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National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 226, 235, 245

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National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would incorporate the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the regulations governing the National School Lunch Program and the Child and Adult Care Food Program. Corresponding technical amendments are also proposed to the regulations governing the State Administrative Expense Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. Under this proposed rule, certain afterschool care programs would earn reimbursement for snacks served which meet program requirements. This rule, as proposed, would be expected to increase consumption of nutritious snacks in afterschool care programs.

DATES: To be assured of consideration, written comments must be postmarked on or before January 9, 2001.

ADDRESSES: Comments may be mailed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 1007, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. You may also submit comments electronically at CNDProposal@fns.gov. All written submissions will be available for public inspection in Room 1007 at this address during regular business hours (8:30 am to 5 pm) Monday through Friday. Since comments are being accepted simultaneously on several separate rulemakings, commentors on this proposed rule are asked to label their comments ''Reimbursement for Snacks in Afterschool Care Programs.''

FOR FURTHER INFORMATION CONTACT: Mary Jane Whitney (National School Lunch Program and Commodity Schools Program) or Ron Ulibarri (Child and Adult Care Food Program) at the above address or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1998, President Clinton signed Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Child Nutrition Reauthorization Act). The Child Nutrition Reauthorization Act (Act) expanded the availability of snacks for both the National School Lunch Program (NSLP) and the Child and Adult Care Food Program (CACFP). Specifically, the Act expanded the availability of snacks in the CACFP so that snacks served to children aged 12 to 18 in afterschool care programs located in the area of a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price meals can be claimed for reimbursement. The Act also expanded the NSLP to permit the service of afterschool snacks to children aged 12 to 18 and further expanded the eligibility of schools to ensure more schools can avail themselves of reimbursement for snacks served afterschool.

For ease of reference, we refer only to the NSLP and CACFP in this preamble. The proposed rule makes clear that the afterschool supplement would also be available in the Commodity School Program. The statutory authority for the NSLP afterschool supplement is in section 17A of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766a); the CACFP provisions are in section 17(r) of the NSLA (42 U.S.C. 1766(r)). Throughout this preamble, the commonly used terms ''afterschool snack(s)'' and ''snack(s)'' are used in lieu of the term ''supplement(s).'' Commenters will find additional discussion of this terminology in Part 4.I of this preamble.

The new afterschool snack component provides reimbursement for snacks served to children in certain afterschool care programs. According to the Conference Report that accompanied this law (House Report 105–786), Congress intended that these new components provide nutrition assistance to programs that offer the types of activities known to help reduce or prevent involvement in juvenile crime. The House Committee on Education and the Workforce further noted in its report (House Report 105–633) that ''afterschool programs, which operate between the end of a school day and time when parents return from work, provide a quality alternative to juveniles with too much time on their hands.'' The proposed afterschool snack components in the NSLP and CACFP are an effort to support and promote these afterschool programs.

This preamble is divided into five parts. Part 1 discusses the proposed core requirements for both the NSLP and CACFP afterschool snack components. Part 2 is a chart showing the requirements with their regulatory citations for the two programs as contained in this proposed rule. We included this chart in lieu of a detailed preamble discussion of each provision of this rule as an easy way to show the proposed changes and to compare the NSLP and CACFP requirements. Part 3 is a discussion, by program, of the particular provisions of this proposed rule that we think warrant elaboration. Part 4 discusses some related changes this rule proposes to make to the regulations. Part 5 addresses implementation dates.

Part 1—What Are the Proposed Core Requirements?

Section I. What Are the Proposed Core Requirements Under the NSLP?

A. Eligible Afterschool Care Programs

Under this proposal and in accordance with the criteria set forth under the NSLA, to be approved for reimbursement under the new afterschool snack component of the NSLP, snacks must be served in an eligible afterschool care program which is operated or sponsored by a school or school district which participates in the NSLP (see Part 3.I.A below) and:

- Is organized primarily to provide care for children after school;
- Has organized, regularly scheduled activities (*i.e.,* in a structured and supervised environment); and
- Includes education or enrichment activities.

These provisions are proposed at 7 CFR 210.4a, paragraphs (a) and (b). Hereinafter, references to proposed amendments to part 210 and 226 of Title 7 of the Code of Federal Regulations are made to the appropriate section number only.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

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.

B. Ineligible Afterschool Care Programs

Under this proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the NSLP. In the Conference Report that accompanied the Child Nutrition Reauthorization Act, the Conference Committee declared its intent that support for afterschool snacks would not be provided to members of athletic teams. This limitation is found at § 210.4a(b)(2) of this proposed rule.

C. Eligible Children

Under the proposal, children would be eligible to participate in the afterschool snack service in traditional schools (see paragraphs (a) and (b) in the definition of ''School,'' § 210.2), if they participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19.

Reimbursement could also be claimed for students with disabilities (see definition of ''Student with disabilities'', § 210.2), regardless of their age, who participate in a school program of high school grade or under. This provision is found at § 210.4a(c) of this proposed rule.

Children enrolled in a residential child care institution (RCCI) would be eligible to participate in an approved afterschool care program's snack service if they are age 18 or under at the start of the school year. Snacks could be claimed for children who turn 19 during the school year. This provision is also found at § 210.4a(c) of this proposed rule.

There would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (e.g., Head Start or Even Start) *and* are participating in an approved afterschool care program after their regularly scheduled school day.

D. Days of Service

Under this proposal, the afterschool snack component in the NSLP would only operate on days that school is in session. This would include snacks served in afterschool care programs operated for children attending summer school, but would not include weekends, holidays, or school vacations. Snacks served *after school* to children attending schools that operate on a year-round basis also would be claimed through the afterschool snack component of the NSLP, assuming the other eligibility requirements are met. These provisions are found at § 210.4a(m) of this proposed rule. Organizations that offer programs during summer vacations may be eligible to participate in the Summer Food Service Program (SFSP).

E. Number of Afterschool Snacks Claimed

Under the proposal, school food authorities would claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced could be offered, but would not be claimed for reimbursement. This provision is found at § 210.4a(k) of this proposed rule.

F. Afterschool Snack Meal Pattern

The proposal would require that afterschool snacks meet the meal pattern requirements set forth in § 210.10(n), *What are the requirements for afterschool snacks*?. This provision is consistent with section 17A(c) of the Act which requires that the content of meal supplements specified under the CACFP be applied to the content of snacks served under the NSLP. Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that older children in afterschool care programs be offered larger portions based on their greater food energy requirements. Under the proposal, if schools offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks would be allowed to take any snack or choice offered as a part of the reimbursable snack. This requirement is found at § 210.4a(l) of this proposed rule.

G. Reimbursement

Under this proposal and consistent with the provisions of section 17A of the Act, school food authorities may claim reimbursement for afterschool snacks served in any facility selected as a site of an eligible afterschool care program, but only those afterschool care program sites that are ''area eligible'' would automatically receive reimbursement at the free rate for all snacks. (''Area eligibility'' is discussed in Part 1.I.H of this preamble.) In this case, free and reduced price applications would not be required.

Reimbursement for snacks served at schools or sites that are not ''area eligible'' would depend on the eligibility status of the child (i.e. free, reduced price, or paid). In this case, free and reduced price applications would be required to establish eligibility status. Generally, sites would not need to distribute new free and reduced price applications. In most cases, the families of children participating in the afterschool care program would have already applied for free and reduced price meals in connection with the lunch component of the NSLP or the School Breakfast Program. In these cases, the school food authority sponsoring the afterschool care program would use the free and reduced price meal determinations made for purposes of school lunches or breakfasts as documentation for free and reduced price afterschool snacks. If children in a school's afterschool care program are from another school, the school sponsoring the afterschool care program would use the determinations made by the children's regular school as long as it documents the source of the eligibility information.

However, if the afterschool care program that is not area eligible includes children from schools that do not participate in the NSLP lunch component or the School Breakfast Program, then the families for those children would not have had the opportunity to apply for free and reduced price meals. Only in this limited circumstance would a school food authority sponsoring the afterschool care program need to distribute free and reduced price applications and make eligibility determinations for purposes of afterschool snacks. These determinations must be made in accordance with 7 CFR part 245. These provisions are found at § 210.4a(n) and (o) of this proposed rule.

H. Area Eligibility

Under this proposal and consistent with the provisions of section 17A of the Act, a school would be ''area eligible'' if at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. Additionally, a school or site would be considered area eligible if it is located

in the attendance area of an elementary, middle, or high school in which at least 50 percent of its enrolled children are certified eligible for free or reduced price meals. This provision is found at § 210.4a(i) of this proposed rule.

The State agency would determine ''area eligibility'' for each afterschool care program site seeking to qualify as area eligible based on information provided by the school food authority. This provision is found at § 210.4a (f) of this proposed rule.

Area eligibility determinations would be made each school year, although FNS, the State agency, or the school food authority could change the determination if updated data indicates that a school or site is no longer area eligible. However, the State agency would not routinely require redeterminations of area eligibility status based on updated data before the school year has expired. We recognize that frequent re-evaluation of area eligibility is disruptive to program operations and have tried to balance this concern with the need for accountability.

Area eligibility determinations would be made using the free and reduced price meal data for the preceding October, or the other month the State agency has designated pursuant to § 210.9(b), *Agreements with State agency,* paragraph (20). School food authorities would make area eligibility determinations prior to beginning snack service each school year. Typically, the school food authority would make the determination before the start of the school year using the preceding October's free and reduced price meal data. Area eligibility provisions are found at § 210.4a(i) of this proposed rule.

School food authorities could, at any time during the school year, submit more recent area eligibility data that would qualify a site that was previously not area eligible. However, only data for October, or the other month designated by the NSLP State agency for free and reduced price data collection, would be used. For example, a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998). That site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change.

In order to facilitate area eligibility determinations, this rule proposes to amend § 210.9(b)(20). School food authorities would be required to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20).

I. Claiming Reimbursement

Sections 210.7, *Reimbursement for school food authorities,* and 210.8, *Claims for reimbursement,* of existing regulations establish procedures which are designed to ensure the fiscal accountability of the lunch and snack service. Prior to the 1998 authorization of the *afterschool* snack service, section 106(a) of the Child Nutrition and WIC Reauthorization Act of 1989 added section 17A (42 U.S.C.1766a) to the NSLA. Under section 17A, elementary and secondary schools that were participating in the CACFP as of May 15, 1989 could be reimbursed for meal supplements served in afterschool care programs. Implementing regulations issued in 1993 (58 FR 42483) made a number of changes to the reimbursement process specified in § § 210.7 and 210.8 to ensure that Federal reimbursement is being properly paid.

This proposed rule would make a number of technical revisions to § § 210.7 and 210.8 to reflect the use of the term ''afterschool snacks'' in lieu of ''meal supplements''. Additionally, this proposal would make several revisions to these sections in order to ensure the fiscal integrity of the afterschool snack service.

Under paragraph (c)(1)(iii) of existing § 210.7, school food authorities are required to base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children. This proposed rule would revise this paragraph to require school food authorities to base Claims for Reimbursement on daily lunch *and afterschool snack* counts. In recognition of the unconventional nature of many afterschool care programs, the Department has determined not to extend the requirement for point of service meal counts to the afterschool snack service. However, as discussed further in part 1.I.J, we are requiring schools to maintain daily attendance rosters or sign-in sheets.

Not requiring a point of service meal count is expected to provide some operational flexibility. However, school food authorities are reminded that they must continue to ensure that the Claim for Reimbursement accurately reflects the number of free, reduced price and paid lunches and afterschool snacks that are served to children eligible for such meals for each day of operation, Further, the Claim for Reimbursement cannot request payment for more than one lunch and afterschool snack per child per day.

This proposal would also make revisions to the internal controls set forth under existing § 210.8(a). Currently, school food authorities are required to establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement.

Under the proposed rule, the existing on-site review requirements for afterschool snack service would be modified. These proposed modifications are further discussed in Part 1.I.K of this preamble.

