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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 226

[FNS-2007-0004]

RIN 0584-AD27

#### Afterschool Snacks in the Child and Adult Care Food Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule incorporates into the Child and Adult Care Food Program (CACFP) regulations the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, which authorized afterschool care centers meeting certain criteria to be reimbursed for snacks served to at-risk children 18 years of age and younger. This rule establishes the eligibility of at-risk afterschool care centers to serve free snacks to children who participate in afterschool programs. The centers, which must be located in low-income areas, are reimbursed at the free rate for snacks. The intended effect of this rule is to support afterschool care programs through the provision of snacks that meet CACFP meal pattern requirements. The additional benefits provided by the 1998 reauthorization act and codified by this final rule were extended to institutions and children immediately after enactment. These changes were originally proposed by the Department in a rulemaking published on October 11, 2000.

**DATES:** This final rule is effective August 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Keith Churchill, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive,

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**SUPPLEMENTARY INFORMATION:** The preamble is organized into two main parts. Part I, Background, describes the provisions in this final rule, including a discussion of the comments received on the proposed rule. A question and answer format is used to guide this discussion. The Background concludes with a description of other changes made in the final rule that were not part of the proposed rule. Part II, Procedural Matters, contains information required to be included in publishing Federal rules.

#### I. Background

*What changes did the law make about afterschool snacks?*

The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336) provided for the nationwide availability of snacks in the National School Lunch Program (NSLP), and it expanded the availability of snacks to children ages 13 through 18 in the Child and Adult Care Food Program (CACFP) through at-risk afterschool care centers (at-risk centers). CACFP at-risk centers must be located in the attendance area of a school where 50 percent or more of the enrolled children are certified as eligible to receive free or reduced price school meals.

*How did USDA propose to implement these changes?*

The proposed rule to implement the statutory provisions for afterschool snacks in the NSLP and CACFP was published on October 11, 2000 (65 FR 60502). Although we included proposed changes for both programs in the same rulemaking, the proposed changes were not identical in both programs. Rather, we proposed to implement afterschool snacks within each program in a way that fit the unique characteristics of each program.

The proposal had a 90-day comment period. A total of 33 comment letters were received, 26 letters were from State and local agencies administering the NSLP and/or the CACFP, five letters came from advocacy groups, and two comment letters were received from individuals not representing any group.

*Why is USDA publishing two final rules on afterschool snacks?*

There were a number of reasons why we decided to publish separate final rules. Perhaps the strongest reason was that many of the proposed procedures for administering afterschool snacks were specific to each program. Most commenters provided program-specific comments. In addition, not all commenters addressed both programs, reflecting the fact that the NSLP and the CACFP are administered by different agencies or offices in 15 States.

Another reason we chose to publish separate afterschool snack final rules is the need to explain changes made to the CACFP regulations, 7 CFR part 226, by previously published final or interim CACFP rulemakings.

*Which recently published CACFP rules impact the afterschool provisions?*

Published CACFP rules that impact this final rulemaking include:

1. Implementing Legislative Reforms to Strengthen Program Integrity (67 FR 43448) (first integrity rule), an interim rule published in the **Federal Register** on June 27, 2002, which implemented provisions of the Agricultural Risk Protection Act of 2000 (Pub. L. 106-224) designed to strengthen the integrity of the program;
2. Improving Management and Program Integrity (69 FR 53502) (second integrity rule), an interim rule published in the **Federal Register** on September 1, 2004, which implemented additional provisions of a proposed rule by the same name, published on September 10, 2000, to improve program integrity through State agency management;
3. Increasing the Duration of Tiering Determinations for Day Care Homes (70 FR 8501) (duration of tiering rule), a final rule published in the **Federal Register** on February 22, 2005, which implemented a provision of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) to increase the length of certain tier I determinations from three years to five years;
4. Child and Adult Care Food Program: Age Limits for Children Receiving Meals in Emergency Shelters, (71 FR 1), an interim rule published on January 3, 2006 (emergency shelter rule), which implemented a provision of Public Law 108-265 that raised the age of children receiving CACFP meals in emergency shelters from 12 to 18; and

5. For-Profit Center Participation in the Child and Adult Care Food Program (71 FR 62057) (for-profit center rule), a final rule published in the **Federal Register** on October 23, 2006, which implemented a provision of Public Law 108–265 that permanently authorized for-profit centers to participate in the program based on the income eligibility of children for free or reduced price meals.

The two integrity rules, published in 2002 and 2004, made significant changes to the Program affecting all participating and applicant institutions, including at-risk afterschool care centers. In doing so, these interim rules revised and reorganized sections of the CACFP regulations that are additionally amended by this final rule, especially §§ 226.6, 226.10, 226.11, 226.15, and 226.19. The other three rules, published in 2005 and 2006, impact the afterschool snack provisions in specific areas of program operations. We will discuss the effect that all five rules have had on the final afterschool snack provisions throughout this preamble.

*How are comments on the proposed rule addressed in this preamble?*

We organized and analyzed the comments on the proposed rule under the following topics:

1. General comments supporting/opposing the proposed rule.
2. At-risk afterschool care centers.
3. Eligible afterschool care programs.
4. Eligible children.
5. Area eligibility:
  - Definition (eligible area).
  - Data used.
  - Procedures for determining.
6. Licensing and approval provisions.
7. Application processing.
8. For-profit center provisions.
9. Meal requirements.
10. Monitoring:
  - By State agencies.
  - By sponsors.
11. Reimbursement provisions.
12. Reporting and Recordkeeping provisions.
13. Other provisions.

Following is a discussion of the comments and our responses to the comments received on these topics.

1. Did commenters provide any comments that addressed the general design or scope of the proposed CACFP afterschool snack component?

Yes. We received three comments that generally supported the proposed rule. One supportive comment was from a sponsoring organization that stated it had been operating under FNS guidance issued after the at-risk snack component

was authorized, most of which was incorporated into the proposed rule, and had experienced few problems following the requirements.

We also received three comments that opposed our general objective of ensuring that the snack component made sense within each respective child nutrition program. In achieving this objective, we were obliged to incorporate some afterschool snack policies that recognize differences between the programs, resulting in two similar afterschool snack components with some variation in operating provisions. These commenters encouraged the Department to make the snack components in the CACFP and NSLP as similar as possible. One commenter urged us to create a “seamless” afterschool snack component that would include three child nutrition programs, the NSLP, CACFP, and Summer Food Service Program.

Although we support seamless child nutrition programs, statutory requirements vary among the child nutrition programs, and we must draft the respective program rules accordingly.

2. What is an at-risk afterschool care center?

We proposed to define an at-risk afterschool care center as a public or private nonprofit organization or a for-profit center that is eligible to participate in the CACFP, which provides nonresidential child care to children after school through an approved afterschool care program in an eligible area, and which participates either as an independent center or as a sponsored center.

We received no comments on our proposed definition of an at-risk afterschool care center at § 226.2 or on the proposed requirement at § 226.17a(a)(1)(i) that organizations must meet this definition in order to receive reimbursement for at-risk afterschool snacks.

Since the October 2000 publication of the proposed rule, we have had to address an issue that was not included in the proposed rule concerning eligibility of emergency shelters. Questions were raised about the eligibility of homeless children to receive afterschool snacks under the at-risk provisions when the emergency shelter where they reside is not located in an eligible area. To ensure that homeless children receive benefits under the at-risk snack component, we provided written guidance in June 2002 that emergency shelters may participate in the at-risk afterschool snack

component regardless of location. This policy on emergency shelters is incorporated in this final rule in §§ 226.2 (definition of at-risk afterschool care centers), 226.17a(b)(1)(iv), and 226.17a(i).

The Department proposed to add “at-risk afterschool care center” to the definitions of child care facility, independent center, and institution. We received no comments on these proposals. Therefore, the proposed revisions are retained in the final rule. For consistency, we have also added the term “at-risk afterschool care center” to the definition of “Center” in this final rule.

3. What did commenters say about proposed criteria for eligible afterschool programs?

We proposed that organizations that want to participate in the at-risk afterschool snack component must have a program that meets the following four criteria: (1) is organized primarily to provide care for children after school and on weekends, holidays, or school vacations during the school year (but not during summer vacation); (2) has regularly scheduled activities (i.e., in a structured and supervised environment); (3) includes education or enrichment activities; and (4) is located in an eligible area. In addition, we proposed to exclude organized athletic sports programs that compete interscholastically or at the community level. These criteria resemble those proposed for afterschool programs serving snacks in the NSLP, except that an afterschool snack service under the NSLP may not operate on weekends or holidays and does not have to be located in an eligible area.

We received eight comments on these provisions.

Commenters asked the Department to clarify the term “care for children”. The Richard B. Russell National School Lunch Act (NSLA) at section 17(r)(2)(A), 42 U.S.C. 1766(r)(2)(A), requires that at-risk afterschool care centers must be organized primarily to provide care to at-risk school children during after school hours, weekends, or holidays during the regular school year. Care for children in at-risk centers would reasonably encompass:

1. Adult supervision,
2. A facility that provides a safe environment, and
3. An organization that assumes responsibility for the children or youth while they are present.

Care for children should be given in a context that is appropriate for the age of the participants. Preschool children, for example, require close adult

supervision in a structured environment; adolescents need adult supervision, which may be provided in a more informal, less structured environment.

Commenters also asked us to clarify “education or enrichment activity” and the State agency’s responsibility for reviewing organized activities/educational components. Examples of educational or enrichment activity would include homework help, tutoring, supervised drop-in athletic or other activity programs. A State agency must review the activities/educational components to the extent needed in order to approve or deny the application for the at-risk center. State agencies should instruct applicant organizations to describe the planned activities or educational components in enough detail so that it is possible for State agencies to determine the adequacy of the program based on the information provided in the application.

Commenters stated that at-risk snack programs should be able to operate during the summer. Section 17(r)(2)(A) of the NSLA (42 U.S.C. 1766(r)(2)(A)) limits reimbursement to snacks served during the regular school year. However, afterschool snacks can be served year-round through the CACFP if an at-risk center is located in the attendance area of a school operating on a year-round schedule. We have clarified the restriction on summer service at § 226.17a(b)(1)(i) and 226.17a(m). At-risk centers that are affected by this restriction (i.e., are located in the attendance area of a school that is on a traditional school calendar) may be able to participate in the Summer Food Service Program.

Several commenters opposed other restrictions on eligible programs that were in the proposed rule, including limiting at-risk programs to low-income areas and excluding organized sports from participating in the snack service. The NSLA restricts the CACFP afterschool snack component to low-income areas, specifically defined at section 17(r)(1)(B) (42 U.S.C. 1766(r)(1)(B)) as programs that are located in the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. Since this restriction is a

statutory requirement, we must include it in the regulations.

Concerning the proposed exclusion of organized sports, some commenters stressed the important role of sports in providing afterschool activity for youth. However, as we explained in the preamble to the proposed rule, House and Senate conferees declared in the Conference Report accompanying Public Law 108–265 (House Report 105–786) that they did not intend for afterschool snacks to be provided to members of athletic teams. Rather, the conferees intended that children receiving afterschool snacks would be participating in the types of programs that provide education or enrichment activities, which are known to help reduce or prevent involvement in juvenile crime. This statement provides a clear indication of Congressional intent, and thus we have retained the restriction on interscholastic or community level sports teams in the final rule. This same exclusion applies to the NSLP afterschool snack component as proposed, as well.

