

TECHNICAL ASSISTANCE

memorandum



NEW YORK STATE OFFICE FOR THE AGING
Bldg. 2, Empire State Plaza, Albany, NY 12223

TO: AREA AGENCY ON AGING DIRECTORS

Subject:

Attached Interim Rule

Response Due Date:

No: 89-TAM-1

Date: 1/17/89

Programs Affected:

III-B III-C-1 III-C-2 RPE
 SNAP CSE ELSEP HEAP

Contact Person(s) - Phone Number(s)

Maribeth Bersani
(518) 474-5796

For Your Information

TAM Superseded by this document:

Attached is an interim rule effective December 28, 1988. This rule is in regard to a 1987 amendment to the Older Americans Act which allows for certain adult day care centers to receive cash and commodity assistance under the Child Care Food Program.

This interim rule also has a request for comments which must be postmarked on or before April 27, 1989. If your agency submits comments, please send a copy to Maribeth Bersani New York State Office for the Aging, Agency Bldg. #2, Empire State Plaza, Albany, NY 12223.

You may want to share this information with the adult day care centers in your county.

Att.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program: Adult Day Care Provision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends the Child Care Food Program (CCFP) regulations by providing Program eligibility for certain adult day care centers. It implements a provision of the Older Americans Act (OAA) Amendments of 1987, which allows these centers to receive cash and commodity assistance available under the CCFP for meals served to eligible enrolled individuals and a provision of the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, which provides categorical eligibility for free meals for participants of these centers who receive assistance under Title XVI or XIX in the Social Security Act or are members of a household receiving assistance under the Food Stamp Act and defines the income to be included in determining eligibility for free and reduced-price meal benefits.

DATES: This interim rule is effective December 28, 1988. To be assured of consideration, comments must be postmarked on or before April 27, 1989.

ADDRESS: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 515, Alexandria, Virginia 22302. Comments in response to these rules may be inspected at the address above during normal business hours 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Mr. James C. O'Donnell at the above address or by phone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This rule implements the provisions of the Older Americans Act Amendments of 1987 (Pub. L. 100-175, enacted November 29, 1987) and the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989 (Pub. L. 100-460, enacted October 1, 1988) regarding the participation of adult day care centers in the CCFP. Section

701 of Pub. L. 100-175 requires that the amendments made by that Act take effect on October 1, 1987. Publication of this rule without prior public comment is necessary to implement these provisions as soon as possible, in keeping with the October 1, 1987, effective date of Pub. L. 100-175. With regard to the provisions of Pub. L. 100-460, that legislation became effective upon enactment. Furthermore, those provisions are nondiscretionary. In light of the October 1, 1988, effective date and because the provisions in question are nondiscretionary, the Department believes that the public would be best served by including them in this interim regulation. This will allow earlier participation by institutions which are clearly eligible and will still allow for public comment on those provisions where such comment may be helpful in developing a final rule. Had the Department issued regulations containing the provisions of either legislation in proposed form, CCFP benefits would not have been available to any institution until the final rules were issued. For these reasons, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, in accordance with 5 U.S.C. 553(b), that it is impracticable and contrary to the public interest to take prior public comment and that good cause exists for publishing this rule without prior public notice and comment. For the same reasons, and in accordance with 5 U.S.C. 553(b), the Administrator has determined that good cause exists for making this rule effective without a 30-day post-publication waiting period.

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this

interim rule have been approved by the Office of Management and Budget under clearance 0584-0055.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pub. L. 100-175, the OAA Amendments of 1987, was enacted on November 29, 1987. Section 401 of that Act amended section 17 of the National School Lunch Act (42 U.S.C. 1766) by adding a new subsection (p). Under that subsection, certain adult day care centers are eligible for cash and commodity assistance under the CCFP. Pub. L. 100-460, the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, was enacted on October 1, 1988. Section 641 of that legislation further amended section 17(p) by defining the income to be included in determining eligibility for free and reduced-price meals and providing for categorical eligibility for individuals enrolled in adult day care centers who receive assistance under Title XVI or Title XIX of the Social Security Act or are members of a household receiving assistance under the Food Stamp Act of 1977.

In general, given the legislative language of Pub. L. 100-175, the Department views these adult day care centers as eligible for the CCFP in essentially the same manner, and under the same terms and conditions, as those child care centers which are currently eligible for or participating in the Program. There are differences in the nature and ages of the populations they serve, the needs of their clients and, presumably in many cases, the type(s) of organizations which operate them. However, these differences are generally not addressed in the OAA Amendments and will not be dealt with in these regulations, except to the extent that specific legislative provisions dictate or the Department determines that distinctions need to be made. In this regard, the Department invites public comment as to other areas where CCFP regulatory distinctions between child care facilities and adult care facilities may be appropriate.

Center Eligibility

The OAA Amendments define an eligible adult day care center as "any public agency or private nonprofit

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organization, or any proprietary Title XIX or XX center which—(i) is licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis; and (ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services * * * (42 U.S.C. 1766(p)(2)(A)). The law limits participation by proprietary Title XIX and Title XX centers to those which receive compensation under Titles XIX and XX for at least 25 percent of their enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation. The Conference Report which accompanies the OAA Amendments (H.R. Rep. 427, 100th Cong., 1st Sess. (1987)) provides further guidance on the type of adult day care center envisioned as eligible. It describes the care offered by these centers as " * * * a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care * * * a structured comprehensive program that provides a variety of health, social, and related support services in a protective setting during any part of the day, but less than 24-hour care" (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)).