This proposal would also revise § 210.8(a) to expand the comparisons of daily free, reduced price and paid lunch counts to include comparisons of afterschool snack counts against data which will assist in the identification of snack counts in excess of the number of free, reduced price and paid snacks served each day to eligible children. The Department is not proposing specific data comparisons in order to provide school food authorities with the flexibility to design comparisons which ensure the fiscal integrity of the afterschool snack service under their jurisdiction.

Finally, under the proposal, school food authorities would be required to expand the system for following up on lunch counts which suggest the likelihood of counting problems to include afterschool snack counts which also have the likelihood of problems.

J. Recordkeeping and Reporting Requirements

In recognition of the fact that many afterschool care programs operate on a drop-in basis, this proposed rule would not require school food authorities to maintain traditional enrollment records for the children who attend their afterschool care programs. Instead, the rule would require school food authorities to maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found at § 210.4a(q) of this proposed rule.

The school food authority would report the number of afterschool snacks served by eligibility category and, for

each October, the number of schools and sites claiming reimbursement for afterschool snacks under the NSLP on the monthly Claim for Reimbursement. These provisions are found at § 210.4a(r) and at § 210.8(c) of this proposed rule.

K. School Food Authority Monitoring

This rule proposes to revise the current monitoring requirements for the NSLP afterschool care programs. Under § 210.9(c), *Afterschool care requirements,* paragraph (7) of existing regulations, school food authorities are required to review each afterschool snack service site twice each year; the first review must be made during the first four weeks that school is in operation. Under this proposal, the first review would be required to be made during the first six weeks of snack service, thus providing school food authorities with an additional two weeks for review activities. The proposed rule also clarifies that the school food authority must review the afterschool snack counting and claiming system and compliance with meal pattern requirements. These provisions are found at § 210.4a(s) of this proposed rule.

L. State Agency Monitoring

This proposed rule would add State agency monitoring requirements to § 210.19(a), *General Program management.* Under the proposed paragraph, each State agency would be required to determine whether school food authorities claiming reimbursement for afterschool snacks under § 210.4a meet the requirements of this part in order to establish whether Claims for Reimbursement are properly payable. Each State agency would be required to conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews could be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies could also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. These requirements are cross-referenced at § 210.4a(t).

Section II. What Are the Proposed Core Requirements Under the CACFP?

A. Eligible Institutions

Under this proposed rule, an ''at-risk afterschool care center'' is a public or private nonprofit organization (or proprietary title XX center) eligible to participate in the CACFP that provides nonresidential care to children through an approved afterschool care program in an eligible area. (Area eligibility is discussed in Part 1.II.I of this preamble.) At-risk afterschool care centers receive reimbursement at the free rate for all snacks served to eligible children. Like other centers in the CACFP, an at-risk afterschool care center may participate as an independent center by entering into an agreement directly with the State agency, or under the auspices of a sponsoring organization which enters into the agreement. This rule proposes to include a definition of ''at-risk afterschool care center'' in § 226.2. (Licensing is discussed in Part 4.II of this preamble.)

B. Eligible Afterschool Care Programs

Under the proposal, to receive reimbursement under the afterschool snack component of the CACFP, an at-risk afterschool care center must serve snacks to eligible children in an eligible afterschool care program. An eligible afterschool care program:

- Is organized primarily to provide care for children *after* school;
- Has organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment); and
- Includes education or enrichment activities.

Afterschool care program requirements are found at § 226.17a(b) of this proposed rule.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

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.

C. Ineligible Afterschool Care Programs

Under the proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the CACFP. This prohibition is found at § 226.17a (b)(2) of this proposed rule.

D. Eligible Children

Under the proposal, children would be eligible to participate if they are students who participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19. Reimbursement may also be claimed for persons, regardless of age, who meet the other requirements and are determined by the State agency to have one or more disabilities and are enrolled in a child care institution which serves a majority of persons age 18 and under. This provision is found at § 226.17a(c) of this proposed rule.

As in the NSLP, there would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (*e.g.*, Head Start or Even Start) and are participating in an approved afterschool care program after their regularly scheduled school day.

E. Days of Service

Under this proposal, the CACFP at-risk afterschool care centers would receive reimbursement for snacks served on any day during the regular school year, including weekends, holidays, and school vacations that fall during the regular school year. In fact, a CACFP at-risk afterschool care center could choose to operate only on weekends, holidays and school vacations during the regular school year. However, CACFP at-risk afterschool care centers would *not* be reimbursed for snacks served during summer vacations, because the Child Nutrition Reauthorization Act explicitly limits reimbursement to snacks served during the ''regular'' school year. These provisions are found at § 226.17a(l) of this proposed rule.

Organizations that offer programs during summer vacations may also be eligible to participate in the Summer Food Service Program (SFSP). CACFP at-risk afterschool care centers that qualify for the SFSP would be able to claim 2 meals, or 1 meal and 1 snack, per child per day under that Program. For schools that operate on a year-round basis, snacks served afterschool in the summer to children could be claimed through the afterschool care

components of either the NSLP or CACFP, assuming the other eligibility requirements are met.

F. Number of Snacks Claimed

Under the proposal, reimbursement may be claimed for one snack per child per day. An at-risk afterschool care center that provides care to a child under another component of the CACFP during the same day could 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 would be claimed in accordance with the requirements for the applicable component of the CACFP (*e.g.*, child care centers, outside-school-hours care centers). This provision is found at § 226.17a(j) of the proposed rule.

G. Snack Meal Pattern

The proposal would require that snacks meet the meal pattern for supplemental food (snacks) in § 226.20(a)(4) or (c)(4). Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. This provision is found at § 226.17a(k) of this proposed rule. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that afterschool care programs offer larger portions for older children based on their greater food energy requirements.

H. What Reimbursement Do At-Risk Afterschool Care Centers Earn?

Under the proposal, CACFP afterschool care programs must be ''area eligible'' in order to qualify as at-risk afterschool care centers. As such, all snacks would be reimbursed at the free rate. Applications for free and reduced price meals would not be required for at-risk afterschool care centers. This provision is found at § 226.17a(m) of the proposed rule.

Afterschool care programs that do not meet area eligibility criteria would not receive reimbursement for afterschool snacks under the at-risk component of the CACFP. However, such programs could be eligible to participate in the CACFP as outside-school-hours care centers, provided they meet all of the requirements established for these facilities under the CACFP regulations. If they meet the criteria set forth in § 210.4a, they may be eligible to participate in the NSLP afterschool snack component.

I. Area Eligibility

As mentioned above, only those afterschool care programs that are ''area eligible'' (*i.e.*, located in an eligible area) could claim reimbursement as an at-risk afterschool care center. Under this proposal, an afterschool care program site would be located 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 meals. Area eligibility requirements are found at § 226.17a(h) of this proposed rule.

Under this proposed rule, the State agency would determine the area eligibility for each afterschool care program site seeking to qualify as area eligible based on information provided by the at-risk afterschool care center (for independent centers), or by the sponsoring organization of the at-risk afterschool care center(s). This provision is found at § 226.17a(e) of this proposed rule. We would encourage State agencies to provide technical assistance to sponsoring organizations and independent at-risk afterschool care centers in obtaining the necessary documentation of area eligibility.

Area eligibility determinations for the CACFP would be made once every *three years.* FNS, the State agency or the sponsoring organization could change the determination if updated data indicates that an at-risk afterschool care center is no longer area eligible. However, the State agency may not routinely require redeterminations of area eligibility status based on updated data before the three-year period has expired. We decided to propose to make the CACFP determinations valid for three years to be consistent with the statutory mandate for tiering determinations for day care homes participating in the CACFP. Tier I day care home determinations based on school data are valid for three years.

Area eligibility determinations would be made using free and reduced price school meal data for the preceding October, or the other month the NSLP State agency has designated pursuant to § 210.9(b)(20) of this proposed rule. At-risk afterschool care centers could begin program operations at any time during the year. For example, if a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998), that site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change. These provisions are found at § 226.17a(h)(2) of this proposed rule.

As previously mentioned, in order to facilitate area eligibility determinations, this rule proposes to expand current § 210.9(b)(20) to require school food authorities to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20) to assist with tiering determinations for day care homes in the CACFP.

Under this proposed rule, § 210.19(f) is similarly expanded to require this information to be provided to the CACFP State agency along with the list of the qualifying elementary schools already required to be provided. Commenters should note that, unlike tiering determinations, area eligibility determinations for at-risk afterschool care centers would be based on the attendance area for *any* school in whose attendance area the afterschool care program is located, not just elementary schools. Also unlike tiering determinations, area eligibility could not be established using census data since, unlike tiering, the use of census data is not authorized by statute.

J. Recordkeeping and Reporting Requirements

This proposed rule would require at-risk afterschool care centers to maintain a daily attendance roster, sign-in sheet or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found in § 226.17a(n) of this proposed rule.

This rule would not require at-risk afterschool care centers to maintain traditional enrollment records for the children who attend their afterschool care programs. This is in recognition that many afterschool care programs operate on a drop-in basis and do not have specific enrollment procedures and schedules for attendance. We are proposing to amend the definition of ''Enrolled child'' in § 226.2 to include this approach for at-risk afterschool care centers. All other types of facilities participating in the CACFP (i.e., day care homes, child care centers, outside-school-hours centers, and adult care centers) would continue to be required to have signed enrollment forms for each child or adult in care.

K. Monitoring Requirements

This rule proposes to require sponsors of at-risk afterschool care centers to monitor their centers three times a year.

Although they serve similar populations, sponsors of outside-school-hours care centers will still be required to monitor their centers six times a year (§ 226.16(d)(4)(iv)). We are evaluating whether to reduce the frequency for monitoring sponsored outside-school-hours care centers in the CACFP and expect to address this provision in an upcoming rule on CACFP management improvement. This provision for at-risk afterschool care centers is found at § 226.16(d)(4)(iii) and § 226.17a(p) of this proposed rule.

In addition, this rule proposes to require State agencies to conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit would be required during the first 90 days of the center's program operations. At the visit, the State agency would be required to examine meal pattern compliance. The State agency would also confirm the accuracy of the documentation submitted and used by the State agency to determine the eligibility of the center's afterschool care program and the center's area eligibility. These visits are expected to ensure that the new at-risk afterschool centers are off to a strong start. Without this new requirement, it would be possible under the current review requirements in § 226.6(l) that the State agency would not visit a new at-risk afterschool care center until its fourth year of operation. These provisions are found at § 226.6(l)(4) and § 226.17a(p) of this proposed rule.

Part 2—How Do the Afterschool Snack Components in the NSLP and CACFP Compare in This Proposed Rule?

The chart below summarizes the proposed requirements for afterschool care programs in the NSLP and CACFP and provides the regulatory citations established by this proposed rule. A more detailed discussion of some of the requirements follows in Part 3 of this preamble.

