 calendar months under an existing application, except as described in paragraph (b)(2)(ii)(B) of this section.

(iii) *State agency notification requirements.* Any new or renewing institution applying for participation in the Program shall be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions which have submitted an incomplete application. Any disapproved applicant shall be notified of the reasons for its disapproval and its right to appeal under paragraph (k) of this section.

(2) *Program agreements.* (i) The State agency shall require each institution which has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for an institution to comply with the reapplication provisions of paragraphs (b) and (f) of this section.

(ii) The length of time during which such agreements are in effect shall be no less than one nor more than three years, except that:

(A) The State agency and institutions which are school food authorities shall enter into a single permanent agreement for the administration of all child nutrition programs for which the State agency has responsibility; and

(B) If the State agency has not conducted a review of a renewing institution since the last agreement was signed or extended, and it has reason to believe that such a review is immediately necessary, the State agency may approve the agreement with the institution for a period of less than one year, pending the completion of a review of the institution.

(iii) Any agreement that extends from one fiscal year into the following fiscal year shall stipulate that, in subsequent years, the agreement shall be in effect contingent upon the availability of Program funds. However, this shall not limit the State agency's ability to terminate the agreement in accordance with paragraph (c) of this section.

(iv) The Program agreement shall provide that the institution accepts final financial and administrative responsibility for management of a proper, efficient, and effective food service, and will comply with all requirements under this part. In addition, the agreement shall provide that the sponsor shall 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 shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

* * * * *

*(f) Miscellaneous responsibilities.* State agencies shall require institutions to comply with the applicable provisions of this part and shall provide or collect the information specified in this paragraph (f).

(1) *Annual responsibilities.* In addition to its other responsibilities under this part, each State agency shall annually:

(i) Inform institutions which are pricing programs of their responsibility to ensure that free and reduced price meals are served to participants unable to pay the full price;

(ii) Provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced price meals under the Program;

(iii) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by February 15 of each year, unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October, in which case the State agency shall provide the list to sponsoring organizations within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency shall also provide each sponsoring organization with census data, as provided to the State agency by FNS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is

made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data;

(iv) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement;

(v) Require child care centers, adult day care centers and outside-school-hours care centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage in accordance with § 226.9(b), and require sponsoring organizations of family day care homes to submit the total number of tier I and tier II day care homes that it sponsors, as well as a breakdown showing the total number of children enrolled in tier I day care homes, enrolled in tier II day care homes, and enrolled in tier II day care homes but identified as eligible for free and reduced price meals;

(vi) Require each sponsoring organization of child care facilities to submit an administrative budget with sufficiently detailed information for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the institution's capability to manage Program funds. The administrative budget submitted by any sponsoring organization shall demonstrate that the sponsor will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars;

(vii) Require each institution to issue a media release;

(viii) Require each institution to provide information concerning its licensing/approval status and that of its facilities, as appropriate;

(ix) Require each institution to submit verification that all facilities under its sponsorship have adhered to the training requirements set forth in Program regulations; and

(x) Require each sponsoring organization of family day care homes to submit to the State agency a list of family day care home providers receiving tier I benefits on the basis of their participation in the Food Stamp Program. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the Food Stamp Program.

(2) *Triennial responsibilities.* In addition to its other responsibilities under this part, each State agency shall, at intervals not to exceed 36 months:

(i) Require participating institutions to re-apply to continue their participation; and

(ii) Require sponsoring organizations of child care facilities to submit a management plan with the elements set forth in paragraph (b)(1)(i)(D) of this section.