In § 226.19a(b), these regulations reflect the legislative intent that eligibility for the CCFP be available through a narrowly defined group of centers which provide highly specialized care services to a specific group (i.e., functionally impaired individuals). Thus, the aim of these eligible centers must be to care for the needs of the functionally impaired. The law recognizes, however, that these eligible centers may enroll and provide services to individuals who may not be classified as functionally impaired but who are 60 years of age or older. It stipulates that CCFP reimbursement be made available for meals served to those individuals as well. However, centers which provide care (or socialization/recreation opportunities) only for persons 60 years of age or over who are not functionally impaired are not eligible to participate. In this regard, the Department also considers organizations such as sheltered workshops to be ineligible, even though they may enroll functionally impaired persons. Their overriding purpose is to provide

employment and developmental opportunities and not the type of care envisioned in the law.

Participant Eligibility

Pub. L. 100-175 provides for CCFP reimbursement for meals served to "persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction." Beyond this clause, however, the law does not define "chronically impaired disabled persons." In an attempt to insure that CCFP benefits are available only to persons 60 years of age or older and those who can be determined "chronically impaired" or "functionally impaired", this rule incorporates into the definition of "functionally impaired adult" certain criteria contained in Federal regulations which implement Title II (Federal Old-Age Survivors and Disability Insurance) and Title XVI (Supplemental Security Income for the Aged, Blind and Disabled Program) of the Social Security Act. These regulations (20 CFR Part 404, Appendix 1, Subpart P) are used in determining disability for both those programs. The criteria incorporated in this regulation were selected by the Department based on the intent of Congress in defining eligibility for centers and adults under Pub. L. 100-175. They relate specifically to an individual's ability to carry out activities of daily living and to function independently and effectively. Only those criteria specifically included in this rule will apply in making eligibility determination. Since Pub. L. 100-175 defines adult beneficiaries as those who are 60 years of age or older or chronically impaired, it will be the responsibility of each adult day care center participating in the CCFP to make CCFP eligibility determinations for each adult in care who is less than 60 years of age using the definition of "functionally impaired adult" contained in this rule. Further, participating centers will be required to maintain records to demonstrate how each such eligibility determination is made.

Meal Reimbursement

As stated in Pub. L. 100-175, the guidelines for CCFP reimbursement to be paid to adult day care centers shall contain provisions designed to assure that CCFP reimbursement " * * * shall not duplicate reimbursement under Part C of Title III of the Older Americans Act of 1965, for the same meals served." (42 U.S.C. 1766(p)(3)(B)). The conference report which accompanied the legislation makes the point that these adult day care centers are eligible for

both the CCFP and Title III feeding programs but that "They could not, however, receive benefits or reimbursement from both programs for the same meal served." (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)). Accordingly, § 226.19a(b)(6) limits reimbursement claims under the CCFP to those meals not claimed under Title III of the Older Americans Act.

In a related area, the Department is aware that some adult day care centers currently receive funds, other than Title III funds, which are available to support the meal service. Centers which receive such funds may continue to use these other funds, even for meals for which it claims reimbursement under the CCFP. However, given the fact that the National School Lunch Act specifically limits the use of Program funds disbursed to institutions to assist in providing meals, the Department considers CCFP reimbursement as their primary source of food assistance and all other sources as supplementary to it. Centers must be able to demonstrate such fund usage in the documentation of nonprofit food service status required under § 226.15(e)(11).

Center Licensing

Pub. L. 100-175 requires eligible adult day care centers to be " * * * licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis." (42 U.S.C. 1766(p)(1)). In § 226.6(e), the Department has interpreted this to mean that in order for a center to be eligible for CCFP participation, it must have Federal, State or local licensing or approval which is specifically established to regulate such center, or be complying with applicable renewal procedures (unless the State agency has information which indicates renewal will be denied). Further, the Department believes that the law clearly limits eligibility to centers which have such licensing and approval and does not envision participation by centers under the alternate approval methods available to child care centers and day care homes under current CCFP statute. This decision is based on the lack of reference to such alternate approval methods in the portion of the statute concerning adult day care center licensing, unlike the specific reference to such procedures in the statutory provision describing licensing for child care institutions and day care homes (42 U.S.C. 1766(p)(2)(A)(1) and (a)(1)).

Meal Patterns

Current CCFP regulations contain specific requirements for meals served under the Program. These requirements establish minimum amounts of food, by type, which must be served in order for meals to be reimbursable. In implementing regulations intended to meet the nutritional needs of individuals enrolled in adult day care centers, the Department has reservations about the appropriateness of the current CCFP meal requirements for this group of individuals. Accordingly, the Department has begun the work necessary to evaluate the current meal patterns and, if necessary, to develop appropriate meal requirements for this group. In this regard, the Department welcomes comment on the current meal patterns, as well as suggestions for changes. However, given the need to publish these regulations implementing Program eligibility for adult day care centers as quickly as possible, as well as the time necessary to give adequate consideration to these meal patterns, § 226.20(c) has been amended to specify an interim adult meal pattern and permit certain milk alternates. This added flexibility for milk alternates has been granted to enable adult day care centers to provide meals that better respond to the individual food preferences of adult participants. In the CCFP, as well as the other Child Nutrition Programs, the Department advises that institutions consider the needs of the individuals involved when determining the amounts of food to be served and adjust portion sizes (within the regulatory minimum portion size limits) to meet the needs of participants. Further, the Department recommends that persons responsible for developing menus in these centers make use of information currently available with respect to beneficial dietary strategies. These would include choosing foods which are low in salt, sugar and fats, such as lowfat milk and fresh fruits and vegetables.