BILLING CODE 3410–30–P

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	**DESCRIPTION**	**REGULATORY CITATION**	**DESCRIPTION**	**REGULATORY CITATION**
Eligible institutions	School food authorities participating in the lunch component of the NSLP or Commodity School Program Participating schools/sites may be area eligible and claim all meals free. If a school/site is not area eligible, reimbursement would be based on each child's eligibility for free and reduced price meals.	§210.4a(a) §210.4a(n)	Institutions eligible to participate in the CACFP and which are located in an eligible area. (See "area eligibility" below.)	§226.2 (definition of "At-risk afterschool care center"); §226.17a(a)
Eligible afterschool care programs	(1) Is organized primarily to provide care for children after school when school is in session; (2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment); (3) Include education or enrichment activities; and (4) Are operated or sponsored by a school or school district Afterschool care programs do not include organized interscholastic athletic programs or community level competitive sports; however, programs may include sports as part of education or enrichment activities	§210.4a(b) §210.4a(a) §210.4a(b)	(1) Is organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year; (2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment); (3) Include education or enrichment activities; and (4) Are located in an "eligible area" Afterschool care programs do not include organized interscholastic athletic programs or community level competitive sports; however, programs may include sports as part of education or enrichment activities.	§226.17a(b)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Area eligibility	"Area eligible site" means a site 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 meals	§210.2 (definition of "Area eligible site")	"Eligible area" means 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	§226.2 (definition of "Eligible area")
Licensing	No Federal requirement, although there may be State or local licensing requirements	Not applicable	Must meet State or local health and safety standards unless there is a Federal, State, or local requirement for licensing	§226.17a(a)(1)(iii); §226.6(d)(1)(iv) §226.17(b)(1)
Reimbursement	All snacks served in area eligible sites reimbursed at free rate; reimbursement for snacks served at other sites depends on the eligibility status of the child (i.e., free, reduced price or paid)	§210.4a(n)	All snacks served in at-risk afterschool care centers reimbursed at free rate	§226.17a(m)
Meal charges	The school food authority may set the price for paid afterschool snacks; maximum reduced price charge is 15 cents; Free afterschool snacks must be served at no charge	§210.4a(j)	All snacks must be served at no charge	§226.17a(i)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	**DESCRIPTION**	**REGULATORY CITATION**	**DESCRIPTION**	**REGULATORY CITATION**
Eligible children	Students participating in an approved afterschool care program in a traditional school who either are age 18 or under at the start of the school year or meet the definition of a "Student with disabilities"; students participating in an approved afterschool care program who are enrolled in an RCCI must be age 18 or under at the start of the school year	§210.2 (definitions of "Child" and "Student with disabilities") and §210.4a(c)	Students enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of "Person with disabilities"	§226.2 (definitions of "Children" and "Person with disabilities") and §226.17a(c)
Meal requirements	Same as current meal supplement meal pattern (no nutrient analysis option); for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children; No offer versus serve (authorized only for lunch service); A la carte foods may be offered with the reimbursable snack; however, no foods of minimal nutritional value may be sold in the food service areas during the snack period	§210.10(n) §210.10(n) §210.11(b)	Same as current supplemental food meal pattern; for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children	§226.20(a)(4) and (c)(4)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	**DESCRIPTION**	**REGULATORY CITATION**	**DESCRIPTION**	**REGULATORY CITATION**
Meal service periods	Snacks must be served after a child's school day and only on days when school is in session (no weekends, holidays, or school vacations); may claim snacks served in approved afterschool care programs operated for children attending summer school	§210.4a(m)	Snacks must be served after a child's school day or on weekends, holidays, or school vacations during the regular school year including breaks in year-around schools; however, snacks cannot be served during a school's summer vacation	§226.17a(l)
Area eligibility determinations	On an annual basis, the school food authority must provide the State agency with an indication of which afterschool care program sites it wishes to claim area eligibility for, and with documentation which permits the State agency to establish whether the afterschool care program site is area eligible	§210.4a(e)	Based on information submitted by the sponsoring organization or independent at-risk afterschool care center, the State agency must make the initial area eligibility determination and must re-determine at least once every three years.	§226.17a(e); §226.15(g); and §226.6(f)(9)(v)
Afterschool care program eligibility determinations	The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information	§210.4a(e), (g)	The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information	§226.17a(e), (f) and §226.6(f)(12)
Agreement	Amend State agency-school food authority agreement to include afterschool snack component	§210.4a(f)	Enter into a new agreement with the State agency (if new to the CACFP) or amend existing agreement (if already participating in the CACFP)	Independent centers: §226.6(f)(1) (current regulations) and §226.15(i); sponsored centers: §226.16(f)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	**DESCRIPTION**	**REGULATORY CITATION**	**DESCRIPTION**	**REGULATORY CITATION**
Reporting and recordkeeping	School food authorities must provide State agencies with the number of snacks served, and, for the month of October, data on the number of schools and sites offering snacks under the NSLP School food authorities must maintain records as required under part 210, including daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance School food authorities must report middle schools and high schools in which 50 percent of the enrolled children are eligible for free or reduced price meals (currently school food authorities report elementary schools)	§210.4a(p) §210.4a(q) §210.15(a),(b)	At-risk afterschool care centers: (1) documentation of eligibility as an afterschool care program; (2) documentation of area eligibility; (3) daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance; (4) menus for each snack served; (5) number of snacks prepared or delivered for each meal service; (6) number of snacks served to children and to adults performing labor necessary to the food service for each meal service; (7) documentation that snacks are claimed only for children who are enrolled in an approved afterschool care program, in accordance with the center's licensed capacity, if applicable, and, for a proprietary title XX center, only in months in which the requirements for a proprietary title XX center are met	§226.17a(b)(1) and (d)(2) §226.17a(n)(1) §226.17a(a)(2)
Monitoring	School food authorities would be required to make comparisons of daily free, reduced price and paid snack counts against data so they can identify excessive snack counts. They also would be required to follow-up with sites identified as having excessive snack counts. School food authorities would have discretion to select the data used to perform edit checks.	§210.8(a)		

PROPOSED REQUIREMENT	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
	The school food authority must review each site's counting and claiming procedures and meal pattern compliance twice each school year; first review in the first six weeks of snack service each school year	§210.4a(s)	The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e., 1/3 each year, in each center at least once every four years)	Independent centers and sponsoring organizations: §226.6(l)(1) (in current regulations)
	The State agency must conduct an on-site review of at least 10%, but not less than 1 site, of a school food authority's afterschool snack sites to determine compliance with §210.4a	§210.19(a)(7)	The State agency must conduct a technical assistance visit to all newly participating independent at-risk afterschool care centers during the first 90-days of program operation.	Independent centers: §226.6(l)(4)
	The State agency must review afterschool snack component as part of any follow-up administrative reviews of school food authorities if not reviewed on initial administrative review	§210.18(i)(4)(iv)	The sponsoring organization must review sponsored at-risk afterschool care centers 3 times each year, including at least one review during the first six weeks of program operation and not more than 6 months between reviews.	Sponsored centers: §226.16(d)(4)(iii)

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Part 3—What Are the Program-Specific Issues?

This part highlights issues raised by the afterschool snack component that are program specific.

Section I. Issues Specific to the NSLP

A. Must the Afterschool Care Program Be Operated Directly by the School?

Under the proposal, a school seeking to participate in the NSLP afterschool snack component would participate through its school food authority (§ 210.4a(a)). There may be individual afterschool care programs sponsored by one or more schools under the jurisdiction of the school district or a single afterschool care program operated by the school district at one or more sites. At least one school in the school food authority would have to participate in the NSLP lunch component.

While the afterschool care program would be ''sponsored or operated'' by a school or school district, this does not mean that the school or school district would have to carry out the day-to-day management of the program. A school or school district could contract with another organization (such as the YWCA or a Boys and Girls Club) to manage the afterschool care program on its behalf. However, the school or school district would be required to retain overall administrative responsibility for the afterschool care program and the school food authority must retain administrative and fiscal responsibility for the snack service. Furthermore, the school food authority would be the party that enters into the agreement with the State agency and would assume full responsibility for meeting all program requirements.

B. Do the Point of Service Requirements Apply to the Afterschool Snack Component?

This proposed rule would not impose point of service count requirements (as discussed in Part 1.I.I of this preamble). However, accurate daily meal counts would continue to be required. State agencies may require point of service counts.

C. Does the Competitive Foods Requirement Apply?

This proposed rule would amend the competitive foods provision found at § 210.11(b) to extend the prohibition on the sale of foods of minimal nutritional value in food service areas to the afterschool snack periods.

D. May Schools Choose To Claim Snacks Through the CACFP Instead?

Under the proposal, schools may claim reimbursement for afterschool snacks either under the NSLP or CACFP. If a school claims afterschool snacks under the CACFP, the school would be required to meet all requirements for at-risk afterschool care centers, outside-school-hours care centers, or child care centers in that Program and keep CACFP records separate from the NSLP records. Afterschool snacks may not be claimed by CACFP at-risk afterschool care centers in the summer. Therefore, schools wishing to claim reimbursement for afterschool snacks served in afterschool care programs after summer school classes would do so: (1) Through the NSLP; (2) as a CACFP child care center or outside-school-hours care center; or (3) as an area eligible ''open site'' through the Summer Food Service Program (Refer to 7 CFR 225.2).

Section II. Issues Specific to the CACFP

A. What Would Be the Difference Between At-Risk Afterschool Care Centers and Outside-School-Hours Care Centers?

Prior to enactment of the Child Nutrition Reauthorization Act, organizations operating afterschool care programs could participate in the CACFP as either outside-school-hours care centers, or, if they also provided child care during the school day, as traditional child care centers with an afterschool care program. The new afterschool snack component adds another possibility—participation as an at-risk afterschool care center. Under this proposed rule, the main differences between participation as an outside-school-hours care center and an at-risk afterschool care center would be:

- All snacks served in at-risk afterschool care centers are reimbursed at the free rate; reimbursement in outside-school-hours care centers is based on the child's eligibility for free, reduced price, or paid meals;
- Snacks served to all children through age 18 may be reimbursed in at-risk afterschool care centers; only meals and snacks served to children through age 12 may be reimbursed in outside-school-hours care centers;
- At-risk afterschool care centers must be area eligible;
- Only one snack per child per day may be claimed by at-risk afterschool care centers; outside-school-hours care centers may claim two meals and one snack or one meal and two snacks per child per day;
- At-risk afterschool care centers may only receive reimbursement for snacks served after school; outside-school-hours care centers may receive reimbursement for meals and snacks served before and after school; and
- At-risk afterschool care centers may only receive reimbursement during the regular school year, including weekends and holidays; outside-school-hours care centers can receive reimbursement during periods of school vacation, including weekends, holidays, and summer.

The following chart compares the requirements for the existing afterschool care centers to the proposed at-risk afterschool care center requirements.

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CACFP

COMPARISON BETWEEN THE REQUIREMENTS FOR CACFP OUTSIDE-SCHOOL-HOURS CARE CENTERS AND AT-RISK AFTERSCHOOL CARE CENTERS, AS PROPOSED

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Eligible institutions	Public and private nonprofit organizations, proprietary title XX centers, and Iowa/Kentucky demonstration project centers	§226.2 (definition of "Outside-school-hours care center")	Same; except that facilities must be located in an eligible area	§226.2 (definitions of "At-risk afterschool care center" and "Eligible area")
Licensing	Must meet State or local health and safety standards unless there is a Federal, State or local requirement for licensing	§226.6(d)(1)	Same	§226.6(d)(1)
Reimbursement/ Area eligibility	Program may operate in any area; individual free and reduced price applications are taken to determine level of reimbursement (free, reduced price, and paid)	§226.19(b)(8)	Program must be located in an eligible area (i.e. the attendance area of a school in which 50 percent or more of the children enrolled are eligible for free or reduced price school meals); all snacks are reimbursed at the free rate	§226.2 (definition of "Eligible area"); §226.17a(b)(1)(iv), §226.17a(h) and 226.17a(m)
Eligible children	Children who are age 12 and under Children age 15 and under who are children of migrant workers Persons of any age who meet the definition of "Person with disabilities"	§226.2 (definition of "Children")	Students enrolled in an approved afterschool care program and who are age 18 or under at the start of the school year, including children of migrants; persons of any age who meet the definition of "Person with disabilities"	§226.2 (definitions of "Children" and "Person with disabilities"); §226.17a(c)
Types of meals eligible for reimbursement	Breakfast, snack, and supper (lunch may also be served under certain conditions)	§226.19(b)(4)	Snack only	§226.17a(j)

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	**DESCRIPTION**	**REGULATORY CITATION**	**DESCRIPTION**	**REGULATORY CITATION**
Number of reimbursable meals	Maximum of two meals and one snack per child per day (or two snacks and one meal)	§226.19(b)(5)	Maximum of 1 snack per child per day	§226.17a(j)
Meal patterns	CACFP meal patterns	§226.20(a)(4), (c)(4)	CACFP snack patterns	§226.17a(k)
Meal service periods	School days, school vacation, including weekends and holidays; no weekend-only programs	§226.19(b)(4)	School days, weekends, holidays, and school vacations (except summer vacation) during the regular school year; weekend/holiday/ school break-only programs are permitted; no summer snack service except in year-round districts	§226.17a(l)
Time restrictions for meal service	Three hours must elapse between the beginning of one meal service and the beginning of another, except that four hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. In addition, the service of a supper must begin no later than 7 p.m., and end no later than 8 p.m.; the duration of the meal service is limited to 2 hours for lunch and supper, and 1 hour for other meals	§226.19(b)(6)	On school days, the snack must be served after school; on weekends, holidays, and school breaks, snack may be served at any time of day	§226.17a(l)

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Monitoring	The State agency must review independent outside-school-hours care centers and sponsoring organizations of independent outside-school-hours care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)	Independent centers: §226.6(l)(1)	The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)	Independent centers and sponsoring organizations: §226.6(l)(1) (in current regulations)
	The sponsoring organization must review sponsored outside-school-hours care centers six times each year, including at least one review during the first four weeks of program operations and not more than three months between reviews	Sponsored centers: §226.16(d)(4)(iv)	The State agency must conduct a technical assistance visit of all newly participating independent at-risk afterschool care centers during the first 90 days of program operation	Independent centers: §226.6(l)(4)
			The sponsoring organization must review sponsored 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	Sponsored centers: §226.16(d)(4)(iii)

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B. May For-Profit Organizations Participate as At-Risk Afterschool Care Centers?