We would, however, like to clarify participation by student athletes in afterschool snacks. One commenter suggested that even though organized athletic teams would be excluded, individual student athletes participating in center activities should be allowed to receive a snack or a meal from an at-risk afterschool care center that is operating to serve children in the eligible area where the athletes live or attend school. We agree. This situation would not violate the intent of Congress as expressed by the House and Senate conferees, which addressed the ineligibility of athletic teams as an afterschool activity to qualify as at-risk snack programs.

We would also like to clarify, as stated in the proposed rule, that programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs, and the YWCA. The key requirement for afterschool programs that include sports would be that they are “open to all” and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.

Accordingly, the proposed limitation on eligible afterschool care programs,

proposed at § 226.17a(b)(2), is retained in this final rule.

#### 4. Who is eligible for afterschool snacks?

One of the hallmarks of the afterschool snack provisions for CACFP as mandated by section 107(h) of Public Law 105–336 was to extend benefits to youth through age 18. Accordingly, we proposed at § 226.17a(c) and in the definition of “Children” at § 226.2 that children are eligible for at-risk afterschool snack programs if they participate in an approved afterschool care program and are 18 and under at the start of the school year or meet the definition of “Person with disabilities”, as proposed at § 226.2.

We received three comments on this proposed provision.

Two State agencies encouraged the Department to set a minimum age limit for participation in the at-risk afterschool snack component. They questioned whether this program is really appropriate for infants and preschoolers. The statute did not set a minimum age for participation in at-risk afterschool snacks. We are concerned that a lower age limit might discourage otherwise eligible child care centers from offering afterschool programs to the at-risk population if they could not be reimbursed for snacks served to preschool children. Furthermore, if centers provided afterschool activities suitable only for school-age children, older siblings might not attend the afterschool program if care was not extended to their younger brothers or sisters.

One commenter encouraged the Department to expand the age limit to 18 also for outside-school-hours care centers. We are unable to adopt this suggestion because the age limitation for outside-school-hours centers remains at age 12 (age 15 for children of migrant workers) as mandated at section 17(a)(3) of the NSLA (42 U.S.C. 1766(a)(3)). As discussed in the preamble to the proposed rule, both at-risk centers and outside-school-hours care centers are reimbursed for snacks served to children in afterschool care, but they are intended to serve different populations and consequently have different provisions. The following chart highlights some of the similarities and differences between at-risk centers and outside-school-hours care centers.

COMPARISON BETWEEN AT-RISK CENTERS AND OUTSIDE-SCHOOL-HOURS CARE CENTERS (OSHCCS)

Provision	At-risk centers		OSHCCS	
	Regulatory citation	Description	Regulatory citation	Description
Eligible institutions	§§ 226.17a(a) and 226.6(b).	Public, private nonprofit, and for-profit organizations that operate an eligible afterschool care program, are licensed or approved (if required). In addition, centers must meet other CACFP requirements, as applicable.	§ 226.2 definition of "Outside-school-hours care center" and § 226.6(b).	Public, private nonprofit, and for-profit organizations that are licensed or approved (if required) to provide organized nonresidential child care services to children during hours outside of school. In addition, centers must meet other CACFP requirements, as applicable.
Eligible afterschool care program.	§ 226.17a(b) .....	Must be organized primarily to provide care for children after school or on weekend, holidays, or school vacations during the regular school year, have organized, regularly scheduled activities, include education or enrichment activities, and be located in a low-income area (see Eligible area below).	N/A .....	N/A.
Licensing .....	§ 226.6(d)(1) .....	If there is no Federal, State, or local licensing requirement, must only meet State or local health and safety standards (see also sec. 17(a)(5) of the NSLA.).	§ 226.6(d)(1) .....	If there is no Federal, State, or local licensing requirement, must only meet State or local health and safety standards (see also sec. 17(a)(5) of the NSLA).
Eligible area .....	§ 226.2 definition of "Eligible area", paragraph (a).	Attendance area of an elementary, middle, or high school with 50% or more free/reduced-price eligible children.	N/A .....	May operate in any area.
Reimbursement .....	§ 226.17a(n) .....	All afterschool snacks are reimbursed at the free rate.	§ 226.12(c) .....	Reimbursement is at the free/reduced price/paid rates based on individual income eligibility of children.
Eligible children .....	§ 226.2, definition of "Children", paragraphs (c) and (e).	Persons age 18 and under at the start of the school year and persons of any age who meet the definition of "Persons with disabilities".	§ 226.2, definition of "Children", paragraphs (a), (b), (c).	Children who are age 12 and under, children age 15 and under who are children of migrant workers, and persons of any age who meet the definition of "Persons with disabilities".
Types of meals eligible for reimbursement.	§ 226.17a(l) .....	Snacks .....	§ 226.19(b)(4) .....	Breakfast, snack, and supper (lunch may also be served under certain conditions).
Number of reimbursable meals.	§ 226.17a(k) .....	One snack per day .....	§ 226.19(b)(5) .....	Two meals and one snack per child per day (or two snacks and one meal).
Meal patterns .....	§§ 226.17a(l) and 226.20(b)(6) and (c)(4).	Requirements for at-risk snacks are the same as CACFP snack pattern requirements for infants and children.	§§ 226.19(b)(6), 226.20(b) and (c).	Requirements for meals served by OSHCCS are the same as CACFP meal patterns for infants and children.
Days of operation ..	§ 226.17a(m) .....	School days, weekends, holidays, and school vacations during the school year; not in the summer except in areas served by year-round schools.	§ 226.19(b)(4) .....	School days, school vacation, including weekends and holidays; no weekend-only programs.
Time restrictions on meal service periods.	§ 226.20(k) .....	States may establish requirements concerning time restrictions for CACFP institutions.	Same .....	Same.
Monitoring .....	§ 226.6(m) for State agency review of independent centers and sponsoring organizations; § 226.16(d)(4)(iv) for sponsoring organizations review of their facilities.	The State agency must review 1/3 of all institutions each year; percentages of sponsored facilities sponsored by the institution vary depending on the size of the institution. Large sponsoring organizations <100 must be reviewed every two years. New institutions with five or more facilities must be reviewed within the first 90 days of operation. Sponsoring organizations must review their facilities three times each year. At least one review must occur during the first six weeks of program operations; reviews cannot be spaced more than six months apart. Two reviews must be unannounced.	Same .....	Same.

Readers should note that Public Law 108–265 raised the age for participation in CACFP meals in emergency shelters to 18. FNS notified CACFP State agencies of this statutory change, which was effective on October 1, 2004, and the emergency shelter rule, published on January 3, 2006 (71 FR 1) codified the increase to age 18 in the CACFP regulations. There are now two types of centers that may serve CACFP meals or snacks to children through age 18: at-risk afterschool care centers and emergency shelters.

The provision describing the eligibility of children for receiving afterschool snacks as proposed at § 226.17a(c) remains unchanged in this final rule. We have made some minor changes, however, to the definition of “Children”, revising proposed text of children’s eligibility for afterschool snacks and current text of children’s eligibility for meals at emergency shelters, which was revised by the emergency shelter rule. We have removed the references to persons with disabilities specific to either at-risk centers or emergency shelters; these references are unnecessary because the definition of “Children” includes persons with disabilities as a category of eligible children. This final rule adopts the proposed definition for participation by disabled persons with minor changes. Longstanding CACFP policy has recognized that disabled persons meeting the regulatory definition are eligible to participate in any CACFP component serving children, including not only at-risk afterschool care centers or emergency shelters, but also child care centers, outside-school-hours care centers, and family or group day care homes. This rule codifies the policy by providing a separate definition for “Persons with disabilities”.

##### 5. Area Eligibility

Because of the number of the issues involved in area eligibility, the next seven questions address the proposed provisions, comments received, and changes made to area eligibility requirements.

*How did the Department propose to define area eligibility and did anyone comment on the definition?*

We proposed to define an eligible area for the at-risk afterschool snack component as the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. As previously mentioned, we also proposed to use area eligibility as one of four key criteria that an afterschool program

must meet in order to be eligible for participation in the CACFP at-risk component. We have provided guidance on questions of area eligibility of schools involved in busing. This policy permits area eligibility to be extended to sites if the majority of children at the site come from schools where at least 50 percent of the enrolled children are eligible for free or reduced-priced school meals.

We received comments from two State agencies that opposed the inclusion of data for middle and high schools; they stated that it would be a reporting burden for NSLP State agencies. Although we acknowledge that the addition of middle and high schools may require more work for NSLP State agencies, we believe it is important to identify as many area eligible locations as possible to reach the population of needy children and youth targeted by the at-risk snack provisions in the NSLA, especially now that the statute expands afterschool snacks to teenagers through age 18.

In this final rule, we have revised the definition for eligible area to provide a two-part definition that distinguishes between two different uses of the term in CACFP. Although the term is more frequently associated with the at-risk snack component, it is also used to describe the geographic area of tier I day care homes. Therefore, to avoid possible confusion, we have provided both definitions of eligible area.

Eligible area as it applies to the at-risk snack component, which is unchanged from the proposed rule, includes the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. Eligible area for tiering purposes, which is taken from the definition of tier I day care home in section 17(f)(3)(A)(ii)(I)(aa) and (bb) of the NSLA (42 U.S.C. 1766(f)(3)(A)(ii)(I)(aa) and (bb)), includes the attendance areas of elementary schools in which at least 50 percent of the total number of children are certified eligible to receive free or reduced-price meals, or neighborhoods that meet the 50 percent threshold of income eligibility for free or reduced-price meals based on census data. Eligible areas for at-risk snacks include middle and high school attendance areas as well as the attendance areas of elementary schools; eligible areas for tiering purposes do not include middle or high school attendance areas but do include neighborhood areas defined by census data that meet the 50 percent threshold of households eligible for free or reduced-price meals. The inclusion of

a definition of eligible area for tiering purposes is not intended to change any aspect of current requirements for determining tier I status for day care homes.

Accordingly, the definition of “Eligible area” as proposed in § 226.2 is revised, and reference to this definition is added at new § 226.17a(i)(1).

*What data did the Department propose to require for determining area eligibility?*

We proposed that the data used to determine area eligibility must be based on the school’s total number of children approved for free and reduced-price school meals for the preceding October. However, we stipulated that the NSLP State agency, which provides the data, may designate another month. If the NSLP State agency chooses to designate a month other than October, it must do so for the entire State. The other critical data element in determining the area eligibility of an at-risk center is documentation that the center is located in the school’s attendance area. If not available from the NSLP State agency, information on a school’s geographical boundaries would be provided by the individual school or by the school district. We did not propose to require the NSLP State agency to provide attendance area data.

*What did commenters say about data for determining area eligibility?*

One State agency commented that the regulations should restrict the use of private school data in establishing area eligibility because private schools often have very large attendance areas. This commenter stated that Federal regulations should specify that only public school data could be used to establish area eligibility.

We agree that private school data may often be an inappropriate source to establish area eligibility for at-risk centers, but we recognize that there may be exceptions, making the use of private school data reasonable to establish area eligibility in some situations. Thus, we conclude that State agencies should have the flexibility to approve the use of private school data for establishing area eligibility when necessary.