Determining Free and Reduced-price Eligibility in Adult Day Care Centers

Public Law 100-460 contains two provisions which affect the free and reduced-price eligibility determinations for individuals enrolled in adult day care centers. The first establishes a definition of "household" or "family" different than that which has been utilized traditionally in the CCFP. The traditional definition requires the consideration of all income earned by all individuals, related or not, who are living as one economic unit when determining free and reduced-price meal eligibility. The new definition, which

applies only to adult participants, limits the income to be counted to only that earned by the adult participant and his or her spouse and any dependents residing with the adult participant. In this regard, the term "dependent" means an individual or individuals who are economically dependent on the adult participant. Therefore, in the case of an adult participant who is residing with and being cared for by his or her children, the income of the children would not be counted when determining free or reduced-price meal eligibility. The second provision contained in the legislation establishes categorical free meal eligibility criteria specific to the adult participant population. Under previous law and existing regulations, categorical eligibility for free meals is available only to children who are members of food stamp households or AFDC assistance units. Now, persons enrolled in adult centers will be categorically eligible for free meals if they are members of food stamp households or if they receive benefits under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program, or Title XIX of the Social Security Act, which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

Other Provisions

The amendments contained in this regulations, although extensive, are for the most part technical in nature. They are extensive primarily because there are numerous references to children, parents, etc., in existing regulations which must be modified to bring a new group of institutions and individual beneficiaries into the CCFP. The provisions which deal solely with these adult day care centers are relatively few in number and are discussed above. They reflect the fact, as previously stated, that these centers will participate in the CCFP essentially under the same requirements as other institutions.

Although Public Law 100-175 was enacted on November 29, 1987, the effective date of the adult day care provision is October 1, 1987. Consequently, based on the effective date of the legislation, the Department is making an exception to: § 226.11(a) that limits retroactive cash and commodity reimbursement to meals served in the calendar month preceding the calendar month in which a written agreement to operate the Program is executed; and § 226.10(e), which requires that final claims be submitted not later than 60 days following the last day of the full month covered by the claim. The

Department is allowing an exception to the latter provision to allow reimbursement retroactive to October 1, 1987, provided that the institution can document that, for any meals claimed: (1) The meals served met all requirements including items and quantities served; (2) free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought; (3) meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available; (4) appropriate food service revenue and expenditure records are available; and (5) reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals. In addition, institutions which intend to claim retroactive reimbursement must have executed a Program agreement with the State agency by March 31, 1989 and must have submitted a claim for reimbursement for each month of operation covering the meals served between October 1, 1987 and the date of the initial program agreement between the State agency and the center by March 31, 1989 or the date set by § 226.10(e), whichever is later. All other institutions should make application to the appropriate State agency as soon as possible and will be subject to the routine reimbursement procedures set out in the Program regulations.

In establishing this general retroactivity, the Department is limiting its applicability to provisions found in existing regulations and Pub. L. 100-175. However, certain other retroactive provisions resulted from the enactment of Pub. L. 100-460. Specifically, adult day care centers may claim retroactive reimbursement for free meals served (1) beginning with October 1, 1987, based on documented food stamp participation; (2) for the period October 1, 1987 to September 30, 1988, based on documented AFDC participation; and (3) beginning October 1, 1988, based on Medicaid and SSI participation. Further, for the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, adult participants need only report their income and the income of any spouse or dependent(s) with whom they reside when applying for free or reduced-price

meals. These retroactive provisions are found in § 226.25(g).

List of Subjects in 7 CFR Part 226

Day care. Food assistance programs. Grant programs—Health, infants and children. Reporting and recordkeeping requirements. Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows, and all other authority citations in the Part are removed:

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

2. Section 226.1 is revised to read as follows:

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. The Program is intended to enable such institutions to integrate a nutritious food service with organized care services for enrolled participants. Payments will be made to State agencies or FNS Regional Offices to enable them to reimburse institutions for food service to enrolled participants.

3. In § 226.2:

a. New definitions of "Adult day care center", "Adult day care facility", "Adult participant", "Enrolled participant", "Functionally impaired adult", "Medicaid participant", "Participants", "Proprietary Title XIX center", "SSI participant", "Title XVI" and "Title XIX" are added in alphabetical order.

b. The definitions of "Claiming percentage", "Family", "Free meal", "Income to the program", "Independent center", "Institution", "Meals", "Nonpricing program", "Nonprofit food service", "Nonresidential", "Operating costs", "Pricing program", "Proprietary Title XX center", "Reduced-price meal", "Sponsoring organization" and "Verification" are revised.

c. In the definition of "Documentation," the second sentence is removed and the third sentence is revised.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

"Adult day care center" means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined in this section) which (a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

"Adult day care facility" means a licensed or approved adult day care center under the auspices of a sponsoring organization.

"Adult participant" means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

"Claiming percentage" means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled participants in the institution.

"Documentation" * * * Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and the signature of an adult member of the household: "documentation" for an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant, as defined in this section, means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section, and the signature of an adult member of the household.

"Enrolled participant" means an "Enrolled child" (as defined in this section) or "Adult participant" (as defined in this section).