A proprietary title XX center is a for-profit organization that provides nonresidential child care for which it receives funds under Title XX of the Social Security Act for not less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less. Under this proposal, a proprietary title XX center could participate in the CACFP as an at-risk afterschool care center, but only if it also participates as a child care center or an outside-school-hours care center.

Due to the drop-in nature of many afterschool care programs, children who only participate in the afterschool care program would not be counted in determining an organization's eligibility as a proprietary title XX center. This means that a for-profit organization seeking to serve as an at-risk afterschool care center could participate only if it qualifies as a proprietary title XX center based on the enrollment of its traditional child care program (i.e., the center receives funds under title XX of the Social Security Act for not less than 25 percent of the children enrolled in the traditional child care program). If the center qualifies as a proprietary title XX center, then it could claim reimbursement for snacks served in an at-risk afterschool care center if: (1) It operates an approved afterschool care program; (2) it is located in an eligible area; and (3) the snacks are served to eligible children after their school day. Similarly, private for-profit organizations participating in the Iowa/Kentucky demonstration projects under section 17(p) of the NSLA could serve as at-risk afterschool care centers, under the requirements described above.

C. Should the Children Participating in the At-Risk Afterschool Component Be Included in a Center's Enrollment for the Purpose of Determining the Claiming Percentage or Blended Rate?

Under this proposal, children who only participate in the at-risk afterschool component would not be counted as enrolled children for the purposes of determining claiming percentages/blended rates. Children who participate in both the at-risk snack component of the program and in at least one meal service of the traditional child care program at a center would be required to have signed income eligibility statements on file. Such children would be included in the center's enrollment for the purpose of determining claiming percentages/blended rates. We are proposing to amend § 226.9(b)(2) of the regulations to reflect this requirement.

Part 4—What Other Changes Does This Proposed Rule Make?

I. Terminology

As mentioned previously, this rule proposes to use the terms ''afterschool snack'' (for the NSLP) and ''snack'' (for the CACFP) rather than ''meal supplement'' in order to conform to the more commonly used terminology. We have proposed conforming changes throughout the NSLP and CACFP regulations, including the addition of the definition of ''Afterschool snack'' in § 210.2 and the definition of ''Snack'' in § 226.2.

II. CACFP Licensing

The Child Nutrition Reauthorization Act also revised the current CACFP licensing requirements in section 17(a)(1)(C) of the NSLA to facilitate CACFP participation of organizations that provide care outside of school hours. This applies both to outside-school-hours care centers and to the new at-risk afterschool care centers. Under the change, these centers are required to be licensed only if Federal, State, or local licensing is required. If licensing is not required, they must only meet State or local health and safety requirements. This change is found in § 226.6(d)(1)(vi) of this proposed rule.

III. Maximum Number of Meals

Section 708(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) amended section 17(f)(2)(B) of the NSLA (42 U.S.C. 1766(f)(2)(B)) to reduce the number of meals that may be claimed by participating centers in the CACFP. The statutorily revised maximum is two meals and one supplement and took effect August 22, 1996. State agencies were informed of this change in an August 13, 1996, memorandum. This proposed rule makes conforming changes throughout the CACFP regulations and clarifies that one meal and two supplements also satisfies the new limit.

IV. Correction to Part 235

The statute authorizing State administrative expense (SAE) funds does not reference the NSLP afterschool care component. Thus, State expenditures for the NSLP afterschool snack component will not ''earn'' SAE funds. However, the CACFP at-risk afterschool snack expenditures (which are made under section 17 of the NSLA) will. This proposed rule would correct an error in the SAE regulations that may cause confusion on this matter. Section 235.4(a)(1) incorrectly states that the amount of SAE funds allocated to each State agency is equal to one percent of the funds expended by the State in the second preceding fiscal year under sections 4 and 11 of the NSLA, and sections 3, 4, and 17A of the Child Nutrition Act of 1966. However, there is no section 17A in the Child Nutrition Act; therefore, this rule proposes to delete that reference. We wish to point out that this provision is taken directly from section 7(a)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(1)); that section does not contain the erroneous cite to section 17A of the Child Nutrition Act. Nor does that section reference funds expended under section 17A of the NSLA (the authorizing statute for the afterschool snack component in the NSLP).

Part 5—What Are the Implementation Dates?

The afterschool snack provisions of the Child Nutrition Reauthorization Act were made effective retroactive to October 1, 1998. To facilitate immediate implementation of these provisions, we provided guidance to State agencies on how to claim reimbursement for afterschool snacks under this new law.

Executive Order 12866

This proposed rule has been determined to be ''significant'' and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The Department has prepared a regulatory impact analysis which indicates an estimated USDA cost of $308 million over 5 years. The regulatory impact analysis can be obtained from Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule would not have a significant impact on a substantial number of small entities because of the optional nature of the snack service. Schools or institutions choose whether they wish to participate in this additional meal service. Because most schools or institutions that will choose to add a snack service are already participating in the NSLP or 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.

Executive Order 12372

The NSLP, SAE funds, and CACFP are listed in the Catalog of Federal Domestic Assistance Programs under 10.555, 10.560, and 10.558, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Since enactment of the Act in 1998, the Department informally consulted with State administering agencies, Program sponsors, and NSLP and CACFP advocates on ways to effectively implement the service of afterschool snacks. Discussions with State agencies took place at the Biennial State Directors' Meeting held in 1999 and at multiple State agency meetings held at various times throughout 1999 and 2000. Discussions with school food service personnel took place at various meetings sponsored by the American School Food Service Association and in a variety of other small and large group meetings.

Executive Order 12988

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

In the NSLP, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of SAE fund sanctions (7 CFR 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

In the CACFP, the administrative procedures are set forth at: (1) 7 CFR 226.6(k), which establishes appeal procedures; and (2) 7 CFR 226.22 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 FNS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the 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. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

This proposed rule contains paperwork burdens that are subject to review and approval by the Office of Management and Budget. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection contained in this proposed rule.

Written comments must be received on or before December 11, 2000. Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation. These information collection requirements will not become effective until approved by OMB.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: 7 CFR part 210, National School Lunch Program.

OMB Number: 0584–0006.

Expiration Date: March 31, 2003.

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

OMB Number: 0584–0055.

Expiration Date: May 31, 2001.

Title: 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: September 30, 2001.

Type of Request: Revision of currently approved collections.

Abstract: This rule proposes to codify the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the NSLP and the CACFP. Corresponding technical amendments are also proposed to the regulations governing the SAE Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

Provisions for operating the afterschool snack component are similar under the two programs, yet are distinguished enough to fit easily into the two larger programs, the NSLP or CACFP. For example, the afterschool snack component under both programs serves the same age group (ages 18 and under at the start of the school year) and must provide care that includes education or enrichment activities. On the other hand, the times that the component is available vary between the NSLP and CACFP. Under the NSLP, afterschool snacks may be provided only on days when school is in session, whereas afterschool snacks under the CACFP may be provided on weekends, holidays, or during vacations that occur during the regular school year. These similarities and differences illustrate how the afterschool snack component mirrors the features and goals of the larger programs.

By utilizing similar features of the ''parent'' program (*i.e.,* the NSLP or the CACFP), this proposed rule would place fewer new information collection burdens on State agencies and local program administrators than might have otherwise been necessary. Thus, we estimate that most of the reporting or recordkeeping burdens that normally would accompany a new program can be contained within existing burdens.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 3410–30–P

Estimated Annual Reporting Burden for 0584-0006, National School Lunch Program, 7 CFR 210

	7 CFR Part 210 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency provides to CACFP State agencies lists of elementary, middle, and high schools with 50% enrollment that is eligible for free or reduced price meals					
Existing Burden	§210.19(f)	12	1	.5	6
Proposed Burden	§210.19(f)	12	1	1.5	18
State agency prepares Grant Closeout Report					
Existing Burden	§210.25	58	2	3.2	371
Proposed Burden	§210.25	58	2	4.0	464
School food authority (SFA) reports the number of schools offering meals for October					
Existing Burden	§210.8(c)(2)	20,287	1	.08	1,623
Proposed Burden	§210.8(c)(2)	20,287	1	.09	1,826
SFA submits application to operate the afterschool snack program					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(e)	4,580	1	1	4,580
SFA submits claim for reimbursement					
Existing Burden	§210.8(c)	19,976	12	1.5	359,568
Proposed Burden	§210.8(c)	19,976	12	1.6	383,539
Schools take daily counts of snacks served.					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(q)	24,000	10	.03	7,200
Total Existing **Reporting** Burden for Part 210			1,126,120		
Total Proposed **Reporting** Burden for Part 210			1,162,179		
Difference Attributed to Proposed Rule			+36,059		

Estimated Annual Recordkeeping Burden for 0584-0006, National School Lunch Program, 7 CFR 210

	7 CFR Part 210 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency records which document details of all reviews and the degree of compliance with the critical and general areas of review to include documented corrective action and fiscal action take on file for review by FNS					
Existing Burden	§210.18(k),(p) §210.20(b)(6)	58	93.23	1.25	6,759
Proposed Burden	§210.18(k),(p) §210.20(b)(6)	58	93.23	1.30	7,030
Documentation by the State agency of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, CRE reviews, and USDA audits					
Existing Burden	§210.19(c), §210.18(p)	58	139	.33	2,660
Proposed Burden	§210.19(c), §210.18(p)	58	145	.33	2,775
SFA keeps documentation of participation data by school, each month's claim for reimbursement and all data used in the claims review process					
Existing Burden	§210.8(a), §210.15(b)(1)	3,442 16,807	12 12	10 8	413,040 1,613,472
Proposed Burden	§210.8(a), §210.15(b)(1)	3,442 16,807	12 12	10 8.25	413,040 1,663,893
Schools maintain daily meal menus and production records					
Existing Burden	§210.10(b), §210.15(b)(2) and (b)(3)	56,941	180	.25	2,562,345
Proposed Burden	§210.10(b), §210.15(b)(2) and (b)(3), §210.4a(l)	56,941	180	.28	2,869,826
Schools maintain records of daily counts of afterschool snacks served					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(p)	24,000	180	.01	43,200
Total **Recordkeeping** Existing Burden for Part 210			8,307,935		
Total Proposed **Recordkeeping** Burden for Part 210			8,709,423		
Difference Attributed to Proposed Rule			+401,488		

Estimated Annual Reporting Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226