One commenter suggested that eligibility determinations made for open sites in the Summer Food Service Program (SFSP) should be allowed to establish area eligibility for at-risk care centers also.

We are bound by the specific requirement of section 17(r)(1)(B) of the NSLA, 42 U.S.C. 1766(r)(1)(B), that area eligibility must be based on eligibility for free or reduced-price school meals.

For this reason, the SFSP open site eligibility may be used only if it is based on the same criteria required for determining area eligibility for at-risk centers.

Accordingly, the data required to document the area eligibility of an at-risk afterschool care center, proposed at §§ 226.6(f)(9)(i) and 226.17a(h)(2) are retained but redesignated at §§ 226.6(f)(1)(ix) and 226.17a(i)(2).

*What did the Department propose about the process of determining area eligibility?*

We proposed a process of determining area eligibility that is similar to the process of determining the tiering status of day care homes. Like the tiering process, which is redesignated in this final rule at § 226.6(f)(1)(viii), the process of determining area eligibility starts with the receipt of free and reduced-price school data from the NSLP State agency. As with tiering, we charged the CACFP State agency with the task of coordinating with the NSLP State agency to receive the school data (i.e., the list of elementary, middle, and high schools that meet the definition of eligible area) on an annual basis. Unlike the tiering process, however, the CACFP State agency is not required to provide the school data to sponsoring organizations of at-risk centers or to independent at-risk centers by a certain date each year. Instead, we proposed that the CACFP State agency must only provide the list upon request by sponsoring organizations or independent at-risk centers.

We proposed that CACFP State agencies must determine the area eligibility for all independent at-risk centers, using the most recent free and reduced-price school data and attendance area data obtained or verified from school officials within the last school year. However, we proposed that a sponsoring organization must provide information required by the State agency that would enable the State to determine the area eligibility of each sponsored at-risk center. This information may include current free and reduced-price school data from the list and related attendance area data. As proposed, area eligibility determinations would be valid for three years to match the tiering determination provisions for tier I status based on school data, which were in effect at the time the proposed rule was published.

We also proposed two provisions for redetermining area eligibility that were consistent with those for tiering determinations based on school data. One of these provisions would allow the sponsoring organization, the State

agency, or FNS to redetermine area eligibility if the attendance area data received annually from the NSLP State agency indicates that an at-risk center is no longer eligible. The second provision would limit this flexibility by prohibiting routine redeterminations of area eligibility based on annual data. Both provisions duplicate current regulatory language for tiering redeterminations found at § 226.6(f)(3)(i) in this final rule.

The annual collection of area eligibility data provides the State agency current and accurate information to approve new applications as well as for use in redeterminations at the end of a center's eligibility cycle. This annual information can also be used if the sponsoring organization, the State agency, or FNS has identified a particular area that has had a dramatic change in economic status and wants to use this information in redetermining a center's area eligibility.

*What has changed about area eligibility determinations in the final rule?*

We received six comments from State agencies that addressed the frequency or timing of the determination or redetermination. Three commenters weighed in on the proposal to allow area eligibility to be valid for three years; two supported and one opposed.

Since the October 11, 2000 publication of the proposed rule, Congress authorized the increase in the duration of tier I status determinations based on school data to five years. The provision of Public Law 108-265 was effective on July 1, 2004, and the change was codified in the CACFP regulations by the duration of tiering rule.

This final rule reflects an increase in longevity of area eligibility determinations from the proposed three years to five years. Please note that those centers that were deemed not eligible to participate in the CACFP as at-risk afterschool centers would not have to wait for five years before they could apply again to participate in the CACFP as an at-risk afterschool center.

We increased the duration of area eligibility determinations in order to achieve the coordinated use of school data for redeterminations of tiering and area eligibility that we had sought in the proposed rule. The Department wants to point out that because applications are approved on a three-year cycle, for administrative efficiency State agencies may choose to make area eligibility determinations on that three-year cycle. However, we encourage State agencies wherever possible to adopt the five-year cycle for area eligibility determinations.

Two commenters addressed the proposal to allow sponsoring organizations, State agencies, or FNS the option of changing a determination of area eligibility based on updated school data. One commenter opposed the option entirely, and the other commenter noted what seemed to be conflicting language between proposed § 226.6(b)(11)(iii), which stated that State agencies must document area eligibility at least once every three years, and proposed § 226.6(f)(9)(v), which stated that State agencies may not routinely redetermine area eligibility during the three-year period. In this final rule, State agency responsibilities for area eligibility redeterminations are clarified and addressed in § 226.6(f)(3)(ii).

We want to clarify the issue of what was received as conflicting language. Although sponsoring organizations, State agencies, or FNS may redetermine area eligibility if the attendance area data received annually from the NSLP State agency indicates that an at-risk center is no longer eligible, they would not be permitted to do so routinely based on annual data. The intention is that existing at-risk afterschool centers would remain area eligible for the entire period of time (i.e. five years), and annual data would not be used to respond to minor variations in eligibility (for example, centers that are located in the attendance areas of schools where the percentage of students eligible for free or reduced-price meals drops negligibly below the 50 percent level in any given year during the five-year period). The intention is to give sponsoring organizations, State agencies, or FNS the flexibility to make redeterminations in those situations where this percentage drops markedly due to underlying demographic changes.

In this final rule, State agency responsibilities for area eligibility redeterminations are clarified and addressed in § 226.6(f)(3)(ii).

Finally, one State agency commented that eligibility periods should begin with the fiscal year or school year, not in the month in which the first determination is made; this is too much work for State agencies to track.

We agree that State agencies should have the flexibility to determine within the last year of area eligibility when the next cycle should begin. This would allow State agencies the option of synchronizing all area eligibility redeterminations so that at-risk centers could begin the next cycle on a particular date, such as the first day of the fiscal year or school year. Note that this flexibility to set the date extends

only with redeterminations, not with the initial determination and approval to begin program operations. State agencies that opt to synchronize area eligibility redeterminations should notify all newly participating at-risk centers of the date in the last year when current area eligibility will expire and new area eligibility data must be submitted.

Accordingly, proposed §§ 226.6(f)(9)(v) and 226.17a(h)(2) are revised and redesignated as §§ 226.6(f)(3)(ii) and 226.17a(i)(3) to increase the duration of area eligibility determinations to five years and to specify that State agencies may determine the date in the fifth year by which the next five-year cycle of area eligibility will begin.

*What other changes have been made to the regulations affecting the area eligibility determination process?*

The second integrity rule substantially revised § 226.6(f) by sorting provisions into annual, triennial or other time periods when data are due or actions are required. These changes compelled us to sort the proposed afterschool snack provisions in current § 226.6(f) into the appropriate time periods. The result is that these provisions are reorganized and in some instances, revised to clarify the process of determining area eligibility; the substance of the proposed provisions has not changed, with one exception. That exception, as previously described, permits State agencies to determine the date during the fifth year of area eligibility when the next cycle of area eligibility will begin. We have also included the tiering determination process for day care homes in the reorganization of § 226.6(f); the tiering provisions previously located at § 226.6(f)(1)(iii) have been revised and redesignated at § 226.6(f)(1)(viii) and (f)(3)(i).

6. What licensing and approval requirements did the Department propose for at-risk centers?

Public Law 105–336 eased licensing and approval requirements for afterschool care programs by allowing institutions to meet State or local health and safety standards if Federal, State, or local licensing or approval is not required. Accordingly, we proposed to require that at-risk and outside-school-hours care centers must only meet State or local health and safety standards if Federal, State, or local licensing or approval is not otherwise required.

*What did commenters say about this proposed change in licensing/approval standards?*

This proposed provision generated 11 comments from State agencies, advocates and associations, and sponsoring organizations. Commenters focused on difficulties that exist due to State and local variations in establishing health and safety standards appropriate for at-risk centers and in maintaining those standards through inspection of facilities. At-risk programs in some areas have been prevented from operating because of non-existent or inappropriate health and safety standards or backlogs in obtaining inspection and approval.

One State agency opposed the reduced licensing requirements for outside-school-hours centers in the proposed rule.

The statutory language, found at section 17(a)(5)(C) in the NSLA (42 U.S.C. 1766(a)(5)(C)), does not distinguish between the types of CACFP afterschool centers that may operate based on compliance with health and safety standards in the absence of licensing requirements. Broadly stated, this provision applies to both types of afterschool centers operating in the CACFP, at-risk centers and outside-school-hours centers. We would like to emphasize that this provision applies only in those localities where Federal, State, or local licensing is not required for afterschool care programs.

One commenter asked the Department to clarify whether CACFP State agencies could require licensing of at-risk and outside-school-hours centers.

Since the authority to establish standards resides with the licensing agency at the Federal, State, or local level, the CACFP State agency may establish or change licensing requirements for outside-school-hours and at-risk centers only if it is also the licensing authority for the State.

Commenters asked what are appropriate health and safety standards for at-risk and outside-school-hours centers. State agencies have informed us that in some localities these centers must meet stringent requirements that apply to restaurants because health authorities are unfamiliar with CACFP meal services. In other instances, minimal or no standards exist.

We encourage CACFP State agencies to work closely with State and local health and safety authorities to determine the specific requirements for each type of facility. This will help ensure that appropriate requirements are being applied to organizations seeking to participate in the CACFP.

Some commenters encouraged the Department to specify not only the types of standards that are appropriate but also a reasonable time interval between inspections. In some localities, an occupancy permit may be issued only once, such as prior to initial occupancy of a newly constructed building.

The Department lacks the statutory authority to regulate either standards or time intervals for health and safety certification of facilities. Because of the variations that exist among communities, the CACFP State agency should work with State and/or local health and safety officials to promote reasonable standards with appropriate time intervals established between inspections and/or certifications.

Commenters asked what information should be provided to document that health and safety standards are met before a State agency approves the at-risk or outside-school-hours center for CACFP participation.

Documentation requirements will vary by State or locality. An application for participation as an at-risk center or outside-school-hours center should include a copy of the documentation that is provided by the health or safety inspection agency. Ideally, this would include a copy of the permit and/or a copy of the inspection report with the date, name, and signature of the inspecting official. In some jurisdictions, however, occupancy permits may serve as the only evidence that a facility is in compliance with State or local health or safety standards. In situations where an at-risk center or outside-school-hours center is located in a school building where school lunch or breakfast is served and food safety inspections have occurred (as required by section 9(h) of the NSLA, 42 U.S.C. 1758(h)), the center may not need to meet any additional health and safety requirements. The school's participation in the National School Lunch Program or the School Breakfast Program would be proof of meeting applicable standards. In all cases, the State agency should ensure that the documentation provided is appropriate and current (i.e., not revoked or expired).

Some commenters suggested that at-risk centers and outside-school-hours centers be allowed to simply notify the State or local health department prior to starting operations, in the same way that sponsors of Summer Food Service Program (SFSP) sites are required to do, as described at 7 CFR 225.16(a).

In localities where health and safety standards exist for afterschool programs and the health inspection requirements are the same for meals served under CACFP afterschool programs and SFSP,

State agencies may accept documentation of a current health inspection of a facility that was previously obtained for the SFSP. CACFP may do this as long as the current SFSP inspection has not been revoked or expired. However, the notification letter to the health department, which serves simply as a notice of intent to begin meal services, must not be considered documentation for meeting health and safety standards for at-risk or outside-school-hours centers. An inspection of the facilities must have occurred.