"Family" means, in the case of children, a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

"Free meal" means a meal served under the Program to (a) a participant from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC reciprocity, or to (c) an adult participant who is automatically eligible for free meals by virtue of food stamp reciprocity or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of (a), (b) or (c), neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

"Functionally impaired adult" means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

"Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other

income, including cash donations or grants from organizations or individuals.

"Independent center" means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"Meals" means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

"Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs—Medicaid.

"Nonpricing program" means an institution in which there is no separate identifiable charge made for meals served to participants.

"Nonprofit food service" means all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are used solely for the operations or improvement of such food service.

"Nonresidential" means that the same participants are not maintained in care for more than 24 hours on a regular basis.

"Operating costs" means expenses incurred by an institution in serving meals to participants under the Program, and allowed by the State agency financial management instruction.

"Participants" means "Children" or "Adult participants" as defined in this section.

"Pricing program" means an institution in which a separate identifiable charge is made for meals served to participants.

"Proprietary Title XIX center" means any private, for profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to

the States under Title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation.

"Proprietary Title XX center" means any private, for profit center (a) providing nonresidential child or adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding 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 shall 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 supplement, and for which neither the participant nor any member of his family is required to work in the food service program.

"SSI participant" means an adult participant who receives assistance under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

"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, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. 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, 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 ("Proprietary Title XIX center", "Proprietary Title XX center").

"Title XVI" means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program—SSI.

"Title XIX" means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

"Verification" means a review of the information reported by institutions to the State agency regarding the eligibility of participants for free or reduced-price meals, and, in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or, for an adult participant, if a food stamp case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp household or is a current SSI or Medicaid participant.

4. In § 226.4:

a. Introductory paragraph (b) is revised.

b. Paragraphs (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9), are amended by removing the word "children" in each place it appears and adding in its place the word "participants".

c. In paragraph (g)(2) the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

The revision specified above reads as follows:

§ 226.4 Payments to States and use of funds.

(b) *Center funds.* For meals served to participants in child care centers, adult day care centers and outside-school-hours care centers, funds shall be made available to each State agency in an

amount no less than the sum of the products obtained by multiplying:

5. In § 226.6:

a. Paragraphs (b)(2), (b)(7), and (b)(8) are revised.

b. Introductory paragraph (c) is amended by removing the reference "§ 226.6(f)" and adding the reference "§ 226.6(k)" in its place.

c. Paragraphs (c)(5) and (c)(6) are amended by removing the words "participating children" and adding the word "participants" in its place.

d. Paragraph (c)(11) is revised.

e. The paragraph heading for paragraph (d) is revised.

f. In paragraph (d)(3), the last sentence is amended by removing the reference "§ 226.6(m)" and adding the reference "§ 226.6(n)" in its place.

g. Paragraphs (e) through (o) are redesignated as paragraphs (f) through (p) and a new paragraph (e) is added.

h. Newly redesignated paragraph (f)(7) is revised.

i. In newly redesignated paragraph (f)(8), the first sentence is amended by removing the words "enrolled children" and adding the word "participants" in its place.

j. In newly redesignated paragraph (g), the second and third sentences are revised.

k. In newly redesignated paragraph (h), the sentence is amended by removing the word "children" and adding the word "participants" in its place.

l. Newly redesignated paragraph (i)(1) is amended by adding the words "adult day care centers" following the words "day care homes,"

m. In newly redesignated paragraph (k)(9), the second sentence is amended by removing the word "children" and adding the word "participants" in its place.

n. In newly redesignated paragraph (l)(1), the second sentence is amended by adding the word "adult day care" following the words "child care".

o. Newly redesignated paragraph (l)(3) is amended by adding the words "or adult day care facilities" following the word "facilities".

p. In newly redesignated paragraph (p), the first sentence is amended by removing the reference "§ 226.6(k)" and adding the reference "§ 226.6(l)" in its place.

The revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

(b) . . .

(2) For child care centers, adult day care centers and outside-school-hours care centers, submission of current eligibility information on enrolled participants.

(7) Submission of documentation that all child 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 XIX or Title XX centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under Title XIX or Title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were Title XIX or Title XX beneficiaries:

(c) . . .

(11) The claiming of Program payment for meals served by a proprietary Title XIX or Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

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

(e) *Licensing/approval for adult day care centers.* This paragraph prescribes State agency responsibilities to ensure that adult day care centers meet the licensing/approval criteria set forth in this Part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent adult day care centers shall submit such documentation to the State agency on their own behalf. Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating adult day care centers either:

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

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

(f) . . .

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price and provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program.

(g) . . . At a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under Title XX and each nonparticipating adult day care center that is licensed or approved, of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, adult day care centers, outside-school-hours care centers, and day care homes notified each year available to the public upon request.

6. In § 226.7:

a. Paragraph (b)(2) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

b. In paragraph (i), the second sentence is revised.

c. Paragraph (k) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

d. Paragraph (l) is revised.

e. Paragraph (m)(1) is amended by removing the words "child's parents" and adding the words "participant's family" in its place.

The revisions specified above read as follows:

§ 226.7 State agency responsibilities for financial management.

(i) . . . The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advanced funds by sponsors, institutions, child care facilities and adult day care facilities.

(i) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to participants attending in excess of the authorized capacity of each independent

center, adult day care facility or child care facility.

§ 226.8 [Amended]

7. In § 226.8, paragraph (a) is amended by adding the words "XIX and Title" following the word "Title" in the second sentence.

8. In § 226.9:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(2) is amended by removing the word "children" and adding the word "participants" in its place.