	7 CFR Part 226 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency processes claims for reimbursement					
Existing Burden	§226.7(k)	54	1	1.79	97
Proposed Burden	§226.7(k)	54	1	1.83	99
Technical assistance visits to newly participating independent at-risk afterschool care centers					
Existing Burden	0	0	0	0	0
Proposed Burden	§226.6(l)(4)	47	15	0.5	352.5
Sponsor or independent institution submits documentation to demonstrate that child care centers, at-risk afterschool care centers, outside-school-hours care centers, day care homes, and adult day care centers are in compliance with licensing/approval criteria					
Existing Burden	§226.6(d), §226.6(e)	10,144	1	.3	3,043
Proposed Burden	§226.6(d), §226.6(e), §226.15(b)	10,759	1	.3	3,228
Sponsor or independent institution submits documentation to demonstrate that at-risk afterschool care centers meet eligibility and area eligibility requirements as part of application process at least once every three years and notify State agency of changes as necessary					
Existing Burden	§226.6(b)(11)	0	0	0	0
Proposed Burden	§226.15(g)	1,318	.3	1	395
Institutions enter into annual program agreement with State agencies by executing FNS-344					
Existing Burden	§226.6(f)(1)	283	1	.92	260
Proposed Burden	§226.6(f)(1)	898	1	.92	826
Sponsor or institution submits Claim for Reimbursement					
Existing Burden	§226.7(k)	283	12	2.29	7,777
Proposed Burden	§226.7(k)	898	12	2.29	24,677
Total Existing **Reporting** Burden for Part 226			4,413,645		
Total Proposed **Reporting** Burden for Part 226			4,432,045.5		
Difference Attributed to Proposed Rule			+18,400.5		

Estimated Annual Recordkeeping Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226

	7 CFR Part 226 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency collects and maintains CACFP agreements, records received from applicant and participating institutions and documentation of administrative review and Program assistance activities, results, and corrective actions					
Existing Burden	§226.6	54	1	1.92	104
Proposed Burden	§226.6	54	1	1.96	106
Independent centers and sponsoring organizations of centers must ensure that family size and income, menus, meal counts, enrollment, invoices, and receipts, claims for reimbursement, day care licenses, CACFP applications, and tax exempt certifications (if applicable) are maintained on file for a period of 3 years. Sponsoring organizations of day care homes must ensure that menus, meal counts, attendance, enrollment, day care licenses, CACFP applications and providers' family size and income records are maintained for up to 3 years					
Existing Burden	§226.10(d), §226.15(e)	10,144	1	7.828	79,407
Proposed Burden	§226.10(d), §226.15(e), §226.17a(o)	10,759	1	7.828	84,221
Total Existing **Recordkeeping** Burden for Part 226			170,831		
Total Proposed **Recordkeeping** Burden for Part 226			175,647		
Difference Attributed to Proposed Rule			+4,816		

Estimated Annual Recordkeeping Burden for 0584-0026, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, 7 CFR 245

	7 CFR Part 245 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
SFAs notify parents in area eligible sites that all children attending afterschool care programs will receive free snacks					
Existing Burden	none	0	0	0	0
Proposed Burden	§245.5(a)(1)(ii)	4,580	1	.08	366
Total Existing **Recordkeeping** Burden for Part 245			369,782		
Total Proposed **Recordkeeping** Burden for Part 245			370,148		
Difference Attributed to Proposed Rule			+366		

BILLING CODE 3410-30-C

List of Subjects

7 CFR Part 210

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

7 CFR Part 226

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

7 CFR Part 235

Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 245

Civil rights, Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For reasons set forth in the preamble, 7 CFR Parts 210, 226, 235, and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751–1760, 1766a, 1769,1779.

2. In § 210.1:

a. Revise the last two sentences of paragraph (a); and

b. Remove the word ''lunches'' in the second sentence of paragraph (b) and add in its place the word ''meals''.

The revision reads as follows:

§ 210.1 General purpose and scope.

(a) * * * Pursuant to this Act, the Department provides States with cash assistance and donated foods to assist schools with serving nutritious meals to children each school day. To meet the Program's objectives, schools must serve meals that are nutritionally adequate in accordance with the applicable provisions of this part 210 to assist participating children with learning the relationship between proper eating habits and good health.

* * * * *

3. In § 210.2:

a. Remove the definitions of ''Afterschool care program'', ''Free lunch'', ''Reduced price lunch'', and ''Subsidized lunch'';

b. Add definitions for ''Afterschool snack'', ''Area eligibility'', ''Free meal'', ''Meal'', ''Paid meal'', and ''Reduced price meal'';

c. Revise the first sentence of the definition of ''Average Daily Participation'';

d. Revise paragraph (c) in the definition of ''Child'' and add a new paragraph (d);

e. Remove the words ''lunch program'' in the first sentence of the definition of ''Commodity School Program'' and add in their place the words ''school food service'';

f. Revise the definition of ''Donated foods'';

g. Remove the word ''meal'' in the second sentence of the definition of ''Menu item'' and add in its place the word ''lunch'';

h. Revise the definition of ''National School Lunch Program'';

i. Remove the reference to ''1954'' in the definition of ''Nonprofit'' and add in its place a reference to ''1986''; and

j. Remove the word ''lunches'' in the definition of ''Reimbursement'' and add in its place the word ''meals''.

The additions and revisions read as follows:

§ 210.2 Definitions.

* * * * *

Afterschool snack means a meal supplement that meets the meal pattern requirements specified in § 210.10(n).

Area eligibility means a determination that an afterschool care program site is located in a needy area as provided for in § 210.4a(i).

* * * * *

Average Daily Participation means the average number of children, by eligibility category, participating in the lunch service each operating day. * * *

Child means—* * * (c) for purposes of reimbursement for afterschool snacks in a ''School'', that term is defined in paragraphs (a) and (b) of the definition of that term, a student participating in an approved afterschool care program who is either age 18 or under at the start of the school year or is a student of any age who meets the definition of a ''Student with disabilities'' and who is participating in a school program as authorized by paragraph (a) of this definition; or (d) for purposes of reimbursement for afterschool snacks in a ''School'' as provided for in paragraph (c) of that definition, a student participating in an approved afterschool care program must be age 18 or under at the start of the school year.

* * * * *

Donated foods means food commodities donated by the Department for use in the National School Lunch Program or the Commodity School Program.

* * * * *

Free meal means a meal served under the Program to a child eligible for free meals under part 245 of this chapter or to a child participating in an approved afterschool care program at an area eligible site. Neither the child nor any member of the household may be required to pay or to work in order to receive the free meal.

* * * * *

Meal means food that meets the requirements for a lunch or an afterschool snack in § 210.10.

* * * * *

National School Lunch Program means the Program under which participating schools operate a nonprofit school food service in accordance with this part 210. The Program may include serving both lunches and afterschool snacks.

* * * * *

Paid meal means a meal served under the Program to a child who is either not eligible for or who elects not to receive free or reduced price meals under part 245 of this chapter.

* * * * *

Reduced price meal means a meal served under the Program to a child eligible for reduced price meals under part 245 of this chapter, for which the price is less than the school food authority's full price of the meal and which does not exceed the maximum allowable reduced price specified under part 245 of this chapter or in § 210.4a(j)(2). Neither the child nor any member of the household may be required to work in order to receive a reduced price meal.

* * * * *

4. In § 210.4:

a. Revise paragraph (a);

b. Add a new sentence at the end of paragraph (b)(2);

c. Revise paragraph (b)(3);

d. Remove paragraph (b)(4); and

e. Amend paragraph (c) introductory text by adding a new second sentence.

The revisions and additions read follows:

§ 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with this section to each State agency for meals served to children under the Program.

(b) * * *

(2) * * * FNS will provide additional donated foods for use in lunches and afterschool snacks when they are available.

(3) *Cash assistance* for afterschool snacks. (i) Cash assistance is provided to each State agency for all afterschool snacks served to children in accordance with the provisions of § 210.4a. The total cash assistance provided to a State agency may not exceed the lesser of:

(A) The amounts reported to FNS as paid to school food authorities in accordance with § 210.5(d)(3); or

(B) The total calculated by multiplying the number of afterschool snacks reported to FNS in accordance with § 210.5(d)(1) for each month during the fiscal year by the applicable rate.

(ii) The cash assistance rates for afterschool snacks are adjusted annually to reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers. These adjustments are announced by Notice in the **Federal Register** in July of each year and are effective on July 1 of each year.

(c) * * * FNS will also make cash assistance available to each State agency for afterschool snacks served in commodity schools in the same manner as it is provided in the National School Lunch Program. * * *

* * * * *

5. Add a new § 210.4a to read as follows:

§ 210.4a Afterschool snacks.

(a) *When is a school food authority eligible to receive reimbursement for afterschool snacks?* A school food authority is eligible to receive reimbursement for afterschool snacks when it has an agreement with the State agency for one or more schools to serve lunches under the National School Lunch Program and a school or school district operates or sponsors an eligible afterschool care program as provided in paragraph (b) of this section.

(b) *What is an eligible afterschool care program?* (1) *Eligible program.* For the purposes of paragraph (a) of this section, an eligible afterschool care program is one which:

(i) Is organized primarily to provide care for children after school;

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

(iii) Includes education or enrichment activities; and

(iv) Is sponsored or operated by the school or school district.

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

(c) *What are the eligibility requirements for children participating in an approved afterschool care program?*

(1) *Requirements for children in schools.* In schools, as provided for in paragraphs (a) and (b) of the definition of "School" in § 210.2, school food authorities may claim reimbursement for afterschool snacks served to children who meet the conditions in paragraph (c) of the definition of "Child" in § 210.2 . In such schools, a school food authority may claim reimbursement for a "Student with disabilities" (as defined in § 210.2) who is any age.

(2) *Requirements for children in residential child care institutions.* In residential child care institutions, as provided for in paragraph (c) of the definition of "School" in § 210.2, school food authorities may claim reimbursement for afterschool snacks served to children who meet the conditions in paragraph (d) of the definition of "Child" in § 210.2.

(d) *Must the afterschool care program be located in a school?* No. Any facility selected as a site of an eligible afterschool care program may participate in the afterschool snack service.

(e) *How does a school food authority apply for the afterschool snack component of the Program?*

(1) *Application.* An official of the school food authority must make written application to the State agency for any school or site in which it desires to operate an afterschool snack service under National School Lunch Program.

(2) *Required information.* At a minimum, the school food authority must submit:

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

(ii) A list of all schools and/or sites;

(iii) An indication of which schools and/or sites the school food authority is requesting area eligibility for; and

(iv) Documentation which permits the State agency to confirm that schools and/or sites for which area eligibility is requested meet the criteria in paragraph (i)(1) of this section.

(f) *How does the State agency approve the application?*

(1) *State agency approval.* The responsibility for approval rests with the State agency. The State agency must evaluate the description(s) of the afterschool care program(s) to determine if they meet the criteria in paragraph (b) of this section. The State agency must review the documentation provided by the school food authority for any school or site requesting area eligibility.

(2) *Agreement.* Upon approval, the State agency amends the existing agreement between the State agency and the school food authority outlined in § 210.9. The amendment must describe the approved afterschool care program(s), list the approved sites and indicate whether they meet the criteria for area eligibility as provided for in paragraph (i)(1) of this section. The amendment must also require the school food authority to comply with the applicable requirements of this part 210 for the afterschool snack service.

(g) *What is the application process in subsequent years?* Prior to beginning afterschool snack service in each subsequent year, the school food authority must provide the information described in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for all schools and/or sites. The school food authority must also provide information about any substantive changes to the afterschool care program(s) to determine if it continues to meet the criteria in paragraph (e)(2)(i) of this section. The State agency reviews and approves the application and amends the agreement as discussed in paragraph (f) of this section.

(h) *What if school food authorities wish to add new at-risk afterschool care sites after application approval?* School food authorities wishing to add new afterschool care sites after application approval must provide the State agency with the information specified in paragraph (e) of this section. The State agency would then follow the procedures established under paragraph (f) of this section.

(i) *What is area eligibility?*

(1) *General.* A school is area eligible if at least 50 percent of its enrolled children are certified as eligible for free or reduced price meals or 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 meals. A site is area eligible 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 meals.