Some commenters asked what requirements should apply if there are no State or local health and safety standards for at-risk and outside-school-hours centers.

The NSLA did not establish any form of "alternate approval" for centers providing afterschool care, as it did for other types of child care facilities (see section 17(a)(5)(B) of the NSLA 42 U.S.C. 1766(a)(5)(B)). The Department concludes, therefore, that CACFP State agencies are not required to develop health and safety standards for these facilities.

To eliminate possible confusion about actions that State agencies must take in the absence of licensing or approval standards for outside-school-hours care centers, we made the following changes. First, we revised the definition of "CACFP child care standard" by removing the words "outside-school-hours care centers". Second, in the definition of "Outside-school-hours care center", we added a reference to § 226.6(d)(1)(v), which provides the specific licensing and approval requirements for this type of center. Third, we removed § 226.6(d)(3)(ii) because it referred to alternate child care standards that may be used as approval standards for outside-school-hours care centers when no other licensing/approval standards are available. This change required a revision to the structure of § 226.6(d)(3), which we have set out in this rule.

The Department wants to make clear that in the absence of licensing or approval standards, at-risk centers and outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits. Therefore, at-risk afterschool care centers and outside-school-hours care centers will

not be eligible for CACFP in areas where State or local health and safety standards have not been established. However, as described at § 226.6(d)(1)(iv), an at-risk afterschool care center or an outside-school-hours care center in an area where State or local health and safety standards have not been established will still have the option to demonstrate, to the State agency, compliance with CACFP child care standards, as described at § 226.6(d)(3).

This final rule retains the requirement, proposed at § 226.6(d)(1)(v), which requires at-risk centers and outside-school-hours centers to meet State or local health and safety standards in the absence of Federal, State, or local licensing requirements. This requirement is also restated at § 226.17a(d) for at-risk centers and at § 226.19(b)(1) for outside-school-hours centers.

7. What were the features of the Department's proposal for processing at-risk center applications?

We did not propose an extensive application process. An official of the applicant organization must apply in writing. The organization must meet the general application requirements for CACFP located at §§ 226.6(b), and 226.15(b) or 226.16(b). Sponsoring organizations that are applying on behalf of sponsored at-risk centers must provide information, including documentation of area eligibility, to enable the State agency to determine each center's eligibility as an at-risk center. State agencies must determine the eligibility of independent centers that are applying to participate.

We proposed that once the application is approved, the organization must enter into an agreement with the State agency; the agreement or amendment to an existing agreement must meet all general requirements located at § 226.6(b)(4). We also proposed to allow State agencies to require sponsoring organizations of at-risk centers to enter into separate agreements for the administration of separate types of CACFP facilities. In subsequent years, renewing independent at-risk centers or sponsoring organizations must inform the State agency of any substantive changes to their afterschool care programs.

One State agency questioned the proposed inclusion of at-risk centers in the provision allowing State agencies to require separate agreements for each type of center operated by a sponsoring organization. This commenter thought that the provision allowing State

agencies to require separate agreements conflicted with the movement toward single agreements.

Single agreement requirements mandated by Public Law 105-336 apply only to School Food Authorities (SFAs) operating more than one child nutrition program under the same State agency. Other CACFP institutions are not included in the single agreement requirements. To avoid confusion about the type of agreement an SFA must sign to operate an at-risk afterschool care center, we have clarified §§ 226.16(f) and 226.17a(f)(2) in this final rule to specify that SFAs must continue to operate under single, permanent agreements in accordance with § 226.6(b)(4)(ii)(A).

*Are there any changes to application processing procedures in the final rule?*

There are no new application requirements specific to at-risk afterschool care centers. However, applying to participate in the CACFP is a more comprehensive process than at the time the proposed rule was published. The first integrity rule strengthened application and participation requirements for all CACFP institutions. Because the application process is the initial opportunity to address an institution's fitness in operating the program, applicant institutions must provide documentation that demonstrates financial viability, demonstrates administrative capability to operate the program, and establishes internal controls that ensure program accountability.

Although at-risk centers must meet all CACFP application requirements, which are described at § 226.6(b), we recognize that some of the smaller afterschool care organizations that are applying to participate in CACFP for the first time may find the application process to be complex and demanding. In order to foster their participation, we encourage State agencies to offer technical assistance whenever possible to independent institutions that want to participate in the at-risk afterschool snack component.

To clarify the process of application renewal for at-risk centers, we added language at § 226.17a(g) on the responsibilities of renewing independent at-risk centers and sponsoring organizations of at-risk centers. We have also clarified in §§ 226.17a(h) and 226.6(f)(3)(iii) how changes are handled between application periods. Finally, we updated citations of general application processing requirements to reflect



changes made by the second integrity rule.

Accordingly, the provisions on application processing for at-risk centers are revised and redesignated at § 226.6(f)(2)(ii) and (f)(3)(ii); these provisions are also described in § 226.17a(f), (g), and (h).

#### 8. For-Profit Center Participation

The following questions address the issue of for-profit center participation in the CACFP and the at-risk snack component.

*What did the Department propose regarding for-profit organizations participating in at-risk afterschool snacks?*

We proposed that children who only participate in the at-risk afterschool snack component at a for-profit center must not be included in the count that qualifies the center for program participation each month. At the time the proposed rule was published, participating for-profit centers could be reimbursed for CACFP meals and snacks only during the months in which 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

We had also proposed to define at § 226.2, the criteria for participation in the Iowa/Kentucky demonstration project, which had been permanently authorized under Public Law 105–336. The proposed definition described the criteria for participation by for-profit centers in these two States as: providing nonresidential child care and having at least 25 percent of the children, based on the enrollment or licensed capacity of the center (whichever is less), eligible to receive free or reduced-price meals.

*What did commenters say about the proposed provisions about for-profit centers?*

Three State agencies commented on the proposed provisions affecting for-profit centers; one supported, one opposed, and a third State agency encouraged us to allow for-profit organizations to count all Federal and State funding sources, not just the title XX funding, toward meeting the 25 percent eligibility criteria. The commenter who opposed the provision thought it would be confusing because children who are enrolled in for-profit centers for part-time care (not necessarily as part of the at-risk component) are currently counted toward the 25 percent participation qualifying level.

For purposes of determining a for-profit center's eligibility, there is a difference between part-time children

who are enrolled in the for-profit child care center and children who are not required to be enrolled but may just drop-in to participate in the afterschool activities and receive a snack. Current program regulations at §§ 226.10(c), 226.11(b) and (c), 226.17(b)(4), and 226.19(b)(5), stipulate that participating for-profit centers must meet eligibility criteria on a monthly basis in order to be reimbursed.

For this reason, we are retaining the exclusion of children who only participate in the at-risk afterschool snack component toward meeting the monthly eligibility criteria for participation and claiming reimbursement. This provision is described at §§ 226.2 (definition of "For-profit center"), 226.9(b)(2), 226.10(c), 226.11(b)(3) and (c)(4), 226.17(b)(4), and 226.17a(a)(2) in this final rule.

*How do the recent changes to for-profit center participation impact the provisions in this final rule?*

The afterschool snack provisions in this final rule reflect the statutory and regulatory changes that permit for-profit centers to participate in CACFP based on the income eligibility of children in care. The proposed rule was published for comment before the Miscellaneous Appropriations Act of 2001 (Appendix D, Division B, Title I of the Consolidated Appropriations Act of 2001, Pub. L. 106–554) permitted for-profit organizations nationwide to participate in CACFP as long as 25 percent of the children served are eligible for free or reduced-price meals. Initially, Congress limited this change to one year but later extended the provision annually through appropriation legislation. Public Law 108–265 permanently established this provision in the NSLA. With the permanent authorization of the participation of for-profit centers based on children's income eligibility for free or reduced-price meals, the pilot project that had operated in Iowa, Kentucky, and Delaware was no longer needed; accordingly, its authority was removed by Public Law 108–265. (Note: The third state to participate in the for-profit pilot project, Delaware, was authorized by the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224); for reasons of timing, Delaware was not included in the proposed rule.)

The for-profit center rule codified the for-profit center eligibility criteria as mandated by the NSLA, at section 17(a)(2)(B)(i) and (ii), 42 U.S.C. 1766(a)(2)(B)(i) and (ii). As defined in § 226.2, for-profit centers that are otherwise eligible may participate if:

1. 25 percent of the children in care (enrolled or licensed capacity,

whichever is less) are eligible for free or reduced-price meals; or

2. 25 percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX funding and the center receives compensation from amounts granted to the States under title XX.

The for-profit center rule also changed the terminology used in the regulations to describe these types of centers from proprietary title XIX and proprietary title XX centers to for-profit centers. This final rule uses the new term "for-profit centers" to describe participating for-profit organizations, replacing all references to "proprietary title XX centers" used in the proposed rule.

#### 9. Meal Service

*Did commenters say anything about the proposed meal pattern requirements for afterschool snacks?*

We proposed that current meal pattern requirements for CACFP snacks be used for afterschool snacks served to children and youth participating in at-risk afterschool programs. Two State agency commenters urged the Department to establish different quantities for snacks served to children ages 13 through 18. One of these commenters also suggested that the CACFP adult portions be used for adolescents.

Although we agree that CACFP meal pattern requirements need to address the nutritional needs of adolescents ages 13 through 18, this would require a separate rulemaking.

Concerning the suggestion to permit at-risk centers to serve adult quantities to the 13–18 age group, we do not believe that this is an appropriate substitution. The CACFP adult meal patterns are intended for adults over the age of 60, and the quantities provided for some food groups do not address the nutritional needs of youth. We recommend that snack portion sizes larger than those for the 6 to 12 age group, as described at § 226.20(c)(4), be given to adolescents. To clarify the difference between portions for adult participants and teenage participants, we have made a technical correction to the footnote following the meal pattern tables at § 226.20(c)(1), (c)(2), (c)(3), and (c)(4). More information about the correction to the footnote is provided in topic # 13 of this preamble.

Accordingly, the proposed provision on meal pattern requirements for afterschool snacks served by at-risk centers is retained but is redesignated as § 226.17a(l).

*Were other comments made about meal service requirements for at-risk afterschool snacks?*

One State agency asked us to clarify whether family style service is allowed for afterschool snacks. If so, the commenter stated that this flexibility conflicts with prohibiting offer versus serve in the NSLP afterschool snack component. CACFP snacks, whether served at a child care center, day care home, or at-risk facility, may be served family style if conducive to the meal service. At-risk centers that choose a family style snack service must comply with the procedures outlined in FNS Instruction 783-9, Rev. 2. Given the nature of afterschool programs, we don't expect that family style service will be commonly used.

We also received a comment from an at-risk center that noted the difficulty in observing the time restrictions that require that three hours elapse between the beginning of one meal service and the beginning of the next meal service.

The second integrity rule eliminated Federal regulatory time restrictions for all CACFP centers and provided State agencies with the authority to determine appropriate serving times for meals (see § 226.20(k)). This change had been proposed in a rulemaking published on September 12, 2000 (65 FR 55101) and overwhelmingly approved by commenters of that proposed rule. This provision gives State agencies a tool to respond to situations in order to better meet children's needs.