The revision specified above reads as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

(b) * * *

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

9. In § 226.10 paragraph (c) is amended by revising the third, fourth and fifth sentences to read as follows:

§ 226.10 Program payment procedures.

(c) * * * Independent proprietary Title XIX or Title XX centers, for months in which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries, shall submit the percentages of enrolled participants receiving Title XIX or Title XX benefits for the month covered by the claim. Sponsoring organizations of such centers shall submit the percentage of enrolled participants receiving Title XIX or Title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries for the month claimed.

10. In § 226.11:

a. The section title is revised.

b. The first sentence in paragraph (a) is amended by adding the words ", adult day care centers" following the words "child care centers".

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

The revisions specified above read as follows:

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

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to participants except that such reports shall be made for a proprietary Title XIX or Title XX center only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to participants multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary Title XIX and Title XX centers only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. In computing reimbursement, the State agency shall either:

(1) 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, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting such standards by the applicable national average payment rate; or

(2) 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

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

§ 226.12 [Amended]

11. In § 226.12 the concluding text at the end of paragraph (b) is amended by removing the reference "§ 226.6(j)" where it appears and adding the reference "§ 226.6(k)" in its place.

§ 226.14 [Amended]

12. In Section 226.14, paragraph (a) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

13. In § 226.15:

a. The first sentence of paragraph (a) is amended by adding the words "Title XIX and" following the word "proprietary".

b. Paragraphs (b)(1), (b)(4), (b)(6), (e)(2), and (e)(4) are revised.

c. Paragraph (e)(3) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

d. Paragraph (e)(11)(ii) is amended by removing the word "children" and adding the word "participants" in its place.

e. Paragraph (g) is amended by removing the reference "§ 226.6(e)(1)" and adding the reference "§ 226.6(f)(1)" in its place.

The revisions specified above read as follows:

§ 226.15 Institution provisions.

(b) * * *

(1) Except for proprietary Title XIX and Title XX centers and sponsoring organizations or proprietary Title XIX and Title XX centers, evidence of nonprofit status, in accordance with Section 226.15(a).

(4) If an independent child 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 XIX or Title XX 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 and certification that not less than 25 percent of the participants enrolled during the most recent calendar month were Title XIX or Title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary Title XIX or Title XX center under its jurisdiction.

(e) * * *

(2) Documentation of the enrollment of each participant including family-size and income information used to determine eligibility for free or reduced-price meals for each participant reported as being in either need category, at child care centers, adult day care centers and outside-school-hours care centers. Such information shall include the social security number of each adult member of the household. However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(iv), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom

free meal benefits are being claimed. When a household applies for free meal eligibility on behalf of an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant in accordance with § 226.23(e)(1)(v), such information shall consist of the food stamp case number or SSI or Medicaid identification number of the adult participant for whom free meal benefits are being claimed.

(4) Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.

14. In § 226.16:

a. Introductory paragraph (b), paragraphs (b)(2), (b)(3), (c), introductory paragraph (d), and paragraphs (d)(1) and (d)(2) are amended by adding the words "and adult day care" following the words "child care" in each place it appears.

b. Paragraph (b)(1) is amended by removing the reference "§ 226.6(e)(2)" and adding the reference "§ 226.6(f)(2)" in its place.

c. Paragraph (d)(4)(i) is revised.

d. Paragraphs (e)(1) and (e)(2) are amended by adding the words "or adult day care" following the words "child care".

e. Paragraph (f) is revised.

f. In paragraph (h), the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

g. Paragraph (i) is amended by adding the words "and adult day" following the word "child".

h. Paragraph (j) is revised.

The revisions specified above read as follows:

§ 226.16 Sponsoring organization provisions.

(d) * * *

(4) * * *

(i) Three times each year at each child care center and adult day care center, provided at least one review is made during each child care or adult day care center's first six weeks of Program operations and not more than six months elapse between reviews:

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care

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

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary Title XIX or Title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary Title XIX or Title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

15. In § 226.17 paragraph (b)(7) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

16. A new § 226.19a is added to read as follows:

§ 226.19a Adult day care center provisions.

(a) Adult day care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Adult day care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All adult day care centers, independent or sponsored, shall meet the following requirements:

(1) Adult day care centers shall provide a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. Such a program shall be a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants.

(2) Adult day care centers shall provide care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services.

(3) Adult day care centers shall have Federal, State or local licensing or approval to provide day care services to functionally impaired adults (as defined in § 226.2) or individuals 60 years of age or older in a group setting outside their home on a less than 24-hour basis. Adult day 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.

(4) Except for proprietary Title XIX or Title XX centers, adult day care centers

shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An adult day care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the adult day care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the adult day care center has failed to provide all required information, the State agency shall terminate the participation of the adult day care center until such time as IRS tax-exempt status is obtained.

(5) Each adult day care center participating in the Program shall serve one or more of the following meal types:

- (i) Breakfast,
- (ii) Lunch,
- (iii) Supper, and
- (iv) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each adult participant.

(6) Each adult day care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Participating centers may not claim CCFP reimbursement for meals claimed under Part C of Title III of the Older Americans Act of 1965. Reimbursement may not be claimed for meals served to persons who are not enrolled, or for meals served to participants at any one time in excess of the center's authorized capacity, or for any meal served at a proprietary Title XIX or Title XX center during a calendar month when less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(7) An adult day care center may obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Adult day care centers shall collect and maintain current family-size and income information and the social security number of adult household members for participants classified as eligible for free and reduced-price meals, and documentation of the enrollment of participants not eligible for free or reduced-price meals. However, for households applying for free meal eligibility on behalf of adult participants from food stamp households or who are SSI or Medicaid participants in accordance with § 226.23(e)(1)(iv), adult day care centers shall collect and maintain food stamp case numbers or SSI or Medicaid assistance identification numbers in lieu of family-size and income information and social security numbers.

(9) Each adult day care center shall maintain daily records of the number of

meals by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

(10) Each adult day care center shall maintain records on the age of each enrolled person. In addition, each adult day care center shall maintain records which demonstrate that each enrolled person under the age of 60 meets the functional impairment eligibility requirements established under the definition of "functionally impaired adult" contained in this Part.

17. In § 226.20:

a. Paragraph (c) is revised.
 b. Paragraph (h) is amended by removing the words "participating children" and adding the word "participants" in its place.

c. Paragraph (j) is amended by removing the words "child" and

"children" each time the words appear and adding the words "participant" and "participants" respectively in their place.

d. A new paragraph (p) is added. The revision and addition specified above read as follows:

§ 226.20 Requirements for meals.

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

Breakfast

(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 ¹	Adult participants ⁶
Milk				
Milk, fluid.....	½ cup ²	¾ cup.....	1 cup.....	1 cup. ⁷
Vegetables and Fruits				
Vegetable(s) and/or Fruit(s).....	¼ cup.....	½ cup.....	½ cup.....	½ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup.....	½ cup.....	½ cup.....	½ cup.
Bread and Bread Alternates³				
Bread.....	½ slice.....	½ slice.....	1 slice.....	1 slice.
or				
Combread, biscuits, rolls, muffins, etc. ⁴	½ serving.....	½ serving.....	1 serving.....	1 serving.
or				
Cold dry cereal ⁵	¼ cup or ½ oz.....	½ cup or ½ oz.....	¾ cup or 1 oz.....	¾ cup or 1 oz.
or				
Cooked cereal.....	¼ cup.....	¼ cup.....	½ cup.....	½ cup.
or				
Cooked pasta or noodle products.....	¼ cup.....	¼ cup.....	½ cup.....	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/ bread alternate.	¼ cup.....	¼ cup.....	½ cup.....	½ cup.

¹ Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

² For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

³ Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.

⁴ Serving sizes and equivalents to be published in guidance materials by FNS.

⁵ Either volume (cup) or weight (oz.) whichever is less.

⁶ Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

⁷ For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or

supper as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 ¹	Adult participants ⁶
Milk				
Milk, fluid.....	½ cup ²	¾ cup.....	1 cup.....	1 cup. ¹⁰
Vegetables and Fruits³				
Vegetable(s) and/or fruit(s).....	¼ cup total.....	¼ cup total.....	¼ cup total.....	¼ cup total.
Bread and Bread Alternates⁴				
Bread.....	½ slice.....	½ slice.....	1 slice.....	1 slice.

Food components	Age 1 up to 3	Age 3 up to 6	Age 5 up to 12 ¹	Adult participants ²
or Cornbread, biscuits, rolls, muffins, etc. ³	1/2 serving	1/2 serving	1 serving	1 serving
or Cooked pasta or noodle products	1/2 cup	1/2 cup	1/2 cup	1/2 cup
or Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. Meat and Meat Alternates	1/4 cup	1/4 cup	1/2 cup	1/2 cup
Lean meat or poultry or fish ⁴	1 oz.	1 1/2 oz.	2 oz.	2 oz.
or Cheese	1 oz.	1 1/2 oz.	2 oz.	2 oz.
or Eggs	1 egg	1 egg	1 egg	1 egg
or Cooked dry beans or peas	1/2 cup	3/4 cup	1/2 cup	1/2 cup
or Peanut butter or soybean butter or other nut or seed butters.	2 tbsp.	3 tbsp.	4 tbsp.	4 tbsp.
or Peanuts or soybeans or tree nuts or seeds. ⁵	1/2 oz. ⁶ = 50%	3/4 oz. ⁶ = 50%	1 oz. ⁶ = 50%	1 oz. ⁶ = 50%
or An equivalent quantity of any combination of the above meat/meat alternates.				

¹ Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

² For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

³ Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

⁴ Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour.

⁵ Serving sizes equivalents to be published in guidance materials by FNS.

⁶ Edible portion as served.

⁷ Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

⁸ No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.

⁹ Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

¹⁰ For adult participants, 8 ounces of yogurt, 1 1/2 ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Supplemental Food

(3) The minimum amounts of food components to be served as

supplemental food as set forth in paragraph (a)(3) of this section are as follows. Select two of the following four

components. (Juice may not be served when milk is served as the only other component.)