(2) *Data used.* Area eligibility determinations must be based on the

total number of children approved for free and reduced price meals for the preceding October or another month the State agency has designated pursuant to § 210.9(b)(20). If the State agency decides to choose another month, it must do so for the entire State.

(j) *What may a school food authority charge for afterschool snacks?*

(1) *Free afterschool snacks.* School food authorities may not charge for afterschool snacks served to children who are eligible for free meals or who participate at an area eligible school or site.

(2) *Reduced price afterschool snacks.* School food authorities may charge no more than 15 cents for afterschool snacks served to children eligible for reduced price meals at non-area eligible schools or sites.

(3) *Paid afterschool snacks.* School food authorities may set the charge for afterschool snacks served to children from households who are not eligible for free or reduced price meals at non-area eligible sites.

(k) *How many snacks may be claimed for reimbursement?* School food authorities may claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced may be offered, but may not be claimed for reimbursement.

(l) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for afterschool snacks in § 210.10(n). If schools or sites offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks must be allowed to take any snack or choice offered as a part of the reimbursable snack. The afterschool snack must be priced as a unit.

(m) *When may snacks be served?* School food authorities may claim reimbursement only for afterschool snacks served in an afterschool care programs after a child's school day on days when school is in session. School food authorities may claim afterschool snacks served in approved afterschool care programs operated for children attending a summer school program which is an integral part of the curriculum or an actual extension of the local educational program. School food authorities may not claim afterschool snacks served on days when school is not in session (i.e. weekends, holidays, or school vacations).

(n) *What reimbursements do schools earn?*

(1) *At area eligible sites.* All afterschool snacks served in area eligible sites are reimbursed at the free afterschool snack rate.

(2) *At non-area eligible sites.* For afterschool snacks served in sites that are not area eligible, the reimbursement rate depends on the eligibility status of the child (i.e. free, reduced price, or paid).

(o) *How do schools determine eligibility status in non-area eligible sites?* School food authorities must determine and document the income eligibility (in accordance with part 245 of this chapter) of the children served in sites that are not area eligible. School food authorities may use the free and reduced price determinations made for purposes of free and reduced price lunches and/or breakfasts as documentation for free and reduced price afterschool snacks.

(p) *How do schools claim reimbursement?* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid afterschool snacks that are served to children eligible for free, reduced price and paid afterschool snacks for each day of operation. In order to obtain reimbursement for afterschool snacks, school food authorities must follow the procedures set forth in § 210.7 and § 210.8, as applicable.

(q) *What additional recordkeeping is required for the snack service?* In addition to the other records required by this part 210, school food authorities or schools must maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance.

(r) *What additional reporting is required for the snack service?* In addition to other reporting requirements under this part 210, school food authorities must submit a claim for reimbursement as specified in § 210.8.

(s) *What are the monitoring requirements for the school food authority?* Twice each school year, the school food authority must review each afterschool care program site's afterschool snack counting and claiming system and compliance with the afterschool snack meal pattern requirements. The first review must be made during the first six weeks of snack service each school year.

(t) *What are the monitoring requirements for State agencies?* State agency monitoring requirements are set forth in § 210.19(a)(7).

(u) *What are the other requirements for afterschool snacks?* School food authorities must comply with all applicable requirements in this part 210 except point of service counts as specified in § § 210.7(c)(1)(iii), 210.7(c)(2), and 210.9(b)(9)).

6. In § 210.5, revise the third sentence of paragraph (d)(1) to read as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(1) * * * For the month of October as of the last day of operation, the final report must include the total number of children approved for free lunches; the total number of children approved for reduced priced lunches; the total number of children enrolled in participating public schools, private schools, and residential child care institutions, respectively; and the total number of public schools/sites, private schools/sites and residential child care institutions, respectively, claiming reimbursements for meals under the National School Lunch Program. * * *

* * * * *

§ 210.6 [Amended]

7. In § 210.6, remove the words ''lunches and meals supplements'' in the first sentence and add in their place the word ''meals''.

8. In § 210.7:

a. Revise paragraph (a);

b. Revise the heading and first sentence of paragraph (b);

c. Revise the introductory text in paragraph (c);

d. Revise paragraph (c)(1) introductory text;

e. Revise paragraph (c)(1)(i);

f. Revise paragraph (c)(1)(ii) introductory text;

g. Revise paragraph (c)(1)(iii);

h. Revise paragraph (c)(1)(iv);

i. Revise paragraph (c)(1)(v); and

j. Revise paragraph (d).

The revisions read as follows:

§ 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations must be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(c), such payments may be made for meals served in accordance with provisions of this part 210 and part 245 of this chapter in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program. Reimbursement payments also include special cash assistance payments for free or reduced price lunches served to children

determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments will also be made for afterschool snacks served in approved afterschool care programs in accordance with § 210.4a.

(b) *Assignment of rates for lunch.* At the beginning of each school year, State agencies must establish the per meal rates of reimbursement for lunches for school food authorities participating in the Program. * * *

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid meals that are served to children eligible for free, reduced price and paid meals, respectively, for each day of operation.

(1) *Meal count system.* To ensure that the Claim for Reimbursement accurately reflects the number of meals, by eligibility category, served to eligible children for each day of operation, the school food authority must, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price meals based on the requirements prescribed under part 245 of this chapter;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price meals. The system must:

* * * * *

(iii) Base Claims for Reimbursement on meal counts, taken daily, that correctly identify the number of free, reduced price and paid lunches and afterschool snacks served to eligible children each day. For lunches, the counts must be taken daily, at the point of service, or in accordance with a point of service alternative authorized under paragraph (c)(2) of this section;

(iv) Correctly record, consolidate and report those lunch and afterschool snack counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess meals produced, as prohibited in § 210.10(a)(2) or non-Program meals (i.e., a la carte or adult lunches) or for more than one lunch and one afterschool snack per child per day.

* * * * *

(d) *Reimbursement for afterschool snacks.* State agencies must reimburse school food authorities for afterschool snacks at the rates set in § 210.4(b)(3).

9. In § 210.8:

a. Revise paragraph (a) introductory text;

b. Add a new sentence at the end of paragraph (a)(1);

c. Revise paragraph (a)(2) introductory text and paragraph (a)(2)(i) introductory text;

d. Remove the word ''meal'' in paragraphs (a)(2)(ii) and (a)(3)(ii) and add in its place the word ''lunch'';

e. Revise paragraph (a)(4);

f. Revise paragraph (b)(2) introductory text;

g. Revise the second sentence of paragraph (b)(2)(ii);

h. Remove the word ''lunch'' in paragraph (b)(3) and add in its place the word ''meal'';

i. Revise the first sentence of paragraph (b)(4);

j. Revise the second sentence of paragraph (c) introductory text;

k. Revise the second sentence of paragraph (c)(1);

l. Revise the first sentence of paragraph (c)(2); and

m. Revise the second sentence of paragraph (d).

The revisions and addition read as follows:

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* The school food authority must establish internal controls which ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls for meal counting and claiming must include: An on-site review of the counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid meal counts against data which will assist in the identification of meal counts in excess of the number of free, reduced price and paid meals served each day to children eligible for such meals; and a system for following up on those meal counts which suggest the likelihood of counting problems.

(1) * * * On-site review requirements for afterschool snacks are set forth in § 210.4a(s).

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority must review the meal count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid lunches and afterschool snacks served on any day of operation to children currently eligible for such lunches and afterschool snacks.

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no lunch counting and claiming violations may:

* * * * *

(4) *Follow-up activity.* The school food authority must promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2) of this section or the claims review process used by schools suggest the likelihood of meal count problems. When problems or errors are identified, the meal counts must be corrected prior to submission of the monthly Claim for Reimbursement. Improvements to the meal count system must also be made to ensure that the meal counting system consistently results in meal counts of the actual number of reimbursable free, reduced price and paid lunches and afterschool snacks served for each day of operation.

* * * * *

(b) * * *

(2) *State agency claims review process.* The State agency must review each school food authority's Claim for Reimbursement, on a monthly basis, in an effort to ensure that monthly claims are limited to the number of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(ii) * * * Such alternative analyses must meet the objective of ensuring that the monthly Claims for Reimbursement are limited to the numbers of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(4) *Corrective action.* The State agency must promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches and/or afterschool snacks served, by type, to eligible children. * * *

(c) * * * Such data must include, at a minimum, the number of free, reduced price and paid lunches and afterschool snacks served to eligible children. * * *

(1) * * * Unless otherwise approved by FNS, the Claim for Reimbursement for any month must include only lunches and afterschool snacks served in that month except if the first or last month of operation for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. * * *

(2) *October data.* For the month of October as of the last day of operation, the State agency must also obtain, either through the Claim for Reimbursement or

other means: the total number of children approved for free lunches; the total number of children approved for reduced price lunches; the total number of children enrolled in the school food authority and the total number of schools and sites claiming reimbursement for meals under the National School Lunch Program. * * *

(d) * * * Following the receipt of claims, the State agency must make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and afterschool snacks by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b). * * *

10. In § 210.9:

a. Revise paragraphs (b)(5) through (b)(7);

b. Revise the first sentence of paragraph (b)(8);

c. Revise paragraph (b)(9);

d. Remove the word "lunches" in first sentence of paragraph (b)(18) and add in its place the word "meals";

e. Revise paragraphs (b)(19) and (b)(20); and

f. Remove paragraph (c).

The revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in § 210.10; and serve snacks after the end of the school day which meet the applicable requirements in § 210.10;

(6) Price the lunch and afterschool snack as units;

(7) Serve meals free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under part 245 of this chapter and serve afterschool snacks free to all children at area eligible sites in accordance with § 210.4a(i);

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid meals served to eligible children in accordance with part 210. * * *

(9) Count the number of meals in accordance with § 210.7(c);

* * * * *

(19) Retain the individual applications for free and reduced price meals submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than December 31, provide the State agency with a list of all elementary, middle and high schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority must provide information on the boundaries of the attendance areas for the elementary, middle and high schools identified as having 50 percent or more of enrolled children certified for free or reduced price meals. Each school food authority must provide this information when available for the schools under its jurisdiction, and upon the request of:

(i) At-risk afterschool care center;

(ii) Sponsoring organization of at-risk afterschool care centers; or

(iii) A sponsoring organization of day care homes participating in the Child and Adult Care Food Program.

11. In § 210.10, revise paragraph (n) to read as follows:

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

* * * * *

(n) *What are the requirements for afterschool snacks?* (1) *Minimum components.* In order to be reimbursed, afterschool snacks must contain two different components from the following four:

(i) A serving of fluid milk, as defined in paragraph (m)(1)(ii) of this section, as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and must not be used as meat alternates due to their low protein content. Nut or seed meals or flours must not be used as a meat alternate except as defined under appendix A to this part: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(2) *Afterschool snacks for infants.* Afterschool snacks for infants must contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of breast milk or iron-fortified infant formula or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the afterschool snacks as desired.

(3) *Minimum quantities.* In order to be reimbursed, afterschool snacks must contain the following quantities of the required components. (Note: Juice may not be served when milk is served as the only other component.) Children older than age 12 may be served larger portions based on the greater food needs of older boys and girls, but must be served no less than the minimum quantities specified for children age 6 through 12.

Afterschool Snack Chart for Children

Components (Select two different components from the four listed)	Ages 1 and 2	Ages 3 through 5	Ages 6 through 12
Milk, fluid	4 ounces	4 ounces	8 ounces
Meat or meat alternate [4]	½ ounce	½ ounce	1 ounce
Juice or fruit or vegetable	½ cup	½ cup	¾ cup
Bread and/or cereal: enriched or whole grain bread or	½ slice	½ slice	1 slice
Cereal: cold dry or	¼ cup [1]	1/3 cup [2]	¾ cup [3]
hot cooked	¼ cup	¼ cup	½ cup

[1] ¼ cup (volume) or 1/3 ounce (weight), whichever is less.
[2] 1/3 cup (volume) or ½ ounce (weight), whichever is less.
[3] 3/4 cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.
Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

Afterschool Snack Chart for Infants

Birth through three months	Four months through seven months	Eight months through eleven months
4-6 fluid ounces breast milk [2,3] or formula [1]	4-6 fluid ounces breast milk [2,3] or formula [1]	2-4 fluid ounces breast milk [2,3] formula,[1] or fruit juice.[4] 0-½ slice bread [5] or 0-2 crackers [5]

[1] Infant formula must be iron fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.
[4] Fruit juice must be full-strength.
[5] Bread and bread alternates must be made from whole grain or enriched meal or flour. A serving of this component must be optional.

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§ 210.11 [Amended]

12. In § 210.11:

a. Remove the word "lunch" and add the word "meal" in its place in paragraph (a)(1); and

b. In paragraph (b):

(i) Remove the word "lunches" and add in its place the word "meals" in the first sentence;

(ii) Remove the word "lunch" and add in its place the word "meal" in the second sentence; and

(iii) Remove the words "lunch period" and add in their place the words "meal periods" in the third sentence.

13. In § 210.15, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) * * *

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(a)(2) and one afterschool snack per child per day under § 210.4a;

(4) Currently approved and denied applications for free and reduced price meals and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with § 245.6a of this chapter.

14. In § 210.16:

a. revise the second sentence in paragraph (a); and

b. revise the first sentence in paragraph (b)(1).

The revisions read as follows:

§ 210.16 Food service management companies.

(a) * * * However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable meals to all eligible children. * * *

* * * * *

(b) * * *

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10 to be used as a standard for the purpose of basing bids or estimating average cost per lunch and/or afterschool snack. * * *

* * * * *

15. In § 210.18:

a. revise paragraph (i)(4)(iv);

b. revise the second sentence of paragraph (l)(2); and

c. revise the last sentence of paragraph (l)(4).

The revisions read as follows:

§ 210.18 Administrative reviews.

* * * * *

(i) * * *

(4) * * *

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the School Breakfast Program (part 220) and/or the Special Milk Program for Children (part 215) or the afterschool snack service (§ 210.4a) in those schools selected for the administrative review and participating in those Programs, the State agency must do so for those schools selected for the first follow-up review.

* * * * *

(l) * * *

(2) * * * Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. * * *

* * * * *

(4) * * * Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

* * * * *

16. In § 210.19:

a. Remove the word ''lunches'' and add the word ''meals'' in its place in the fifth sentence of paragraph (a)(2);

b. Add a new paragraph (a)(7);

c. Revise paragraph (c)(2)(i);

d. Revise the last sentence of paragraph (c)(2)(ii);

e. Revise paragraph (c)(2)(iii); and

f. Revise paragraph (f).

The revisions and addition read as follows:

§ 210.19 Additional responsibilities.

(a) * * *

(7) *Compliance with afterschool snack requirements.* Each State agency shall determine whether school food authorities claiming reimbursement for afterschool snacks comply with the provisions of § 210.4a. Each State agency shall conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews may be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

* * * * *

(c) * * *

(2) * * *

(i) The State agency must identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under § 210.7. In order to take fiscal action, the State agency must identify accurate counts of reimbursable lunches and afterschool snacks through available data, if possible. In the absence of reliable data, the State agency must reconstruct the lunch and afterschool snack counts in accordance with procedures established by FNS.

(ii) * * * The State agency must ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under § 210.18 and prior to the implementation of corrective action, is limited to meals eligible for reimbursement under this part 210.

(iii) In taking fiscal action, State agencies must assume that children determined by the reviewer to be incorrectly approved for free and reduced price meals participated at the same rate as correctly approved children in the corresponding category.

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency must provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary, middle, and high schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October, or another month specified by the State agency. Lists must be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency must provide the current list, upon request, to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers or sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

17. In § 210.23, revise paragraph (a) to read as follows:

§ 210.23 Other responsibilities.

(a) *Free and reduced price meals.* State agencies and school food authorities must ensure that meals are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price meals is to be made in accordance with part 245 of this chapter.

* * * * *

18. In § 210.24, revise the last sentence to read as follows:

§ 210.24 Withholding payments.

* * * Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

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

Authority: 42 U.S.C. 1758, 1759a, 1765, and 1766.

2. In part 226:

a. Remove the words ''supplement'' or ''supplements'' wherever they appear in

the following sections and add the words ''snack'' or ''snacks'', respectively, in their place:

§ 226.4(b)(7);
§ 226.4(b)(8);
§ 226.4(b)(9);
§ 226.13(b);
§ 226.15(e)(4);
§ 226.17(b)(8);
§ 226.19(b)(4);
§ 226.19(b)(6);
§ 226.19a(b)(9);
§ 226.20(b)(4) introductory text;
§ 226.25(g)(1)(i)(C); and

b. remove the words ''supplemental food'' wherever they appear in the following sections and add the word ''snacks'' in their place:

§ 226.20(a)(4);
§ 226.20(b)(1)(iii)
§ 226.20(b)(2)(iii);
§ 226.20(b)(3)(iii);
§ 226.20(c)(4); and
§ 226.20(d)(2).

3. In § 226.2:

a. Add new definitions of ''At-risk afterschool care center'', ''Eligible area'', ''Iowa/Kentucky demonstration project center'', ''Person with disabilities'', and ''Snack'' in alphabetical order;

b. Revise the definitions of ''CACFP child care standards'', ''Child care facility'', ''Children'', ''Nonpricing program'', ''Pricing program'', ''Proprietary title XX center'', ''Reduced price meal'', and ''Sponsoring organization'';

c. Add a new sentence to the end of the definition of ''Enrolled child'';

d. Revise the first sentence in the definition of ''Free meal'';

e. Add the words ''at-risk afterschool care center,'' in the definition of ''Independent center'' after the words ''child care center,'';

f. Add the words ''at-risk afterschool care center,'' in the definition of ''Institution'' after the words ''child care center,''; and

g. 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 new definitions and revisions read as follows:

§ 226.2 Definitions.

* * * * *

At-risk afterschool care center means a public or private nonprofit organization (or a proprietary title XX center, as defined in this section) eligible to participate in the CACFP that provides nonresidential child care to children after school through an approved afterschool care program in an eligible area. An at-risk afterschool care center may participate in the Program as an independent center or under the auspices of a sponsoring organization.

CACFP child care standards means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers and day care homes by the State agency under the provisions of § 226.6(d)(2) and (d)(3).

* * * * *

Child care facility means a child care center, day care home, at-risk afterschool care center, or outside-school-hours care center under the auspices of a sponsoring organization.

Children means:

(a) Persons age 12 and under;

(b) Persons age 15 and under who are children of migrant workers;

(c) ''Person with disabilities'' as defined in this section; and

(d) For at-risk afterschool care centers, students who are enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or who are any age and meet the definition of ''Person with disabilities'' as defined in this section.

* * * * *

Eligible area means 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.

Enrolled child * * * For at-risk afterschool care centers, ''enrolled child'' means a child participating in an approved afterschool care program.

* * * * *

Free meal means a meal served under the Program to: a participant from a family that meets the income standards for free school meals; a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC recipiency; a child who is a Head Start participant; a child participating in an approved at-risk afterschool care program; or an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. * * *

* * * * *

Iowa/Kentucky demonstration project center means any private for-profit center:

(a) Providing nonresidential child care;

(b) In which at least 25 percent of the enrolled children or 25 percent of the licensed capacity, whichever is less, meet the income eligibility criteria for free or reduced price meals. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage; and

(c) Participating in the demonstration project under section 17(p) of the National School Lunch Act.

* * * * *

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.

* * * * *

Person with disabilities means a person of any age who has one or more disabilities, as determined by the State agency, and who is 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.

* * * * *

Proprietary title XX center means:

(a) Any private, for profit center which provides nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX child care beneficiaries were at least 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month before initial application or annual reapplication for Program participation. (Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage); or

(b) Any private, for profit center which provides nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX adult beneficiaries were at least 25 percent of enrolled eligible participants during the calendar month before initial application or annual reapplication for Program participation.

Reduced price meal means a meal served under the Program to a participant from a family which 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 which meets the meal pattern requirements specified in § 226.20(a)(4).

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

(a) One or more day care homes;

(b) A child care center, 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, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(d) Any combination of child care centers, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term ''sponsoring organization'' also includes a for-profit organization which 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 and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary title XIX or XX centers, as defined in this section.

* * * * *

4. In § 226.4:

a. Revise paragraph (a);

b. Redesignate paragraphs (c) through (j) as paragraphs (d) through (k), respectively;

c. Add a new paragraph (c);

d. Remove the word ''supplements'' wherever it appears in newly redesignated paragraphs (d)(7) through (d)(9), and add in its place the word ''snacks'';

e. Revise the first sentence of newly redesignated paragraph (h)(2).

The revisions and addition read as follows:

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS must make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part 226. Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), and (i) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part 226 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 (i) and (k) of this section.

* * * * *

(c) *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.

* * * * *

(h) * * *

(2) The rate for snacks served in child care centers, 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. Revise paragraph (b)(7);

b. Remove the first sentence and add three sentences in its place in paragraph (b)(8);

c. Add a new paragraph (b)(11);

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

e. Remove the period at the end of paragraph (d)(1)(v) and add in its place the word ''; or'';

f. Add a new paragraph (d)(1)(vi);

g. Remove the words ''and outside-school-hours care centers'' in paragraph (d)(2)(i)(A)(*2*);

h. Remove paragraph (d)(2)(ii);

i. Revise the second sentence of paragraph (d)(3) and paragraph (f)(9);

j. Add new paragraphs (f)(12) and (l)(4); and

k. Remove the words '', outside-school-hours care centers,'' and '',outside-school-hours care center,'' wherever they appear in paragraph (n).

The additions and revisions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(7) Submission of documentation that all child care centers, at-risk afterschool care centers, adult day care centers, outside-school-hours care centers and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act. Each such center must also certify that at least 25 percent of its enrolled children or 25 percent of its licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

(11) For at-risk afterschool care centers:

(i) Documentation sufficient to determine if each afterschool care program meets the eligibility requirements in § 226.17a(a);

(ii) Information about any substantive changes to the afterschool care program whenever such changes occur (even if the changes do not affect the eligibility of the afterschool care program); and

(iii) Documentation of area eligibility at least once every three years thereafter.

* * * * *

(d) *Licensing/approval for child care centers, at-risk afterschool care centers, outside-school hours care centers and day care homes.* * * *

(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 and outside-school hours care centers and day care homes either:

* * * * *

(vi) 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.

* * * * *

(3) * * * Licensing or approval is not available when no Federal, State, or local licensing/approval standards have been established for child care centers or day care homes; or no mechanism exists to determine compliance with licensing/approval standards. * * *

* * * * *

(f) * * *

(9) The State agency must comply with the requirements of this paragraph (f) for tiering and at-risk afterschool center area eligibility determinations.

(i) *General.* Coordinate with the State agency which administers the National School Lunch Program 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.

(ii) *Tiering data.* The State agency must provide the list of elementary schools to sponsoring organizations of day care homes by February 15 each year unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October. In 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 State agency that administers the National School Lunch Program. The State agency also must provide each sponsoring organization of day care homes with census data (as provided to the State agency by FNS upon its availability on a decennial basis) showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals.

(iii) *Tiering determinations.* The State agency must ensure that the most recent available data is used when the determination of a day care home's eligibility as a tier I day care home (as defined in § 226.2) is made using elementary school or census data. Determinations of a day care home's eligibility as a tier I day care home are valid for one year if based on a provider's household income, three years if based on elementary school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency may not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data during the three-year period.

(iv) *Area eligibility data.* The State agency must provide the list of elementary, middle, and high schools to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request.

(v) *At-risk afterschool care center area eligibility determinations.* 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 pursuant to paragraph (f)(9)(i) of this section. 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. Area eligibility determinations are valid for three years. However, the State agency, a sponsoring organization, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible. The State agency may not routinely require redeterminations of area eligibility based on updated school data during the three-year period.