As previously discussed in this preamble, we have clarified that afterschool snacks may be served in the summer by an at-risk center that is located in the attendance area of a school that operates on a continuous year schedule. Accordingly, we have revised the provision on time periods for snack service, which was proposed at § 226.17a(l) and is redesignated at § 226.17a(m) in this final rule.

#### 10. Monitoring Requirements

*How did commenters respond to the proposed monitoring requirements by State agencies?*

Twelve commenters responded to our proposal at § 226.6(l)(4) to require State agencies to conduct a technical assistance visit to all newly participating independent at-risk afterschool care centers during the first 90 days of program operation. All but one opposed the proposed requirement. Most commenters objected that the visits would duplicate pre-approval visits that State agencies must conduct before approving new independent private child care centers (as well as

sponsors of group and home day care facilities). Commenters pointed out that under this proposal, State agencies would be obligated to visit the same centers twice within 120 days. This additional visit, commenters believed, would strain State agency workloads and possibly even discourage the State from promoting the afterschool snack component to at-risk care centers. Instead, several commenters urged the Department to allow State agencies flexibility in providing technical assistance to new centers. They suggested several alternatives to the on-site visits such as allowing States to require attendance at pre-approval training sessions, substituting desk reviews of menus or claim records with follow-up visits as necessary, and extending the time period for conducting the technical visit.

We recognize that many State agencies are over-burdened due to financial restraints in response to economic conditions. As a result, many State agencies have found it necessary to prioritize CACFP administrative activities. Although we continue to believe that technical assistance visits would be very helpful to independent at-risk afterschool care centers that are new to CACFP, we believe that limited State resources would be better spent in conducting the reviews as required at § 226.6(m)(6). We encourage State agencies to find ways to assist these newly participating CACFP institutions, using the above-mentioned activities suggested by State agency commenters. We also encourage State agencies to make use of the pre-approval visits to provide technical assistance to newly participating CACFP institutions.

Accordingly, in response to the concerns expressed about State agency workload, we have not included in this final rule the proposed requirement for technical assistance visits by State agencies within the first 90 days of new participating independent at-risk centers.

*What did commenters say about proposed monitoring requirements by sponsoring organizations?*

We had proposed that sponsors must review at-risk afterschool care centers three times each year, including at least one review during the first six weeks of program operations and not more than six months between reviews. Three commenters supported this proposal and two commenters provided suggestions for improving monitoring of at-risk facilities. Other commenters either recommended adopting these monitoring provisions for outside-school-hours care centers or noted that

the number and frequency of CACFP monitoring requirements by sponsoring organizations of facilities had been changed by Public Law 106-224.

Due to the changes made to monitoring requirements in the second integrity rule, the monitoring provisions as proposed for at-risk centers are not included in this final rule. Instead, the monitoring requirements that are now in place at § 226.16(d)(4) include all sponsored centers, including at-risk centers and outside-school-hours centers. The principle features of these new monitoring requirements by sponsors of their sponsored centers, which are similar to the proposed at-risk monitoring requirements in frequency and number, include the following:

1. Centers must be reviewed at least three times per year;
2. Two of the three reviews must be unannounced;
3. At least one of the unannounced reviews must include observation of a meal service;
4. At least one review must be made within four weeks of a newly participating center; and
5. Reviews must be no more than six months apart.

Accordingly, for the reasons stated above, the proposed monitoring provisions at §§ 226.6(l)(4) and 226.16(d)(4)(iii) are not adopted in this final rule.

11. What did the Department propose about reimbursement for afterschool snacks and did anyone comment?

We proposed that at-risk centers may claim only one afterschool snack per child per day. An organization that provides care to a child under another CACFP component (such as a child care center) may not claim reimbursement for more than two meals and one snack or one meal and two snacks served to the same child on the same day, including a snack served in an at-risk program. This provision ties the provision of at-risk afterschool snacks to the total number of reimbursable meals permitted under CACFP, and it is specified in the final rule at §§ 226.17(b)(6) and 226.17a(k).

We received only one comment on these provisions, and this commenter supported the proposal to count the snacks served by at-risk afterschool care centers toward the total number of meals that may be reimbursed to the organization under the CACFP.

Accordingly, the provision allowing one afterschool snack per child per day is adopted as proposed.

12. What types of reporting and recordkeeping requirements did the Department propose for at-risk centers?

Due to the drop-in nature of many afterschool programs, we did not propose extensive reporting and recordkeeping requirements. Consistent with the objective of keeping program administration for at-risk centers minimal, we purposely excluded enrollment records and point-of-service meal counts from recordkeeping requirements. We proposed minimum recordkeeping requirements for at-risk centers. In addition to other records that an at-risk center must keep as a participating organization in the CACFP, an at-risk center must document:

1. Daily attendance using rosters, sign-in sheets, or other methods of recording attendance as required by the CACFP State agency;
2. The number of snacks prepared or delivered for each meal service;
3. The number of snacks served to children; and
4. Menus for each snack service.

Another recordkeeping requirement is that applicant organizations must be able to document afterschool program eligibility and area eligibility (although State agencies are responsible for determining area eligibility of independent at-risk centers).

We proposed only one additional reporting requirement at § 226.17a(o) that at-risk centers must report the total number of snacks served to children who meet the age limitation requirements.

We received eight comments on recordkeeping and reporting issues. Commenters were split on their opinions of our proposal for limited recordkeeping/reporting requirements for at-risk centers. Three out of four commenters who addressed the issue supported the proposal to not require enrollment records of children who only participate in the at-risk snack service. However, other commenters objected to the proposal to allow attendance rosters or sign-in sheets instead of requiring point-of-service meal counts. One opposing commenter reasoned that since NSLP State agencies have the option of requiring point-of-service counts at the afterschool snack service, CACFP State agencies should also have this flexibility. Another commenter argued in favor of allowing States to require point-of-service counts because of the need to improve program integrity.

The Department appreciates concerns expressed about the need to protect program integrity. However, we believe

that at-risk afterschool care centers should be able to participate under reduced administrative requirements to the extent possible.

As stated at § 226.17a(o) in this final rule, institutions providing afterschool care to at-risk children, whether sponsoring organizations or independent at-risk afterschool care centers, are bound by the applicable recordkeeping requirements for CACFP institutions. General recordkeeping requirements, found at § 226.15(e), were amended by the second integrity rule. In addition, this final rule revises § 226.15(e)(2) to specifically exclude at-risk centers and outside-school-hours centers from maintaining enrollment records and to exclude at-risk centers from the requirement to maintain participant information used to determine eligibility for free or reduced-price meals.

Following is a summary of those recordkeeping requirements at § 226.15(e), as amended, that are applicable to at-risk centers. In addition to the requirements of § 226.17a(o), at-risk centers must keep:

1. Daily records of the number of meals (snacks for at-risk centers) served to adults who provide the meal service;
2. Copies of invoices, receipts, or other records as required by the State agency;
3. Copies of claims for reimbursement;
4. Receipts for Program payments received from the State agency;
5. In addition to copies of menus, other food service records that the State agency may require;
6. Records on staff training conducted including dates, locations, topics and participants; and
7. Documentation of nonprofit food service.

Sponsoring organizations of at-risk centers must also keep:

1. Records of the dates and amounts of funds disbursed to sponsored facilities;
2. Records of dates and locations of reviews of facilities, problems noted, and corrective action required; and
3. Records verifying training provided to monitoring staff.

Accordingly, proposed recordkeeping requirements at § 226.17a(n) are retained but redesignated at § 226.17a(o). Section 226.15(e)(2) is revised in this final rule to exclude at-risk centers from the requirement to maintain enrollment records of children and to exclude at-risk centers from the requirement to maintain information on the eligibility of participating children for free and reduced-price meals. Reporting requirements for at-risk

centers as proposed at § 226.17a(o) are retained but redesignated at § 226.17a(p).

13. What other changes to the CACFP regulations are made in this rulemaking?

This final rule incorporates a mandatory provision from section 107(a)(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336), which amended section 17(a)(1) of the NSLA, 42 U.S.C. 1766(a)(1), to remove the receipt of title XX funds by institutions or group or family day care homes as an acceptable substitute for Federal, State or local licensing or approval. As stated in the Conference Report (105-786) accompanying Public Law 105-336, this change is not intended to disqualify any institution that originally qualified under title XX.

Accordingly, §§ 226.6(d)(1), 226.17(b)(1), and 226.19(b)(1) are revised to remove references to receipt of title XX funds as a substitute for licensing or approval by a Federal, State, or local licensing authority.

We proposed to revise the definitions of “Nonpricing program” and “Pricing program” at § 226.2 to include child care facilities and adult day care facilities. This ensures that all sponsored facilities of institutions, including sponsored at-risk centers, are covered in the requirements for pricing and nonpricing programs described in §§ 226.6(f)(1)(i) and 226.23(e) and (h).

We received no comments on these proposed revisions to the definitions of nonpricing programs and pricing programs. Accordingly, we have adopted the revisions to the definitions of “Nonpricing program” and “Pricing program” at § 226.2.

Another change that we made in this final rule was to specify in the definition of “Meals” in § 226.2 that at-risk centers, emergency shelters, and outside-school-hours care centers do not have to enroll children in CACFP in order to receive reimbursement for the meals served to these participants. CACFP enrollment continues to be required for participants of day care homes, traditional child care centers, and adult day care centers.

Finally, a revision is made in this final rule to correct the first footnote that is displayed under the tables for meal pattern requirements in § 226.20(c)(1), (c)(2), (c)(3), and (c)(4). This footnote states that children age 12 and up may be served adult size portions. The adult portions in the meal pattern requirements are based on the nutritional needs of adults age 60 and older and do not take into account the

different nutritional needs of youth. Therefore, we have revised this footnote to state that children ages 13 through 18 may be served larger portions based on greater food needs but must be served not less than the minimum quantities required for children ages 6 through 12.

Accordingly, the first footnote under the tables that display meal pattern requirements in § 226.20 (c)(1), (c)(2), (c)(3), and (c)(4) is revised.

## II. Procedural Matters

### *Executive Order 12866*

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

### *Regulatory Impact Analysis*

#### Need for Action

This final rule changes the Child and Adult Care Food Program (CACFP) regulations as proposed by the Department in a rulemaking published on October 11, 2000 (65 FR 60502). These changes implement provisions of Public Law 105–336, which authorized afterschool care centers meeting certain criteria to be reimbursed for snacks served to at-risk children 18 years of age and younger. In addition to codifying these benefits, this rule establishes the administrative provisions necessary to manage afterschool snacks.

#### Benefits

This final rule codifies benefits provided by Public Law 105–336, which expands the opportunity for children to receive subsidized snacks through afterschool programs, thereby encouraging positive youth development. A regulatory impact analysis of the rule indicated that since the enactment of Public Law 105–336, participation in afterschool programs has increased. Research indicates that afterschool programs can have a positive effect on juvenile crime, drug and alcohol use, and teen pregnancy, and can also improve educational achievement and support personal development, although it is not feasible to assign a monetary value to these benefits.

#### Costs

The analysis of the rule estimated that these provisions will cost the Federal government about \$120 million between Fiscal Years 2005–2009. Also, due to the training, monitoring, recordkeeping, and other administrative and managerial requirements of the provisions, some additional burden will be imposed on the staff of at-risk centers, at-risk sponsors, State agencies, and the USDA.

### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. Institutions choose whether they wish to participate in this additional meal service. Because most institutions that will choose to add a snack service are already participating in the CACFP, the snack service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and Claim for Reimbursement.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

### *Executive Order 12372*

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

### *Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency’s considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

### Prior Consultation With State and Local Officials

Since the CACFP is a State-administered, federally funded program, our regional offices have had informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State agencies and sponsoring organizations to provide feedback that forms the basis for any discretionary decisions in this and other CACFP rules. Additionally, the issue of this rule, at-risk afterschool snacks, has been discussed in many formal and informal meetings.

### Nature of Concerns and the Need To Issue This Rule

This component of the CACFP responds to a growing national concern that at-risk children need appropriate and meaningful activities in a safe environment during the hours after school. The provision of reimbursable nutritious snacks assists organizations currently providing afterschool care to at-risk children and encourages other organizations to begin serving the at-risk population. The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) enlarged the scope of the CACFP by authorizing the reimbursement of snacks served to at-risk children through age 18 by organizations operating eligible afterschool programs in low-income areas. This final rule implements the at-risk afterschool provisions mandated by the law.

### Extent To Which We Meet These Concerns

This final rule amends the CACFP regulations at 7 CFR part 226 by incorporating at-risk afterschool provisions that were proposed on October 11, 2000 and commented on by the public. We analyzed the public comments, most of which were provided by State agencies that administer the CACFP. In this final rule, we responded to commenters’ requests for clarification, and where possible, accommodated preferences stated by the

majority of commenters on discretionary provisions contained in the rule.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which otherwise impede its full implementation. This final rule does not have retroactive effect unless so specified in the Dates section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures, and 7 CFR 226.22, 3016, and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

#### Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis" to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at § 226.6(b)(4)(iv) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a, and 15b). At § 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap., 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control

number. The information collection requirements contained in this rule have been approved by OMB under OMB Number 0584-0055.

#### E-Government Act Compliance

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 226 is amended as follows:

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

1. The authority citation for part 226 continues to read as follows:

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

#### §§ 226.4, 226.13, 226.19, and 226.23 [Amended]

2. In part 226, remove the words "supplement" or "supplements" wherever they appear in the following locations and add the words "snack" or "snacks", respectively, in their place: § 226.4(b)(7); § 226.4(b)(8); § 226.4(b)(9); § 226.4(d)(7); § 226.4(d)(8); § 226.4(d)(9); § 226.13(b); § 226.19(b)(4); and § 226.23(c)(6).

3. In § 226.2:

a. Add new definitions of "At-risk afterschool care center", "Eligible area", "Persons with disabilities", and "Snack" in alphabetical order;

b. Amend the definition of "CACFP child care standards" by removing the words ", outside-school-hours care centers,";

c. Revise the definitions of "Children", "Nonpricing program", "Pricing program", "Reduced-price meal", and "Sponsoring organization";

d. Add a new last sentence to the definition of "Enrolled child";

e. Revise the introductory paragraph of the definition of "For-profit center";

f. Amend the definition of "Free meal" by adding in the first sentence the words "a child participating in an approved at-risk afterschool care program;" after the words "a child who

is receiving temporary housing and meal services from an approved emergency shelter;"

g. Amend the definitions of "Center" and "Child care facility" by adding the words "at-risk afterschool care center," after the words "child care center,";

h. Amend the definitions of "Independent center" and "Institution" by adding the words "at-risk afterschool care center," after the words "child care center,";

i. Amend the definition of "Meals" by adding a new last sentence; and

j. Add the words "in accordance with § 226.6(d)(1)" in the first sentence of the definition of "Outside-school-hours care center" after the words "licensed or approved".

The additions and revisions read as follows:

#### § 226.2 Definitions.

\* \* \* \* \*

*At-risk afterschool care center* means a public or private nonprofit organization that is participating or is eligible to participate in the CACFP as an institution or as a sponsored facility and that provides nonresidential child care to children after school through an approved afterschool care program located in an eligible area. However, an *Emergency shelter*, as defined in this section, may participate as an at-risk afterschool care center without regard to location.

\* \* \* \* \*

*Children* means:

- (a) Persons age 12 and under;
- (b) Persons age 15 and under who are children of migrant workers;
- (c) *Persons with disabilities* as defined in this section;
- (d) For emergency shelters, persons age 18 and under; and
- (e) For at-risk afterschool care centers, persons age 18 and under at the start of the school year.

\* \* \* \* \*

*Eligible area* means:

- (a) For the purpose of determining the eligibility of at-risk afterschool care centers, the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals; or
- (b) For the purpose of determining the tiering status of day care homes, the area served by an elementary school in which at least 50 percent of the total number of children are certified eligible to receive free or reduced-price meals, or the area based on census data in which at least 50 percent of the children residing in the area are members of households that meet the income

standards for free or reduced-price meals.

\* \* \* \* \*
Enrolled child \* \* \* For at-risk afterschool care centers, outside-school-hours care centers, or emergency shelters, the term "enrolled child" or "enrolled participant" does not apply.

\* \* \* \* \*
For-profit center means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition. For-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition, except that children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining the percentages under paragraphs (b)(1) or (b)(2) of this definition.

\* \* \* \* \*
Meals \* \* \* However, children participating in at-risk afterschool care centers, emergency shelters, or outside-school-hours care centers do not have to be enrolled.

\* \* \* \* \*
Nonpricing program means an institution, child care facility, or adult day care facility in which there is no separate identifiable charge made for meals served to participants.

\* \* \* \* \*
Persons with disabilities means persons of any age who have one or more disabilities, as determined by the State, and who are enrolled in an institution or child care facility serving a majority of persons who are age 18 and under.

\* \* \* \* \*
Pricing program means an institution, child care facility, or adult day care facility in which a separate identifiable charge is made for meals served to participants.

\* \* \* \* \*
Reduced-price meal means a meal served under the Program to a participant from a family that meets the income standards for reduced-price school meals. Any separate charge imposed must be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a snack. Neither the participant nor any member of his family may be required to work in the food service program for a reduced-price meal.

Snack means a meal supplement that meets the meal pattern requirements specified in § 226.20(b)(6) or (c)(4).

Sponsoring organization means a public or nonprofit private organization that is entirely responsible for the administration of the food program in:

- (a) One or more day care homes;
(b) A child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

- (c) Two or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

- (d) Any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term "sponsoring organization" also includes an organization that is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers or outside-school-hours care centers, which meet the definition of For-profit center in this section and are part of the same legal entity as the sponsoring organization.

4. In § 226.4:

- a. Revise the second and third sentences of paragraph (a);
b. Redesignate paragraphs (d) through (k) as paragraphs (e) through (l), respectively;
c. Add a new paragraph (d);
d. Amend the first sentence of newly redesignated paragraph (i)(1) by adding the words, ", including snacks," after the word "meals"; and
e. Revise the first sentence of newly redesignated paragraph (i)(2).

The revisions and addition read as follows:

§ 226.4 Payments to States and use of funds.

(a) \* \* \* Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), (g), and (j) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part must not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (j) and (l) of this section.

(d) At-risk afterschool care center funds. For snacks served to children in

at-risk afterschool care centers, funds will be made available to each State agency in an amount equal to the total calculated by multiplying the number of snacks served in the Program within the State to such children by the national average payment rate for free snacks under section 11 of the National School Lunch Act.

(i) \* \* \*
(2) The rates for meals, including snacks, served in child care centers, emergency shelters, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

5. In § 226.6:

- a. Redesignate paragraphs (b)(1)(viii) through (b)(1)(xvii) as paragraphs (b)(1)(ix) through (b)(1)(xviii), respectively, and add a new paragraph (b)(1)(viii);
b. Amend paragraphs (c)(2)(ii)(B) and (c)(3)(ii)(C) by removing the reference "(b)(1)(xvii)" and adding in its place the reference "(b)(1)(xviii)";
c. Amend paragraphs (c)(7)(ii), (c)(7)(iii), (c)(7)(iv)(A), (c)(7)(iv)(B), and (c)(7)(iv)(C) by removing the reference "(b)(1)(xi)" and adding in its place the reference "(b)(1)(xii)";
d. Revise the first sentence of the introductory text of paragraph (d);
e. Revise paragraphs (d)(1) and (d)(3);
f. Amend the second sentence of paragraph (d)(4) by removing the words, ", outside-school-hours care centers,";
g. Remove paragraphs (f)(1)(iii), (f)(1)(iv), and (f)(1)(x) and redesignate paragraphs (f)(1)(v) through (f)(1)(ix) as paragraphs (f)(1)(iii) through (f)(1)(vii), respectively, and add new paragraphs (f)(1)(viii) and (f)(1)(ix);
h. Revise paragraphs (f)(2) and (f)(3); and
i. Remove the words ", outside-school-hours care centers," from the first sentence of paragraph (o).

The additions and revisions read as follows:

§ 226.6 State agency administrative responsibilities.

(b) \* \* \*
(1) \* \* \*
(viii) At-risk afterschool care centers. Institutions (independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers) must submit documentation

sufficient to determine that each at-risk afterschool care center meets the program eligibility requirements in § 226.17a(a), and sponsoring organizations must submit documentation that each sponsored at-risk afterschool care center meets the area eligibility requirements in § 226.17a(i).

\* \* \* \* \*

(d) \* \* \* This section prescribes State agency responsibilities to ensure that child care centers, at-risk afterschool care centers, outside-school-hours care centers, and day care homes meet the licensing/approval criteria set forth in this part. \* \* \*

(1) *General.* Each State agency must establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, at-risk afterschool care centers, outside-school hours care centers, and day care homes:

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions that are approved for Federal programs on the basis of State or local licensing are not eligible for the Program if their licenses lapse or are terminated; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available; or

(iv) Demonstrate compliance with CACFP child care standards to the State agency, if licensing or approval is not available; or

(v) If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits.

\* \* \* \* \*

(3) *CACFP child care standards.* When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CACFP child care standards or other standards specified in paragraph (d)(4) of this section:

(i) *Staff/child ratios.* (A) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(B) Child care centers do not fall below the following staff/child ratios:

(1) For children under 6 weeks of age—1:1;

(2) For children ages 6 weeks up to 3 years—1:4;

(3) For children ages 3 years up to 6 years—1:6;

(4) For children ages 6 years up to 10 years—1:15; and

(5) For children ages 10 and above—1:20.

(ii) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

(iii) *Safety and sanitation.* (A) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(B) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(C) Fire drills are held in accordance with local fire/building safety requirements.

(iv) *Suitability of facilities.* (A) Ventilation, temperature, and lighting are adequate for children's safety and comfort.

(B) Floors and walls are cleaned and maintained in a condition safe for children.

(C) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(v) *Social services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(vi) *Health services.* (A) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(B) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(C) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(D) At least one full-time staff member is currently qualified in first aid, including artificial respiration techniques. (Not applicable to day care homes.)

(E) First aid supplies are available.

(F) Staff members undergo initial and periodic health assessments.

(vii) *Staff training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(viii) *Parental involvement.* Parents are afforded the opportunity to observe their children in day care.