(3) *Other responsibilities.* At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit an administrative budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the institution's qualifications to manage Program funds. Such budget shall demonstrate that the institution will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars;

(ii) Require institutions to report their commodity preference;

(iii) Require each institution to submit documentation of its non-discrimination statement;

(iv) Require an institution (except for any public organization, or any proprietary title XIX and title XX centers and sponsoring organizations of proprietary title XIX and title XX centers) to submit evidence of nonprofit status in accordance with § 226.15(a);

(v) Require proprietary title XX child care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants or 25 percent of the licensed capacity, whichever is less, in each such center during the most recent calendar month were title XX beneficiaries;

(vi) Require proprietary title XIX or title XX adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vii) Require each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(viii) Perform verification in accordance with § 226.23(h) and paragraph (l)(3) of this section. State agencies verifying the information on free and reduced price applications shall ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

(g) *Program expansion.* Each State agency shall take action to expand the availability of benefits under this Program, and shall conduct outreach to potential sponsoring organizations of family day care homes which might administer the Program in low-income or rural areas.

(h) *Commodity distribution.* The State agency shall require new applicant institutions to state their preference to receive commodities or cash-in-lieu of commodities, and may periodically inquire as to participating institutions' preference to receive commodities or cash-in-lieu of commodities. State agencies shall annually provide institutions with information on foods available in plentiful supply, based on information provided by the Department. * * *

* * * * *

(j) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.22 and shall annually determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22.

* * * * *

*(l) Program assistance*—(1) *General.* Each State agency shall provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination

regulations (part 15 of this title) issued under title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts, shall be maintained on file by the State agency.

(2) *Review content.* As part of its conduct of administrative reviews, the State agency shall assess institutional compliance with: the provisions of this part; any applicable instructions and handbooks issued by FNS and the Department under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part. Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. At a minimum, State agency reviews shall also include an assessment of:

(i) The institution's maintenance of required Program documents on file;

(ii) Facility licensing and approval;

(iii) Meal counts;

(iv) Administrative costs;

(v) Sponsor training and monitoring of facilities;

(vi) Observation of meal service;

(vii) The sponsoring organization's compliance with the household contact requirements set forth at § 226.16(d)(5); and

(viii) All other Program requirements.

(3) *Review of sponsored facilities.* As part of each required review of a sponsoring organization, the State agency shall select a sample of facilities in order to compare available enrollment and attendance records and facility review results to meal counts submitted by those facilities. As part of such reviews, the State agency shall conduct verification of Program applications in accordance with § 226.23(h).

(4) *Household contacts.* When conducting reviews of sponsored facilities or institutions, State agencies shall contact the households of children in family day care homes or in child care centers (to exclude family day care home provider's households when the provider's own children are in care) whenever a facility or institution claims the same number and type of meals served for ten or more consecutive days, or claims an unusually high number of meals for more than one day in a claiming period. In such cases, the State agency shall contact at least one half of the households of children in care (not counting family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal service(s) which their children routinely receive while in care. Household contacts may be made in writing or by telephone. However, if telephone contacts are used, State agencies shall give advance notice of the call to the household in writing. Such notice shall inform the household of the upcoming call and shall provide the name of the employee who will make the call. Such notice shall also inform the household that the call is being made to verify their child's participation or attendance at a child care facility receiving CACFP reimbursement; that all information provided shall be strictly confidential; and that the State agency will only use the information for Program purposes. If one-quarter or more of the selected households with children in a sponsored center, or if any of the households with children in a family day care home, cannot be contacted or refuse to provide information within 30 days, or if any of the households contacted fail to corroborate the facility's meal claim, the State agency shall make an unannounced visit to the facility within one week. Non-respondent households shall be counted towards meeting the State agency's requirement to contact one-half of the households with children in a particular facility.

(5) *Frequency and number of required institution reviews.* State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(i) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care, adult day care, and outside-school-hours care centers and 10 percent of their day care homes.

(ii) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(iii) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities or adult day care facilities within the first 90 days of program operations.

* * * * *

(q) *WIC Program Information.* State agencies shall provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and WIC income eligibility guidelines, to participating institutions. In addition, the State agency shall ensure that:

(1) Participating family day care homes and sponsored child care centers receive this information, and periodic updates of this information, from their sponsoring organizations or the State agency; and

(2) The parents of enrolled children also receive this information.

6. In § 226.7:

a. Paragraph (g) is revised.

b. Paragraph (k) is amended by adding a new sentence after the first sentence.

The revision and addition specified above read as follows:

**§ 226.7 State agency responsibilities for financial management.**

* * * * *

(g) *Administrative budget approval.* The State agency shall review institution administrative budgets and shall limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget. The administrative budget shall demonstrate the institution's ability to manage Program funds in accordance with this part, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars. Sponsoring organizations shall submit an administrative budget to the State agency annually, and independent centers shall submit administrative budgets as frequently as required by the State agency. Administrative budget levels may be adjusted to reflect changes in Program activities.

* * * * *

(k) * * * Such procedures shall include State agency edit checks, including but not limited to ensuring that payments are made only for approved meal types and do not exceed the product of the total enrollment times operating days times approved meal types. * * *

* * * * *

7. In § 226.8:

a. Paragraphs (a) and (b) are revised.

b. Paragraph (c) is amended by adding the words ''or agreed-upon procedures engagements'' after the words ''administrative reviews'' in the second sentence.

The revisions specified above read as follows:

**§ 226.8 Audits.**

(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with Office of Management and Budget circular A–133 and the Department's implementing regulations at 7 CFR part 3052. State agencies shall establish audit policy for title XIX and title XX proprietary institutions. However, the audit policy established by the State agency shall not conflict with the authority of the State agency or the Department to perform, or cause to be performed, audits, reviews, agree-upon procedures, or other monitoring activities.

(b) The funds provided to the State agency under § 226.4(h) may be made available to institutions to fund a portion of organization-wide audits made in accordance with 7 CFR part 3052. The funds provided to an institution for an organization-wide audit shall be determined in accordance with 7 CFR 3052.230(a).

* * * * *

8. In § 226.10:

a. The first sentence of paragraph (a) is revised.

b. Paragraph (c) is amended by adding three new sentences at the end of the introductory text and by adding paragraphs (c)(1), (c)(2), and (c)(3).

c. Paragraph (f) is revised.

The addition and revisions specified above read as follows:

**§ 226.10 Program payment procedures.**

(a) If a State agency decides to issue advance payments to all or some of the participating institutions in the State, it shall provide such advances no later than the first day of each month to those institutions electing to receive advances in accordance with § 226.6 (f)(3)(vii).

* * *

* * * * *

(c) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall perform edit checks on its facilities' meal claims. Edit checks must be performed for every day meals are claimed by a facility. Discrepancies between the facility's meal claim and its enrollment (as adjusted for absences, shift care, and other factors) must be subjected to more thorough review to determine if the claim is accurate. At a minimum, these edit checks must:

(1) Verify that the facility has been approved to serve the types of meals claimed;

(2) Compare the number of children enrolled for care (taking an expected rate of absences into account) to the number of meals claimed; and

(3) Detect block claiming (*i.e.*, no daily variation in the number of meals claimed).

* * * * *

(f) If, based on the results of audits, investigations, or other reviews, a State agency has reason to believe that an institution, child or adult care facility, or food service management company has engaged in unlawful acts with respect to Program operations, the evidence found in audits, investigations, or other reviews shall be a basis for non-payment of claims for reimbursement.

9. In § 226.11:

a. Paragraph (a) is amended by adding a new sentence to the end of the paragraph.

b. Paragraph (b) is amended by adding a new sentence to the end of the paragraph.

c. Paragraph (c)(1) is revised.

The additions and revision specified above read as follows:

**§ 226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.**

(a) * * * However, State agencies may defer payment for meals served in approved centers until the day on which the State agency and center enter into a Program agreement.

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall compare sponsored child care and outside-school-hour care centers' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services, for each meal type being claimed on each day of operation.

(c) * * *

(1) Base reimbursement to child care centers and adult day care centers on actual time of service meal counts, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting such standards by the applicable national average payment rate; or

* * * * *

10. In § 226.13:

a. Paragraph (b) is amended by adding a new sentence to the end of the paragraph; and

b. Paragraph (c) is amended by adding the words ''based on daily meal counts taken in the home'' after the words ''as applicable,''.

The addition specified above reads as follows:

**§ 226.13 Food service payments to sponsoring organizations for day care homes.**

* * * * *

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall compare day care homes' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services at each home, for each meal type being claimed on each day of operation, and shall not include in its consolidated claim any meal(s) which are not properly supported by appropriate documentation.

* * * * *

11. In § 226.15:

a. Paragraph (b) is revised.

b. Paragraphs (e)(2) and (e)(3) are amended by adding a new sentence to the end of each paragraph.

c. Paragraph (e)(4) is revised.

d. New paragraph (e)(15) is added.

e. Paragraphs (g)-(k) are redesignated as paragraphs (h)-(l), and a new paragraph (g) is added.

f. Redesignated paragraph (i) is amended by removing the reference ''§ 226.6(f)(1)'' and adding in its place the reference ''§ 226.6(b)(2)''.

g. New paragraphs (m) and (n) are added.

The additions and revisions specified above read as follows:

**§ 226.15 Institution provisions.**

* * * * *

(b) *New applications and renewals.* Each institution shall submit to the State agency with its application all information required for its approval as set forth in § § 226.6(b) and (f). Such information shall demonstrate that the institution has the administrative and financial capability to operate the Program properly, efficiently, and effectively.

* * * * *

(e) * * *

(2) * * * For child care centers and outside-school-hours care centers, such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(3) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(4) Daily records indicating the number of participants in attendance and the daily meal counts, by type

(breakfast, lunch, supper, and supplements), served to family day care home participants, or the time of service meal counts, by type, (breakfast, lunch, supper, and supplements), served to child care center and adult day care center participants.

* * * * *

(15) For sponsoring organizations, records documenting the attendance of each staff member with monitoring responsibilities at training which includes instruction on the Program's meal patterns, meal counts, claims submission and review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system.

* * * * *

(g) No institution which is a sponsoring organization of family day care homes which employs more than one person is permitted to base payment (including bonuses or gratuities) to its employees, contractors, or family day care home providers solely on the number of new family day care homes recruited for the sponsoring organization's Program.

* * * * *

(m) Each institution shall comply with all regulations, instructions and handbooks issued by FNS and the Department and all regulations, instructions and handbooks issued by the State agency which are not inconsistent with the provisions established in Program regulations.

(n) Each institution shall ensure that parents of enrolled children are provided with current information on the benefits and importance of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the eligibility requirements for WIC participation.

12. In § 226.16:

a. The introductory text of paragraph (b) and paragraph (b)(1) are revised.

b. Paragraphs (d)(2), (d)(3) and (d)(4) are revised.

c. New paragraph (d)(5) is added.

d. New paragraph (l) is added.

The additions and revisions specified above read as follows:

**§ 226.16 Sponsoring organization provisions.**

* * * * *

(b) Each sponsoring organization shall submit to the State agency with its application all information required for its approval, and the approval of the child care and adult day care facilities under its jurisdiction, as set forth in § § 226.6(b) and (f). The application shall demonstrate that the institution has the administrative and financial capability to operate the Program properly, efficiently, and effectively in accordance with the Program regulations. In addition to the information required in § § 226.6(b) and (f), the application shall include:

(1) A sponsoring organization management plan and budget, in accordance with § § 226.6(b)(1)(i)(D), 226.6(f)(1)(vi), and 226.7(g);

* * * * *

(d) * * *

(2) Providing, prior to the beginning of Program operations, training on Program duties and responsibilities to key staff from all sponsored child care and adult day care facilities. At a minimum, such training shall include instruction on the Program's meal patterns, meal counts, claims submission and review, recordkeeping requirements, and an explanation of the Program's reimbursement system. Attendance by key staff, as defined by the sponsoring organization, shall be mandatory;

(3) Providing, not less frequently than annually, additional mandatory training sessions for key staff from all sponsored child care and adult day care facilities. At a minimum, such training shall include instruction on the Program's meal patterns, meal counts, claims submission and review, recordkeeping requirements, and an explanation of the Program's reimbursement system. Attendance by key staff, as defined by the State agency, shall be mandatory;

(4)(i) *Review elements.* All reviews shall include a reconciliation of the facility's meal claims with enrollment and attendance records, an assessment of whether the facility has corrected problems noted on the previous review(s), and an assessment of the facility's compliance with the Program requirements pertaining to:

(A) The meal pattern;

(B) Licensing or approval;

(C) Health, safety and sanitation;

(D) Attendance at training;

(E) Meal counts;

(F) Menu and meal records; and

(G) The annual updating and content of enrollment forms.

(ii) Such reviews shall include a thorough examination of the meal claims recorded by the facility for five consecutive days during the current and/or prior claiming period. For each day examined, reviewers shall use enrollment and attendance records to determine the number of children in care during each meal service and to compare those numbers to the numbers of breakfasts, lunches, suppers, and/or supplements claimed for that day. Based on that comparison, reviewers shall determine whether the claims were accurate. If there is a discrepancy between the number of children enrolled or in attendance on the day of review and prior claiming patterns, the reviewer shall attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary. In addition, after the on-site review has been conducted, the sponsoring organization shall analyze the review findings to determine whether household contacts, as defined in § 226.2, must be initiated to determine the validity of the providers' previous meal claims.

(iii) *Frequency and type of required reviews of sponsored child care and adult day care facilities.* Such reviews shall be made not less frequently than three times per year at each child care facility and adult day care facility. At least one review shall be made during each child care or adult day care facility's first four weeks of Program operations and not more than six months shall elapse between reviews. However, sponsors may conduct reviews on average of three times each year per child care or adult day care facility, provided that each facility receives at least two visits per year, at least one review is made during each facility's first four weeks of Program operations, and no more than twelve months elapse between reviews. Sponsoring organizations which have completed two of the three required facility reviews without discovering serious problems (*e.g.,* non-compliance with the meal pattern, missing or inaccurate meal claims, submission of inaccurate claims, failure to keep required records, or the provider's unexplained absence) may choose either to not conduct a third review of that facility or to use the third review as an opportunity to conduct training at that facility;

(5) *Household contacts.* (i) Sponsoring organizations shall contact households of children in family day care homes and child care centers (to exclude family day care home provider's households when the provider's own children are in care) whenever a facility claims the same number and type of meals served for ten or more consecutive days, or claims an unusually high number of meals for more than one day in a claiming period. In such cases, sponsoring organizations shall contact at least one half of the households of children in care at that facility (not counting family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal

service(s) which their children routinely receive while in care. Sponsoring organizations are also encouraged to make household contacts whenever they detect unusual or suspicious patterns in the meal claims submitted by their sponsored facilities.

(ii) Household contacts may be made in writing or by telephone. However, if telephone contacts are used, sponsoring organizations shall give advance notice of the call to the household in writing. Such notice shall inform the household of the upcoming call and shall provide the name of the employee who will make the call. Such notice shall also inform the household that the call is being made to verify their child's participation or attendance at a child care facilities receiving CACFP reimbursement; that all information provided shall be strictly confidential; and that the sponsor will only use the information for Program purposes.

(iii) If one-quarter or more of the selected households with children in a sponsored center, or if any of the households with children in a family day care home, cannot be contacted or refuse to provide information within 30 days, or if any of the households contacted fail to corroborate the facility's meal claim, the sponsoring organization shall make an unannounced visit to the facility within one week. Non-respondent households shall be counted towards meeting the sponsoring organization's requirement to contact one-half of the households with children in a particular facility. Sponsoring organizations may make additional household contacts as they may deem necessary, provided that the procedures set forth in this paragraph are followed.

* * * * *

(l) Sponsoring organizations of family day care homes shall not make payments to employees or contractors solely on the basis of the number of homes recruited. However, such employees or contractors may be paid or evaluated on the basis of recruitment activities accomplished.

13. In § 226.17:

a. Paragraph (b)(7) is amended by adding a new sentence at the end of the paragraph.

b. Paragraph (b)(8) is revised.

c. A new paragraph (b)(9) is added.

The additions and revision specified above read as follows:

**§ 226.17 Child care center provisions.**

* * * * *

(b) * * *

(7) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(8) Each child care center shall maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

(9) Each child care center shall require key staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

14. In § 226.18:

a. Paragraph (b)(2) is revised.

b. Paragraph (b)(7) is amended by removing the semicolon, adding a period after the word ''agreement'' and by adding a new sentence at the end of the paragraph.

c. Paragraph (e) is amended by adding the words, ''shall maintain on file documentation of each child's enrollment and'' after the words ''Each day care home'' in the first sentence, and by adding a new sentence after the first sentence.

The revisions and additions specified above read as follows:

**§ 226.18 Day care home provisions.**

* * * * *

(b) * * *

(2) The responsibility of the sponsoring organization to require key staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established in this Part and by the State agency, and the responsibility of the sponsoring organization to train the day care home's staff in Program requirements;

* * * * *

(7) * * * The sponsoring organization shall not withhold Program payments to any family day care home for any other reason except that, with the prior consent of the State agency, the sponsoring organization may withhold from the provider any amounts which the sponsoring organization has reason to believe are based on a false or erroneous claim submitted by the provider.

* * * * *

(e) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

* * *

* * * * *

15. In § 226.19:

a. The introductory text of paragraph (b)(7) is revised.

b. Paragraph (b)(8)(i) is amended by removing the semicolon, adding a period after ''§ 226.23(e)(1)'' and adding a new sentence at the end of the paragraph.

The addition and revision specified above read as follows:

**§ 226.19 Outside-school-hours care center provisions.**

* * * * *

(b) * * *

(7) Each outside-school-hours care center shall require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service shall be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this Section. Operational personnel shall ensure that:

* * * * *

(8) * * *

(i) * * * Such documentation of enrollment shall be updated annually, shall be signed by a parent or legal guardian, and shall include information on each child's normal days and hours of care and the meals normally received while in care.

* * * * *

16. In § 226.19a:

a. Paragraph (b)(9) is revised.

b. A new paragraph (b)(11) is added.

The addition and revision specified above read as follows:

**§ 226.19a Adult day care center provisions.**

* * * * *

(b) * * *

(9) Each adult day care center shall maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

* * * * *

(11) Each adult day care center shall require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service shall be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this Section.

17. In § 226.20, paragraphs (k)-(p) are redesignated as paragraphs (l)-(q), respectively, and a new paragraph (k) is added to read as follows:

**§ 226.20 Requirements for meals.**

* * * * *

(k) *Time of meal service.* In addition to the requirements for outside-school-hours care centers set forth at § 226.19(b)(6), State agencies may require any institution or child care facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

* * * * *

18. In § 226.23, paragraph (a) is revised to read as follows:

**§ 226.23 Free and reduced-price meals.**

(a) The State agency shall not enter into a Program agreement with a new institution until the institution has submitted, and the State agency has approved, a written policy statement concerning free and reduced-price meals to be used in all child and adult day care facilities under its jurisdiction, as described in paragraph (b) of this Section. The State agency shall not require an institution to revise its policy statement unless the institution makes a substantive change to its policy. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

* * * * *

**§ 226.25 [Amended]**

19. In § 226.25, paragraph (g) is removed.

Dated: August 28, 2000.

**Shirley R. Watkins,**

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

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