* * * * *

(12) Determine whether the afterschool care programs of at-risk afterschool care centers meet the requirements of § 226.17a(a) before the centers begin participating in the Program and whenever information on changes to the afterschool care programs is submitted or otherwise becomes available. The determinations must be based on information submitted by the sponsoring organization or, for independent centers, by the at-risk afterschool care centers.

* * * * *

(l) * * *

(4) *Technical assistance visits to independent at-risk afterschool care centers.* In addition to these reviews, State agencies must conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit must be made during the first 90 days of program operations. At the visit, the State agency must confirm the accuracy of the documentation provided by the at-risk afterschool care center and used by the State agency to determine eligibility. The State agency must also examine meal pattern compliance.

* * * * *

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 at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations for 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 references to ''§ 226.4(h)'' 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 their places references to ''§ 226.4(i)''.

8. In § 226.9:

a. Add a new second sentence in paragraph (a);

b. Revise paragraph (b) introductory text; and

c. Revise paragraph (b)(2).

The addition and revisions read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

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

(b) Except for 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. Children who only participate in the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of claiming percentages; or

* * * * *

9. In § 226.10, revise the third sentence of paragraph (c) and add a new fourth sentence to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * Independent proprietary title XX child care centers and independent proprietary title XX at-risk afterschool care centers must submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, 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. * * *

* * * * *

10. In § 226.11:

a. Revise the section heading, and 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 child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care 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 and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) *Institution reporting.*—(1) *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)(2) of this section.

(2) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(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 the number of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(3) of this section.

(2) *At-risk afterschool care institutions.* Each State agency must base reimbursement to each at-risk afterschool care institution on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(3) of this section.

(3) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(4) *Computation of reimbursement.* Except for at-risk afterschool care centers, in computing reimbursement, the State agency must either:

(i) *Actual counts.* Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants 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. Revise paragraphs (b)(4) and (b)(6);

b. Remove paragraph (e)(5) and redesignate paragraphs (e)(6) through (e)(14) as paragraphs (e)(5) through (e)(13), respectively; and

c. Redesignate paragraphs (g) through (k) as paragraphs (h) through (l), respectively, and add a new paragraph (g).

The revisions and addition read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) * * *

(4) If an independent child care center, independent at-risk afterschool care center or independent outside-school hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

* * * * *

(6) For each proprietary title XX child care center and proprietary title XX at-risk afterschool care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations must provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction.

* * * * *

(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)(9) 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. Remove the word ''and'' at the end of paragraph (d)(4)(ii), redesignate paragraph (d)(4)(iii) as paragraph (d)(4)(iv) and add a new paragraph (d)(4)(iii); and

b. Revise paragraphs (f) and (h).

The addition and revisions read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(iii) Three times each year at each at-risk afterschool care center, provided at least one review is made during each at-risk afterschool care center's first six weeks of Program operations and not more than six months elapse between reviews; and

* * * * *

(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, at-risk afterschool care centers, day care

homes, adult day care centers and outside-school-hours care centers).

* * * * *

(h) Sponsoring organizations must make payments of program funds to child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers within five working days of receipt from the State agency. These payments must be made on the basis of the management plan approved by the State agency. In addition, payments must not exceed the Program costs documented at each facility during any fiscal year, except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements must not exceed the rates times the number of meals documented at each facility during any fiscal year.

* * * * *

13. In § 226.17:

a. Revise paragraph (b)(1) introductory text;

b. Revise paragraph (b)(3);

c. Add in the second sentence of paragraph (b)(4), the words ''(excluding children receiving snacks in an approved afterschool care program),'' after the words ''enrolled children''; and

d. Revise paragraph (b)(5)

The revisions read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(1) Child care centers (except for at-risk afterschool care centers and outside-school-hours care centers) must have Federal, State, or local licensing or approval to provide day care services to children. 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. 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 which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

* * * * *

(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 may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

* * * * *

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded. A child care center with preschool children may also be approved to serve a snack to school age children enrolled in an afterschool care program meeting the requirements of § 226.17a which is distinct from its day care program for preschool children, provided 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) *When is an organization eligible to receive reimbursement for afterschool snacks?*

(1) *Eligible organizations.* In order to be eligible to receive reimbursement, organizations must meet all of 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 under the auspices of a sponsoring organization. Independent centers must comply with the provisions of § 226.15. 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 proprietary title XX 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. In addition, such centers may only claim reimbursement for snacks served at any one time to children within the at-risk afterschool care center's authorized capacity, and for snacks served at a proprietary title XX center during a calendar month in which at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) 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) *What is an eligible at-risk afterschool care program?*

(1) *Eligible program.* 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 (except summer vacation) during the regular school year;

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

(iii) Include education or enrichment activities; and

(iv) Be located in an eligible area, as described in paragraph (h) of this section.

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

(c) *What are the 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 either are age 18 or under at the start of the school year or meet the definition of ''Person with disabilities'' in § 226.2.

(d) *How does an organization apply to be an at-risk afterschool care center?*

(1) *Application.* An official of the organization must make written application to the State agency for any afterschool care program which 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 which permits the State agency to confirm that all applicant afterschool care centers are

located in an eligible area, as described in paragraph (h) of this section.

(e) *How does the State agency approve the application?*

(1) *State agency approval.* In addition to establishing applicant eligibility (in accordance with §§ 226.6(b), 226.15(b), and 226.16(b)), 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 (see § 226.6(f)(12)). The State agency must determine the eligibility of the afterschool care programs of independent afterschool care centers (see § 226.6(f)(12)). An approved organization must enter into an agreement with the State agency as described in paragraph (e)(2) of this section.

(2) *Agreement.* The State agency must enter into an agreement or amend an existing agreement with an approved at-risk afterschool care center pursuant to § 226.6(f)(1). The amendment must describe the approved afterschool care program and list the approved centers. The amendment must also require the at-risk afterschool care center to comply with the applicable requirements of this part.

(f) *What is the application process in subsequent years?* In addition to renewing applicant eligibility (as described in §§ 226.6(b), 226.15(b), 226.16(b)), the independent at-risk afterschool care center or sponsoring organization must advise the State agency of any substantive changes to the afterschool care program consistent with the timeframes described in paragraph (h)(2) of this section.

(g) *What if sponsoring organizations want to add new at-risk after school care centers after application approval?* Sponsoring organizations that want to add new at-risk afterschool care centers must provide the State agency with the information sufficient to demonstrate its compliance with the requirements of this section.

(h) *What is ''area eligibility''?* In order to receive reimbursement for snacks served in at-risk afterschool care centers, such centers must be located in an ''Eligible area'' as defined in § 226.2.

(1) *Definition.* An at-risk afterschool care center is in an ''eligible area'' when 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, pursuant to § 210.9(b)(20) of this chapter. If the State agency chooses a month other than October, it must do so for the entire State. Area eligibility determinations are valid for three years from the beginning of the month in which the determination was made.

(i) *May an at-risk afterschool care center charge for a snack?* No, all afterschool snacks served under this section must be made available to participating children at no charge.

(j) *How many snacks may be claimed for reimbursement?* 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.

(k) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for snacks in §§ 226.20(a)(4) and (c)(4).

(l) *When may snacks be served?* At-risk afterschool care centers may claim only snacks served in approved afterschool care programs after a child's school day or on weekends, holidays, or school vacations (except summer vacation) during the regular school year.

(m) *What reimbursements do at-risk afterschool care centers earn?* All snacks served in at-risk afterschool care centers will be reimbursed at the free snack rate.

(n) *What additional recordkeeping is required for at-risk afterschool care centers?* 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.

(o) *What additional reporting is required for the snack service?* 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.

(p) *What are the monitoring requirements for at-risk afterschool care centers?* State agencies must monitor independent centers in accordance with § 226.6(l). Sponsoring organizations of at-risk afterschool care centers must monitor their centers in accordance with § 226.16(d)(4)(iii).

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) and (b)(5) to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(1) For purposes of Program participation, outside-school-hours care centers must have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours only if Federal, State or local licensing or approval is otherwise required. 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. The main purpose of the center must be the care and the supervision of children. In cases where Federal, State or local licensing or approval is required, outside-school-hours 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 which indicates the renewal will be denied.

* * * * *

(5) Each outside-school-hours care center participating in the Program must claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child. In addition, reimbursement may not be claimed for meals served to children who are not enrolled, or meals served to children at any one time in excess of authorized

capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

* * * * *

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.

* * * * *

§ 226.20 [Amended]

18. In § 226.20(b)(4), remove the words "Supplement (snack)" in the table and add in their place the word "Snack".

19. In § 226.23:

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

b. Revise paragraph (c)(6);

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

d. Add in the first sentence of paragraph (e)(1)(i), the words "other than at-risk afterschool care centers" after the word "institutions".

The revisions read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(b) At-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which 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 handicap and that there is no discrimination in the course of the food service. * * *

(c) * * *

(6) An assurance that the charges for a reduced price lunch or supper will not exceed 40 cents, that the charge for a reduced price breakfast will not exceed 30 cents, and that the charge for a reduced price snack will not exceed 15 cents.

(d) * * * All media releases issued by institutions other than at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes, must include the Secretary's Income Eligibility Guidelines for Free and Reduced Price Meals. The release issued by all at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers and sponsoring organizations of 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. * * *

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for 7 CFR part 235 continues to read as follows:

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

2. In § 235.4, revise the first sentence of paragraph (a)(1) and paragraph (b)(3)(iii) to read as follows:

§ 235.4 Allocation of funds to States.

(a) * * *

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. * * *

* * * * *

(b) * * *

(3) * * *

(iii) The ratio of the number of free and reduced price lunches served in school food authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price lunches served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FNS for reviews conducted under § 210.18 of this chapter.

* * * * *

PART 245—DETERMINING ELIGIBLITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for 7 CFR part 245 continues to read as follows:

Authority: 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751–60.

2. In § 245.1, revise the second sentence of paragraph (a) to read as follows:

§ 245.1 General purpose and scope.

(a) * * * Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price breakfasts, lunches, and afterschool snacks and, at the option of the School Food Authority for schools participating only in the Special Milk Program, free milk to eligible children.

* * * * *

3. In 245.2, revise paragraphs (f) and (g) to read as follows:

§ 245.2 Definitions.

* * * * *

(f) *Meal* means a lunch, afterschool snack, or breakfast which meets the applicable requirements in § 210.10 and § 220.8 of this chapter.

* * * * *

(g) *Reduced price meal* means a meal which meets all of the following criteria:

(1) The price must be less than the full price of the meal;

(2) The price must not exceed 40 cents for a lunch, 30 cents for a breakfast, and 15 cents for afterschool snacks; and

(3) Neither the child nor any member of his family must be required to supply an equivalent value in work for the school or the school's food service.

* * * * *

4. In § 245.5, redesignate paragraphs (a)(1)(ii) through (a)(1)(xi) as paragraphs (a)(1)(iii) through (a)(1)(xii) and add a new paragraph (a)(1)(ii) to read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(ii) In schools participating in the afterschool snack meal service in area eligible sites, an explanation that all children attending the afterschool care program will receive free snacks;

* * * * *

§ 245.8 [Amended]

5. In § 245.8(e), remove the words "lunch or breakfast" and add in their place the words "lunch, breakfast, or afterschool snacks;"

6. In § 245.9, revise paragraph (a) introductory text to read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

(a) A school food authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price lunches may, at its option, authorize the school to reduce annual certification and public

notification for those children eligible for free meals to once every two consecutive school years. This alternative is known as Provision 1 and the following requirements must apply:

* * * * *

7. In § 245.11, revise the second sentence of paragraph (a)(1) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

(a) * * *

(1) * * * If the State agency elects to establish a maximum price for reduced price lunches, breakfasts, or afterschool snacks in all schools that is less than the maximum charge permitted under this part, the State agency must establish the price in its prototype policy. * * *

* * * * *

Dated: September 22, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 00–25817 Filed 10–10–00; 8:45 am]

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