(ix) *Self-evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CACFP child care standards.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(viii) Comply with the following requirements for tiering of day care homes:

(A) Coordinate with the State agency that administers the National School Lunch Program (the NSLP State agency) 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 must provide the list of elementary schools to sponsoring organizations of day care homes by February 15 each year unless the NSLP State agency has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the NSLP State agency.

(B) For tiering determinations of day care homes that are based on school or census data, the State agency must ensure that sponsoring organizations of day care homes use the most recent available data, as described in § 226.15(f).

(C) For tiering determinations of day care homes that are based on the provider's household income, the State agency must ensure that sponsoring organizations annually determine the eligibility of each day care home, as described in § 226.15(f).

(D) The State agency must 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.

(E) The State agency must 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.

(ix) Comply with the following requirements for determining the eligibility of at-risk afterschool care centers:

(A) Coordinate with the NSLP State agency to ensure the receipt of a list of elementary, middle, and high 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 must provide the list of elementary, middle, and high schools to independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request. The list must represent data from the preceding October, unless the NSLP State agency has elected to base data for the list on a month other than October. If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(B) The State agency must determine the area eligibility for each independent at-risk afterschool care center. The State agency must use the most recent data available, as described in § 226.6(f)(1)(ix)(A). The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

(C) The State agency must determine the area eligibility of each sponsored at-risk afterschool care center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g).

(D) The State agency must determine whether the afterschool care programs of at-risk afterschool care centers meet the requirements of § 226.17a(b) before the centers begin participating in the Program.

(2) *Triennial Responsibilities*—(i) *General reapplication requirements.* At intervals not to exceed 36 months, each State agency must require participating institutions to reapply to continue their participation and must require sponsoring organizations to submit a management plan with the elements set forth in § 226.6(b)(1)(iv).

(ii) *Redeterminations of afterschool program eligibility.* The State agency must determine whether institutions reapplying as at-risk afterschool care

centers continue to meet the eligibility requirements, as described in § 226.17a(b).

(3) *Responsibilities at other time intervals*—(i) *Day care home tiering redeterminations based on school data.* As described in § 226.15(f), tiering determinations are valid for five years if based on school data. The State agency must 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 data. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area.

(ii) *Area eligibility redeterminations for at-risk afterschool care centers.* Area eligibility determinations are valid for five years for at-risk afterschool care centers that are already participating in the Program. The State agency may determine the date in the fifth year when the next five-year cycle of area eligibility will begin. The State agency must redetermine the area eligibility for each independent at-risk afterschool care center in accordance with § 226.6(f)(1)(ix)(B). The State agency must redetermine the area eligibility of each sponsored at-risk afterschool care center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g). The State agency must not routinely require annual redeterminations of area eligibility based on updated school data during the five-year period, except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions into the three-year application cycle. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(iii) *State agency transmittal of census data.* Upon receipt of census data from FNS (on a decennial basis), the State agency must provide each sponsoring organization of day care homes with census data 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.

(iv) *Additional institution requirements.* At intervals and in a manner specified by the State agency,

but not more frequently than annually, the State agency may:

(A) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center 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"), and parts 3015, 3016, and 3019 of this title and applicable Office of Management and Budget circulars;

(B) Request institutions to report their commodity preference;

(C) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.16(a);

(D) Require for-profit institutions to submit documentation on behalf of their centers of:

(1) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced-price meals; or

(2) Compensation received under title XX of the Social Security Act of nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(E) Require for-profit 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;

(F) Request 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

(G) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

\* \* \* \* \*

■ 6. In § 226.7, revise paragraph (f) to read as follows:



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

\* \* \* \* \*

(f) *Rate assignment.* Each State agency must require institutions (other than emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

\* \* \* \* \*

**§ 226.8 [Amended]**

■ 7. In § 226.8, remove the reference “§ 226.4(i)” in the first sentence of paragraph (b), the first sentence of paragraph (c), and the first and second sentences of paragraph (d), and add in its place the reference “§ 226.4(j)”.

■ 8. In § 226.9:

- a. Revise the second sentence of paragraph (a);
- b. Revise paragraph (b) introductory text; and
- c. Revise paragraph (b)(2).

The revisions read as follows:

**§ 226.9 Assignment of rates of reimbursement for centers.**

(a) \* \* \* However, no rates should be assigned for emergency shelters and at-risk afterschool care centers. \* \* \*

(b) Except for emergency shelters and at-risk afterschool care centers, the State agency must either:

\* \* \* \* \*

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced-price, and paid meals, except that children who only participate in emergency shelters or the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of establishing claiming percentages; or

\* \* \* \* \*

■ 9. In § 226.10:

- a. In paragraph (a), remove the reference “§ 226.6(f)(3)(vi)” in the first sentence and add in its place the reference “§ 226.6(f)(3)(iv)(F)”; and
- b. Add a new sentence after the third sentence in the introductory text of paragraph (c).

The addition reads as follows:

**§ 226.10 Program payment procedures.**

\* \* \* \* \*

(c) \* \* \* However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. \* \* \*

\* \* \* \* \*

■ 10. In § 226.11:

- a. Revise paragraphs (a), (b) and (c); and
- b. Add a heading to paragraphs (d) and (e).

The revisions and additions read as follows:

**§ 226.11 Program payments for centers.**

(a) *Requirement for agreements.*

Payments must be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, at-risk afterschool care centers, adult day care centers, emergency shelters, and outside-school-hours care centers. A State agency may develop a policy under which centers are reimbursed for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, or the State agency may develop a policy under which centers receive reimbursement only for meals served in approved centers on and after the effective date of the Program agreement. If the State agency's policy permits centers to earn reimbursement for meals served prior to the execution of a Program agreement, program reimbursement must not be received by the center until the agreement is executed.

(b) *Institutions*—(1) *Edit checks of sponsored centers.* Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must conduct reasonable edit checks on the sponsored centers' meal claims, which at a minimum, must include those edit checks specified at § 226.10(c).

(2) *Child and adult care institutions.* Each child care institution and each adult day care institution must report each month to the State agency the total number of Program meals, by type (breakfasts, lunches, suppers, and snacks), served to children or adult participants, respectively, except as provided in paragraph (b)(3) of this section.

(3) *For-profit center exception.* For-profit child care centers, including for-profit at-risk afterschool care centers and outside-school-hours care centers, must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must

not be considered in determining this percentage. For-profit adult day care centers must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(c) *Reimbursement*—(1) *Child and adult care institutions.* Each State agency must base reimbursement to each approved child care institution and adult day care institution on actual time of service meal counts of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(4) of this section.

(2) *At-risk afterschool care centers.* Each State agency must base reimbursement to each at-risk afterschool care center on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(4) of this section.

(3) *Emergency shelters.* Each State agency must base reimbursement to each emergency shelter on the number of meals served to children multiplied by the free rates for meals and snacks.

(4) *For-profit center exception.* For-profit child care centers, including for-profit at-risk and outside-school-hours care centers, must be reimbursed only for the calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must not be considered in determining this percentage. For-profit adult day care centers must be reimbursed only for the calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(5) *Computation of reimbursement.* Except for at-risk afterschool care centers and emergency shelters, the State agency must compute reimbursement by either:

(i) *Actual counts.* Base reimbursement to institutions on actual time of service counts of meals served, and multiply the number of meals, by type, served to participants that are eligible to receive free meals, participants eligible to receive reduced-price meals, and participants not eligible for free or reduced-price meals by the applicable national average payment rate; or

(ii) *Claiming percentages.* Apply the applicable claiming percentage or percentages to the total number of

meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(iii) *Blended rates.* Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) *Limits on reimbursement.* \* \* \*

(e) *Institution recordkeeping.* \* \* \*

■ 11. In § 226.15:

■ a. Amend the second sentence in paragraph (b) by removing the reference “§ 226.6(b)(1)(xvii)” and adding in its place the reference

“§ 226.6(b)(1)(xviii)”;

■ b. Revise the first two sentences of paragraph (e)(2); and

■ c. Redesignate paragraphs (g) through (n) as paragraphs (h) through (o), respectively, and add a new paragraph (g).

The revisions and addition read as follows:

§ 226.15 Institution provisions.

\* \* \* \* \*

(e) \* \* \*

(2) Documentation of the enrollment of each participant at centers (except for outside-school-hours care centers, emergency shelters, and at-risk afterschool care centers). All types of centers, except for emergency shelters and at-risk afterschool care centers, must maintain information used to determine eligibility for free or reduced-price meals in accordance with § 226.23(e)(1). \* \* \*

\* \* \* \* \*

(g) *Area eligibility determinations for at-risk afterschool care centers.*

Sponsoring organizations of at-risk afterschool care centers must provide information, as required by the State agency, which permits the State agency to determine whether the centers they sponsor are located in eligible areas. Such information may include the most recent free and reduced-price school data available pursuant to § 226.6(f)(1)(ix) and attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

\* \* \* \* \*

■ 12. In § 226.16:

■ a. Amend the first sentence of paragraph (b)(1) by removing the references “226.6(f)(2)(ii)” and “226.6(b)(1)(xvii)” and adding in their place the references “226.6(f)(2)(i)” and “226.6(b)(1)(xviii), respectively;

■ b. Revise paragraph (f); and

■ c. Amend the first sentence of paragraph (h) by adding the words “at-risk afterschool care centers,” after the words “emergency shelters,”.

The revision reads as follows:

§ 226.16 Sponsoring organization provisions.

\* \* \* \* \*

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, emergency shelters, at-risk afterschool care centers, and outside-school-hours care centers). However, if a school food authority provides child care and is applying to participate in the Program, the State agency must enter into a single permanent agreement, as specified in § 226.6(b)(4)(ii)(A).

\* \* \* \* \*

■ 13. In § 226.17:

■ a. Revise paragraphs (b)(1), (b)(3), and (b)(5);

■ b. Add a new sentence between the second and third sentence in paragraph (b)(4); and

■ c. Redesignate paragraphs (b)(6) through (b)(9) as paragraphs (b)(7) through (b)(10), respectively, and add a new paragraph (b)(6).

The revisions and additions read as follows:

§ 226.17 Child care center provisions.

\* \* \* \* \*

(b) \* \* \*

(1) Child care centers must have Federal, State, or local licensing or approval to provide day care services to children. Child care centers, which are complying with applicable procedures to renew licensing or approval, may participate in the Program during the renewal process, unless the State agency has information that indicates that renewal will be denied. If licensing or approval is not available, a child care center may participate if it demonstrates compliance with the CACFP child care standards or any applicable State or local child care standards to the State agency.

\* \* \* \* \*

(3) Each child care center participating in the Program must serve one or more of the following meal types—breakfast; lunch; supper; and snack. Reimbursement must not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

(4) \* \* \* However, children who only receive snacks in an approved afterschool care program must not be included in this percentage. \* \* \*

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children participating in an outside-

school-hours care program meeting the criteria of § 226.19(b) that is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such participating children who attend a school that does not offer a lunch program, provided that the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded.

(6) A child care center with preschool children may also be approved to serve a snack to school age children participating in an afterschool care program meeting the requirements of § 226.17a that is distinct from its day care program for preschool children, provided that the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

\* \* \* \* \*

■ 14. Add a new § 226.17a to read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for afterschool snacks—* (1) *Eligible organizations.* In order to be eligible to receive reimbursement, organizations must meet the following criteria:

(i) Organizations must meet the definition of an *At-risk afterschool care center* in § 226.2. An organization may participate in the Program either as an independent center or as a child care facility under the auspices of a sponsoring organization. Public and private nonprofit centers may not participate under the auspices of a for-profit sponsoring organization.