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 ¹	Adult participate ²
Milk				
Milk, fluid	1/2 cup ³	1/2 cup	1 cup	1 cup ⁴
Vegetables and Fruits				
Vegetable(s) and/or fruit(s)	1/2 cup	1/2 cup	3/4 cup	3/4 cup
or Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice. Bread and Bread Alternates ³	1/2 cup	1/2 cup	3/4 cup	3/4 cup
Bread	1/2 slice	1/2 slice	1 slice	1 slice
or Cornbread, biscuits, rolls, muffins, etc. ⁴	1/2 serving	1/2 serving	1 serving	1 serving
or Cold dry cereal ⁵	1/4 cup or 1/2 oz.	1/2 cup or 1/2 oz.	3/4 cup or 1 oz.	3/4 cup or 1 oz.
or Cooked cereal	1/4 cup	1/4 cup	1/2 cup	1/2 cup
or Cooked pasta or noodle products	1/4 cup	1/4 cup	1/2 cup	1/2 cup
or Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate. Meat and Meat Alternates	1/4 cup	1/4 cup	1/2 cup	1/2 cup
Lean meat or poultry or fish ⁶	1/2 oz.	1/2 oz.	1 oz.	1 oz.
or Cheese	1/2 oz.	1/2 oz.	1 oz.	1 oz.
or Eggs	1/2 egg	1/2 egg	1 egg	1 egg
or Cooked dry beans or peas	1/4 cup	1/4 cup	1/2 cup	1/2 cup

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 ¹	Adult participate ⁴
or Peanut butter or soynut butter or other nut or seed butters.	1 tbsp.....	1 tbsp.....	2 tbsp.....	2 tbsp.
or Peanuts or soynuts or tree nuts or seeds. ²	½ oz.....	½ oz.....	1 oz.....	1 oz.
or An equivalent quantity of any combina- tion of the meat/meat alternates.				

¹ Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

² For purposes of the requirements outlined in this paragraph, a cup means a standard measuring cup.

³ Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornmeal, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.

⁴ Serving size and equivalents to be published in guidance materials by FNS.

⁵ Either volume (cup) or weight (oz.), whichever is less.

⁶ Edible portion as served.

⁷ Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

⁸ Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

⁹ For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

(p) *Adult participant meal provisions.* When persons enrolled in adult day care centers participate in the Program, the total amount of food authorized in the meal patterns for age six to twelve as set forth in § 226.20(c) shall be provided, at a minimum, in order to qualify for reimbursement.

§ 226.21 [Amended]

18. In § 226.21:

a. Paragraph (a)(5) is amended by removing the word "children" and adding the word "participants" in its place.

b. Paragraph (b) is amended by removing the reference "§ 226.6(b)" where it appears and adding the reference "§ 226.6(i)" in its place.

19. In § 226.23, the first sentence of paragraph (a) is amended by adding the words "and adult day care" following the words "child care".

20. In § 226.23 paragraph (b) is amended by removing the word "children" the second time it appears and adding the word "participants" in its place.

21. In § 226.23 paragraph (c) is amended as follows:

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

b. Paragraph (c)(3) is amended by removing the word "children" where it appears and adding the word "participants" in its place.

c. Paragraph (c)(5) is amended by removing the word "child" and adding the word "person" in its place.

The revisions specified above read as follows:

§ 226.23 Free and reduced-price meals.

(c) * * *

(2) A description of the method or methods to be used in accepting

applications from families for free and reduced-price meals. Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households or, for adult participants, who are members of a food stamp household or SSI or Medicaid participants;

22. In § 226.23, the fourth and fifth sentences of paragraph (d) are revised and three new sentences are added to read as follows:

(d) * * * The release issued by child care institutions which charge separately for meals shall announce the availability of free and reduced-price meals to children meeting the approved eligibility criteria. The release issued by child care institutions shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits. The release issued by adult day care centers which charge separately for meals shall announce the availability of free and reduced-price meals to participants meeting the approved eligibility criteria. The release issued by adult day care centers shall also announce that adult participants who are members of food stamp households or who are SSI or Medicaid participants are automatically eligible to receive free meal benefits. All releases shall state that meals are available to all participants without regard to race, color, national origin, sex, age or handicap.

§ 226.23 [Amended]

23. In § 226.23 paragraph (e) is amended as follows:

a. Paragraphs (e)(1)(i) and (e)(1)(iii) are revised. The paragraph heading for paragraph (e)(i) is republished for the convenience of the reader.

b. Paragraph (e)(1)(iii) is redesignated as paragraph (e)(1)(iv) and a new paragraph (e)(1)(iii) is added.

c. A new paragraph (e)(1)(v) is added.

d. In paragraph (e)(2) the paragraph heading and introductory paragraph are revised and paragraphs (e)(2)(ii), (e)(2)(v), (e)(2)(vi), and (e)(2)(vii) are revised.

e. Paragraph (e)(2)(iv) is amended by removing the word "child" the second time it appears and adding the word "person" in its place.

f. Paragraph (e)(3) is amended by removing the word "parents" and adding the word "household" in its place.

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

h. In paragraph (e)(5) the second sentence is amended by removing the words "parent or guardian" and adding the word "household" in its place.

The revisions specified above read as follows:

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced-price meals, institutions other than sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to day care home providers who wish to enroll their eligible children in the Program. The application, and any

other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to the completion of the application as described in § 226.23(e)(1)(ii) of this part; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) Except as provided in paragraph (e)(1)(iv) of this section, the application for children shall contain a request for the following information:

(A) The names of all children for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources);

(E) A statement to the effect that "In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us."

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to

provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(G) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) Except as provided in paragraph (e)(1)(v) of this section, the application for adults shall contain a request for the following information:

(A) The names of all adults for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income

received or withdrawn from any other source, including savings, investments, trust accounts and other resources);

(E) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp case number or SSI or Medicaid assistance identification number for the adult for whom benefits are sought, you must provide the social security numbers of all adult members of your household in order for the adult for whom benefits are sought to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program review, audits and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps, contacting the issuing office of SSI or Medicaid benefits to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to provide the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(F) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution

under applicable State and Federal criminal statutes.

(v) If they so desire, households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(iii) of this section. Households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants shall be required to provide:

(A) The names and food stamp case numbers or SSI or Medicaid assistance identification numbers of the adults for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided in § 226.23(e)(1)(iii)(F).

In accordance with § 226.23(e)(1)(iii)(G), if a food stamp case number or SSI or Medicaid assistance identification number is provided it may be used to verify the current food stamp or SSI or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamps or SSI or Medicaid benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(iii).

(2) *Letter to households.* Institutions shall distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(i) How a participant's household may make application for free or reduced-price meals;

(v) A statement to the effect that participants having family members who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) Except in the case of adult participants, a statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that households receiving free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over \$50 per month or \$600 per year or—

(A) In the case of households of enrolled children that provide a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, SSI or Medicaid Programs.

(4) *Determination of eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the participants from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determinations. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the participants from that family as not eligible for free or reduced-price meals, and must consider the participants as eligible for "paid" meals. When information furnished by the family of participants enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price benefits. At a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g., income in excess of allowable limits or incomplete application;

(ii) Notification of the right to appeal;

(iii) Instructions on how to appeal; and

(iv) a statement reminding the household that they may reapply for free or reduced-price benefits at any time during the year.

The reasons for ineligibility shall be properly documented and retained on file at the institution.

§ 226.23 (Amended)

24. In § 226.23 paragraph (f) is amended by removing the word "children" and adding the word "participants" in its place.

25. In § 226.23 paragraph (h) is amended as follows:

a. Introductory paragraph (h) is amended by removing the reference "§ 226.6(k)" where it appears and adding the reference "§ 226.6(l)" in its place.

b. Paragraph (h)(1), the second sentence of paragraph (h)(2)(i), paragraph (h)(2)(iii), introductory paragraph (h)(2)(iv), paragraphs (h)(2)(iv)(A), (h)(2)(iv)(C) and (h)(2)(v) are revised.

c. Paragraph (h)(2)(iv)(D) is removed.

d. Paragraph (h)(4) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

The revisions specified above should read as follows:

(h) * * *

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that (i) the application has been correctly and completely executed by the household; (ii) the institution has correctly determined and classified the eligibility of enrolled participants for free or reduced-price meals based on the information included on the application submitted by the household; (iii) the institution has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced-price meal eligibility and the number of enrolled participants that do not meet the eligibility criteria for those meals; and (iv) in addition, the State agency may conduct further verification of the information provided by the household on the approved application for program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) * * *

(i) * * * However, (A) if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or (B) if a food stamp case number or SSI or Medicaid assistance identification number is provided for an

adult, verification for such adult shall include only confirmation that the adult is included in a currently certified food stamp household or is currently certified to receive SSI or Medicaid benefits.

(iii) Households shall be informed in writing that they have been selected for verification and they are required to submit the requested verification information to confirm their eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contain an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of (A) a current "Notice of Eligibility" for Food Stamp benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program. An identification card is not acceptable as verification unless it contains an expiration date; or (B) official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification card is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of information for verification may include written evidence, collateral contacts, and/or systems of records.

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification for enrolled children, or food stamp/SSI/Medicaid certification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(v) Verification by State agencies of receipt of food stamps, AFDC, SSI or Medicaid benefits shall be limited to a review to determine that the period of eligibility is current. If the benefit period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

26. In § 226.25:

a. Paragraph (c) is amended by removing the word "children" and adding the word "participants".

b. A new paragraph (g) is added. The addition specified above reads as follows:

§ 226.25 Other provisions.

(g) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this Part, the following shall apply:

(1) State agencies shall provide reimbursement for meals served by any adult day care center between October 1, 1987 and the date of the initial

Program agreement between the State agency and the center under the following conditions, provided that:

(i) The center can document that, for any meals claimed:

(A) Meals served met all requirements including items and quantities served;

(B) Free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought;

(C) Meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available;

(D) Appropriate food service revenue and expenditure records are available;

(E) Reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals; and

(ii) The initial agreement between the State agency and the center is executed no later than March 31, 1989, and the claims for reimbursement for the meals served between October 1, 1987 and the date of the initial agreement between the State agency and the center are received by the State agency no later than March 31, 1989 or the date set by § 226.10(e), whichever is later.

(2) *Alternative documentation for free meal eligibility for adult participants* shall be based on the following:

(i) Beginning with October 1, 1987, documentation of membership in a food stamp household;

(ii) For the period October 1, 1987 through September 30, 1988,

documentation of membership in an AFDC assistance unit; and

(iii) Beginning October 1, 1988, documentation of receipt of assistance under Medicaid or SSI.

(3) For the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced-price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, the family of an adult participant applying for free or reduced-price meals shall include only the adult participant and any spouse or dependent(s) residing with the adult participant.

27. In § 226.26, paragraphs (a) and (e) are revised to read as follows:

§ 226.26 Program information

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont:

Northeast Regional Office, FNS, U.S.
Department of Agriculture, 10 Causeway
Street, Room 501, Boston, MA 02222-
1065.

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(e) In the States of Colorado, Iowa,
Kansas, Missouri, Montana, Nebraska,
North Dakota, South Dakota, Utah and
Wyoming; Mountain Plains Regional
Office, FNS, U.S. Department of
Agriculture, 1244 Speer Boulevard, Suite
903, Denver, CO 80204.
• • • • •

Anna Kondratas,
Administrator, Food and Nutrition Service.

Date: December 21, 1988.

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BILLING CCDE 3410-30-M