(ii) Organizations must operate an eligible afterschool care program, as described in paragraph (b) of this section.

(iii) Organizations must meet the licensing/approval requirements in § 226.6(d)(1).

(iv) Except for for-profit centers, at-risk afterschool care centers must be public, or have tax-exempt status under the Internal Revenue Code of 1986 or be currently participating in another Federal program requiring nonprofit status.

(2) *Limitations.* At-risk afterschool care centers may only claim reimbursement for snacks served to children who are participating in an approved afterschool care program, as described in paragraph (b) of this section. In addition, centers may only claim reimbursement for snacks served at any one time to children within the at-risk afterschool care center’s authorized capacity. For-profit centers

may only claim reimbursement for snacks served during a calendar month in which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage.

(b) *Eligible at-risk afterschool care programs*—(1) *Eligible programs*. To be eligible for reimbursement, an afterschool care program must:

(i) Be organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year (an at-risk afterschool care center may not claim snacks during summer vacation, unless it is located in the attendance area of a school operating on a year-round calendar);

(ii) Have organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment);

(iii) Include education or enrichment activities; and

(iv) Except for *Emergency shelters* as defined in § 226.2, be located in an eligible area, as described in paragraph (i) of this section.

(2) *Eligibility limitation*. Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *Eligibility requirements for children*. At-risk afterschool care centers may claim reimbursement only for snacks served to children who participate in an approved afterschool care program and who are age 18 or under at the start of the school year.

(d) *Licensing requirements for at-risk afterschool care centers*. In accordance with § 226.6(d)(1), if Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits. In cases where Federal, State or local licensing or approval is required, at-risk afterschool care centers that are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information that indicates the renewal will be denied.

(e) *Application procedures*—(1) *Application*. An official of the organization must make written application to the State agency for any afterschool care program that it wants to operate as an at-risk afterschool care center.

(2) *Required information*. At a minimum, an organization must submit:

(i) An indication that the applicant organization meets the eligibility criteria for organizations as specified in paragraph (a) of this section;

(ii) A description of how the afterschool care program(s) meets the eligibility criteria in paragraph (b) of this section;

(iii) In the case of a sponsoring organization, a list of all applicant afterschool care centers;

(iv) Documentation that permits the State agency to confirm that all applicant afterschool care centers are located in an eligible area, as described in paragraph (i) of this section; and

(v) Other information required as a condition of eligibility in the CACFP must be submitted with an application for participation in accordance with § 226.6(b)(1).

(f) *State agency action on applications*—(1) *State agency approval*. The State agency must determine the eligibility of the afterschool care program for each sponsored afterschool care center based on the information submitted by the sponsoring organization in accordance with §§ 226.6(b)(1) and 226.15(g) and the requirements of this section. The State agency must determine the eligibility of the afterschool care programs of independent afterschool care centers based on the information submitted by the independent center in accordance with § 226.6(b)(1) and the requirements of this section. The State agency must determine the area eligibility of independent at-risk afterschool care centers in accordance with the requirements of § 226.6(f)(1)(ix)(B). An approved organization must enter into an agreement with the State agency as described in paragraph (f)(2) of this section.

(2) *Agreement*. The State agency must enter into an agreement or amend an existing agreement with an institution approved to operate one or more at-risk afterschool care centers pursuant to § 226.6(b)(4). The agreement must describe the approved afterschool care program(s) and list the approved center(s). The agreement must also require the institution to comply with the applicable requirements of this part. If the institution is a school food authority that is applying to participate as an at-risk afterschool care center, the

State agency must enter into a single permanent agreement, as specified in § 226.6(b)(4)(ii)(A).

(g) *Application process in subsequent years*. To continue participating in the Program, independent at-risk afterschool care centers or sponsoring organizations of at-risk afterschool care centers must reapply at time intervals required by the State agency, as described in § 226.6(b)(3) and (f)(2). Sponsoring organizations of at-risk afterschool care centers must provide area eligibility data in compliance with the provisions of § 226.15(g). In accordance with § 226.6(f)(3)(ii), State agencies must determine the area eligibility of each independent at-risk afterschool care center that is reapplying to participate in the Program.

(h) *Changes to participating centers*. Independent at-risk afterschool care centers or sponsors of at-risk afterschool care centers must advise the State agency of any substantive changes to the afterschool care program. Sponsoring organizations that want to add new at-risk afterschool care centers must provide the State agency with the information sufficient to demonstrate that the new centers meet the requirements of this section.

(i) *Area eligibility*. Except for emergency shelters, at-risk afterschool care centers must be located in an area described in paragraph (a) of the *Eligible area* definition in § 226.2 and in paragraph (i)(1) of this section.

(1) *Definition*. An at-risk afterschool care center is in an eligible area if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals.

(2) *Data used*. Area eligibility determinations must be based on the total number of children approved for free and reduced-price school meals for the preceding October, or another month designated by the State agency that administers the National School Lunch Program (the NSLP State agency). If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(3) *Frequency of area eligibility determinations*. Area eligibility determinations are valid for five years. The State agency may determine the date in the fifth year in which the next five-year cycle of area eligibility will begin. The State agency must not routinely require redeterminations of area eligibility based on updated school data during the five-year period, except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions

into the three-year application cycle. However, a sponsoring organization, the State agency, or FNS may change the determination of area eligibility if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(j) *Cost of afterschool snacks.* All afterschool snacks served under this section must be made available to participating children at no charge.

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

(l) *Meal pattern requirements for afterschool snacks.* Afterschool snacks must meet the meal pattern requirements for snacks described in § 226.20(b)(6) and (c)(4).

(m) *Time periods for snack service.* At-risk afterschool care centers may only claim snacks served in approved afterschool care programs after a child's school day or on weekends, holidays, or school vacations during the regular school year. Afterschool snacks may not be claimed during summer vacation, unless the at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(n) *Reimbursement rate.* All snacks served in at-risk afterschool care centers will be reimbursed at the free snack rate.

(o) *Recordkeeping requirements.* In addition to the other records required by this part, at-risk afterschool care centers must maintain:

- (1) Daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance;
- (2) The number of snacks prepared or delivered for each snack service;
- (3) The number of snacks served to participating children for each snack service; and
- (4) Menus for each snack service.

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

(q) *Monitoring requirements.* State agencies must monitor independent centers in accordance with § 226.6(m). Sponsoring organizations of at-risk afterschool care centers must monitor their centers in accordance with § 226.16(d)(4).

■ 15. In § 226.18, revise paragraph (c) to read as follows:

**§ 226.18 Day care home provisions.**

\* \* \* \* \*

(c) Each day care home must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one meal and two snacks, provided daily to each child.

\* \* \* \* \*

■ 16. In § 226.19, revise paragraph (b)(1) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) In accordance with § 226.6(d)(1), if Federal, State or local licensing or approval is not otherwise required, outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any outside-school-hours care center's eligibility for CACFP nutrition benefits. In cases where Federal, State or local licensing or approval is required, outside-school-hours care centers that are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information that indicates the renewal will be denied.

\* \* \* \* \*

■ 17. In § 226.19a, revise paragraph (b)(5) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(5) Each adult day care center participating in the Program must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one snack and two meals, provided daily to each adult participant.

\* \* \* \* \*

■ 18. In § 226.20:

■ a. Amend the introductory text of paragraph (a)(4) by removing the words "Supplemental food" and adding in their place the word "Snacks";

■ b. Revise footnote 1 in the tables of paragraphs (c)(1), (c)(2), (c)(3), and (c)(4); and

■ c. Amend paragraph (d)(2) by removing the words "supplemental food" and adding in their place the word "snacks".

The revisions read as follows:

**§ 226.20 Requirements for meals.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

\* \* \* \* \*

(2) \* \* \*

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

\* \* \* \* \*

(3) \* \* \*

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

\* \* \* \* \*

(4) \* \* \*

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

\* \* \* \* \*

■ 19. In § 226.23:

■ a. Revise the first sentence in paragraph (b);

■ b. Revise the second and third sentences of paragraph (d); and

■ c. Add in the first sentence of paragraph (e)(1)(i), the words " and at-risk afterschool care centers" after the word "emergency shelters".

The revisions read as follows:

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

\* \* \* \* \*

(b) Institutions that may not serve meals at a separate charge to children (including emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, and day care homes) and other institutions that elect to serve meals at no separate charge must develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or disability and that there is

no discrimination in the course of the food service. \* \* \*

\* \* \* \* \*

(d) \* \* \* All media releases issued by institutions other than emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes must include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. The release issued by all emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes, and by other institutions which elect not to charge separately for meals, must announce the availability of meals at no separate charge. \* \* \*

\* \* \* \* \*

Dated: July 16, 2007.

**Kate J. Houston,**

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

[FR Doc. E7-14642 Filed 7-30-07; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2007-0072]

#### Black Stem Rust; Addition of Rust-Resistant Varieties

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On June 12, 2007, the Animal and Plant Health Inspection Service published a direct final rule. (See 72 FR 32165-32167.) The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding four varieties to the list of rust-resistant *Berberis* species or cultivars in the regulations. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**DATES:** *Effective Date:* The effective date of the direct final rule is confirmed as August 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 25th day of July 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-14722 Filed 7-30-07; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2005-0106]

RIN 0579-AB80

#### Revision of Fruits and Vegetables Import Regulations; Correction

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** We are correcting an error in the amendatory instructions in our final rule that revised and reorganized the regulations pertaining to the importation of fruits and vegetables. The final rule was published in the **Federal Register** on July 18, 2007 (72 FR 39482-39528, Docket No. APHIS 2005-0106).

**EFFECTIVE DATE:** August 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janel Barsi, Regulatory Analyst, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road Unit 118, Riverdale, MD 20737; (301) 734-8682.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** on July 18, 2007 (72 FR 39482-39528, Docket No. APHIS-2005-0106) and effective on August 17, 2007, we revised and reorganized our regulations pertaining to the importation of fruits and vegetables.

In an amendatory instruction in the final rule, we directed the revision of "Subpart—Fruits and Vegetables, §§ 319.56 through 319.56-8." This was incorrect. We should have simply referred to "Subpart—Fruits and Vegetables." This document corrects that error.

#### Correction

#### PART 319—[CORRECTED]

■ In FR Doc. E7-13708, published on July 18, 2007 (72 FR 39482-39528), make the following correction: On page 39501, second column, instruction 13, remove the words "§§ 319.56 through 319.56-8,".

Done in Washington, DC, this 25th day of July 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-14723 Filed 7-30-07; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS-FV-07-0039; FV07-985-2 FIR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2006-2007 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that revised the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may have purchased from, or handled for, producers during the 2006-2007 marketing year. This rule continues in effect the action that increased the Scotch spearmint oil salable quantity from 878,205 pounds to 2,984,817 pounds, and the allotment percentage from 45 percent to 153 percent. In addition, this rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,161,260 pounds to 1,205,208 pounds, and the allotment percentage from 53 percent to 55 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**EFFECTIVE DATE:** August 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: