

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Part 226

RIN 0584-AC07

#### Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments

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

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** This interim rule incorporates changes to the Child and Adult Care Food Program (CACFP) as required by the Child Nutrition and WIC Reauthorization Act of 1989, the Child Nutrition Improvement Act of 1992, and the Older Americans Act Amendments of 1992. These changes consist of making one change and one clarification to the requirements governing participation of adult day care centers in the CACFP; changing the basis for making commodities available to State agencies; clarifying the rules governing the participation of for-profit centers in the CACFP; and making two specific technical adjustments in the CACFP regulations. This interim rule also clarifies that households participating in the Food Distribution Program on Indian Reservations (FDPIR) are categorically eligible as free meal recipients under the CACFP. These changes are intended to reduce administrative burdens at the Federal, State, and local levels.

**DATES:** This rule is effective June 2, 1997. To be assured of consideration, comments must be postmarked on or before June 30, 1997.

**ADDRESSES:** Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, United States

Department of Agriculture, 3101 Park Center Drive, Room 1006, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.-5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie or Mr. Edward Morawetz at the above address or by telephone at (703) 305-2620.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will effect State agencies, certain types of institutions in the CACFP, and households participating in both the FDPIR and the CACFP, by simplifying and/or clarifying the rules governing their CACFP participation. The Administrator has determined that these effects do not constitute a significant economic impact.

##### Executive Order 12372

The Child and Adult Care Food 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 at 48 FR 29114, June 24, 1983).

##### Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its

provisions, all available administrative procedures must be exhausted. In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR Part 3015.

#### Information Collection

In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the proposed adjustments to be made to the information collections for the Child and Adult Care Food Program (CACFP) as a result of the interim rule, Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments.

To be assured of consideration, comments must be received by June 30, 1997.

Comments concerning the information collection aspects of this interim rule should be sent to Mr. Robert Eadie at the address listed in the **ADDRESS** section of this preamble. Commenters are asked to separate their information collection requirements from their comments on the remainder of the interim rule.

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

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

*OMB Number:* 0584-0055.

*Expiration Date:* April 30, 1997.

*Type of request:* Revision of existing collection.

*Abstract:* The interim rule, Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments, incorporates changes as required by the Child Nutrition and WIC Reauthorization Act of 1989, the Child Nutrition Improvement Act of 1992, and the Older Americans Act Amendments of 1992.

*Collection of Information:* Commodity Assistance.

Section 226.5 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of this section to OMB for its review.

*Donation of Commodities:* (Child Care Program).

The formula for making entitlement commodity determinations is changing from "current year" to "preceding year" data. The Department will, at the end of each school year, compare the number of lunches and suppers actually served in the State during that school year to the number served in the preceding year and adjust the State's commodity entitlement accordingly for the subsequent school year.

The information collected includes the number of institutions participating in CACFP that request commodities. The Department uses this information to do advance planning in order to provide for the timely purchase and distribution of commodities. Preference for commodities and a list of recipients are each collected once each year from each State agency. Annual reporting burden for this collection of information is estimated to average 5 hours for each response for 53 State agencies. Thus, the total annual reporting burden for this collection is 265 hours, and remains unchanged by this interim regulation.

*Collection of Information:* Title XX Reimbursement Claims.

Sections 226.6, 226.10, 226.11, and 226.15 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of these sections to OMB for its review.

*State Agency Administrative Responsibilities:* (Child Care Program).

The CACFP eligibility criteria for private for-profit child care centers is

being changed to permit such centers to participate if at least 25 percent of their enrolled children, or 25 percent of their licensed capacity, whichever is less, are title XX recipients. This provision would help make centers which serve a large number of part-time title XX children eligible to participate in CACFP.

The information to be collected includes documentation from title XX centers that are currently providing services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, are title XX beneficiaries. It also includes the review, and approval or denial, of applications for participation, the processing of claims for reimbursement, and the maintenance of documentation to support the claim. This documentation is submitted by centers once each year and reviewed by the State agency. Annual recordkeeping burden for this collection of information is estimated to average 8 hours for each response for 1,742 institutions. The annual reporting burden is estimated to average 33 hours for each of the 53 State agencies, and 2.3 hours for each of 1,742 institutions. Thus, the annual recordkeeping burden for this collection is 13,936 hours for institutions, and the reporting burden is 1,749 hours for State agencies and 4,007 for institutions.

*Collection of Information:* Adult Day Care.

Section 226.19a contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of this section to OMB for its review.

*Adult Day Care Center Provisions:* (Adult Day Care Program).

This provision extends eligibility to adults attending adult day care centers, but who reside in group living arrangements. This is consistent with current program policy.

The collection of information includes documentation to support that reimbursement is claimed for meals served in centers which serve individuals that are functionally impaired or 60 years of age or older in a group, either inside their homes or in a group living arrangement. Annual recordkeeping burden for this collection of information is estimated to average 8 hours for each response for 1,025 institutions, and the annual reporting burden is estimated to average 2.3 hours for each response for 1,025 institutions. Thus, the total annual recordkeeping burden for this collection is estimated to

be 8,200 hours, and the total annual reporting burden is estimated to be 2,358.

*Collection of Information:* Technical Clarification Provision.

Sections 226.2 and 226.23 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department has submitted a copy of these sections to OMB for its review.

*Free and Reduced-price meals:* (Child Care Program).

This provision provides categorical eligibility to CACFP participants who also participate in FDPIR. Such households would not need to submit income information on their application in order to receive free and reduced price benefits. Indication that they participate in FDPIR is sufficient.

Implementation of this provision would reduce the reporting burden for free and reduced-price eligibility determination by 1,200 hours.

Total burden hours in interim rule:  
Reporting—8,379  
Recordkeeping—22,136

### **Good Cause**

This rule implements substantive and technical changes mandated by statutory amendments to Section 17 of the National School Lunch Act (42 USC 1766) which do not provide the Secretary with any discretion in their implementation. Thus, the rule is non-discretionary. For this reason, the Administrator of the Food and Consumer Service has determined that, in accordance with 5 USC 553, prior notice and comment is unnecessary and contrary to public interest. Since the rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment are not required by 5 USC 553. The rule further implements one technical clarification regarding categorical eligibility for FDPIR participants. The Administrator of the Food and Consumer Service has determined that, in accordance with 5 USC 553, prior notice and comment on this technical clarification is contrary to the public interest and that good cause exists for making this rule effective thirty days from the date of publication.

### **Background**

On November 10, 1989, the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) made several changes to Section 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1766). In addition to changing the name of the Program to the Child and Adult Care Food Program (CACFP) in Section 105(a), Pub. L. 101-147 included

provisions which: (1) simplified the free and reduced price application process; (2) established a one-third daily Recommended Dietary Allowance (RDA) nutritional requirement for lunches served in adult day care centers; (3) made additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas; (4) permitted State agencies to allow biennial applications by institutions; (5) allowed governors to designate a separate State agency to administer only the adult portion of the CACFP; (6) changed the basis for making commodities available to State agencies; and (7) made two miscellaneous technical changes. Congressional explanatory statements on Pub. L. 101-147 (*Cong. Rec. S14021*, October 24, 1989) also requested that Program regulations be amended to reduce to three visits per year the number of facility visits required of school-sponsored after-school care. This request will be addressed in a separate rulemaking at a later date.

On August 14, 1992, the Child Nutrition Improvement Act of 1992 (Pub. L. 102-342) amended Section 17(a) of the NSLA (42 U.S.C. 1766(a)). Pursuant to the amendment made in Pub. L. 102-342, any private for-profit child care center providing nonresidential day care services may participate in the CACFP if it receives compensation under title XX of the Social Security Act (42 U.S.C. 1397, et seq.) for at least 25 percent of its eligible enrolled children or 25 percent of its licensed capacity, whichever is less.

On September 15, 1992, the Older Americans Act Amendments of 1992 (Pub. L. 102-375) amended Section 17 of the NSLA (42 U.S.C. 1766). This amendment allows institutions to participate in the CACFP if they provide adult day care services to functionally impaired adults or to individuals sixty years of age or older in a group setting outside of their home or their group living arrangements, on a less than 24-hour basis.

In response to the above-referenced legislative provisions, the Department published a final rule on January 16, 1990 (55 FR 1376) that changed the Program name from the "Child Care Food Program" to the "Child and Adult Care Food Program". The Department also published a final rule on July 14, 1993 (58 FR 37847) on a meal pattern to be used in adult day care centers participating in CACFP. The adult meal pattern rule contains the requirement found in Section 105(b)(3)(A) of Pub. L. 101-147 that lunches served in adult day care centers provide approximately

one-third of the Recommended Dietary Allowances to participating individuals. Finally, the Department has issued a separate rule, regarding provisions set forth in Pub. L. 101-147 related to the content and processing of free and reduced price applications in both the CACFP and the Summer Food Service Program for Children.

This interim rule incorporates in the CACFP regulations other provisions from Pub. L. 101-147, Pub. L. 102-342, and Pub. L. 102-375 relating to the CACFP. In addition, this interim rule incorporates one clarifying provision to the CACFP regulations: categorical free meal eligibility to households participating in the FDIIR.

#### *1. Alternate State Agencies for Adult Day Care*

Section 105(b)(3)(B) of Pub. L. 101-147 amended Section 17(o)(6) (42 U.S.C. 1766(o)(6)) of the NSLA to allow the Governor of a State to designate a State agency, other than the existing CACFP State agency, to administer the adult day care component of the CACFP. This change in the statute recognizes that, in some instances, another State-level agency may be more cognizant of or capable of meeting the needs of adults in day care programs due to a long-standing relationship with the adult day care community and prior administration of other Federal programs for the elderly.

Accordingly, this interim rule amends Section 226.2 by expanding the definition of "State agency" to include a State agency other than the existing CACFP State agency, designated by the Governor, to administer the adult day care component of the CACFP.

#### *2. Commodity Assistance*

Section 6(e) of the National School Lunch Act (42 U.S.C. 1755(e)) establishes a per-meal commodity or cash-in-lieu of donated commodity assistance rate for lunches served under the National School Lunch Program. Section 17(h)(1) of the Act (42 U.S.C. 1766(h)(1)) authorizes payment of that rate to States for each lunch and supper served by institutions participating in the CACFP. Prior to the enactment of Pub. L. 101-147, the value of commodities donated to each State for any school year was, by law, calculated by multiplying the number of lunches and suppers served in CACFP institutions in that State during the current school year by the rate for commodities established for that school year. The Department must do considerable advance planning in order to provide for the timely purchase and distribution of commodities. Since it

cannot know the actual number of lunches and suppers served until well after the school year is over, it was difficult under the previous system for the Department to accurately forecast and purchase commodities for the CACFP.

Congress recognized this problem and in Section 131(b) of Pub. L. 101-147 amended Section 17(h) of the NSLA (42 U.S.C. 1766(h)) to change the method of calculating commodity assistance. The effect of this change is that for the CACFP, the value of commodity assistance for institutions participating in the CACFP will now be calculated by multiplying the number of lunches and suppers served in participating institutions during the *preceding* school year by the current-year rate for commodities. At the end of each school year, the Department must determine the actual number of lunches and suppers served during that year, compare the actual number served in that year with the number served during the preceding year, and adjust commodity entitlements upwards or downwards, as necessary. The Department will make such adjustments in the next school year.

This provision does not affect the payment of cash-in-lieu of commodities. State agencies electing to receive cash-in-lieu of commodities for the CACFP will continue to receive payments based upon the number of meals actually served during the *current* school year. Section 17(h) of the NSLA establishes entitlement for cash-in-lieu of commodities, and payment is made on an ongoing basis as part of the reimbursement claiming process.

The preamble to the FCS Final Rule "Cash in Lieu of Donated Foods and Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction" (published at 58 FR 39113 (July 22, 1993) includes an in-depth discussion of the amendment made to Section 6(e)(1) of the NSLA by Section 131(a)(1) of Pub. L. 101-147, which changed the base for calculating commodity assistance. Pub. L. 101-147 has an identical effect on the calculation of commodity assistance for both the NSLP and the CACFP. As noted in this preamble, at the Department's discretion, it may make current year adjustments for significant variations in the number of reimbursable meals served. Generally, the Department will exercise this discretion only in exceptional circumstances.

Accordingly, this interim rulemaking amends Section 226.5(b) by changing the basis for entitlement commodity determinations from "current year" to

“preceding year” data and by establishing a process under which the Department will, at the end of each school year, compare the number of lunches and suppers actually served in the State during that school year to the number served in the preceding year and adjust the State’s commodity entitlement accordingly for the subsequent school year.

### 3. Title XX Reimbursement Claims

Section 17(a) of the NSLA (42 U.S.C. 1766(a)) previously allowed the participation of a proprietary title XX child care center “if such organization receive[d] compensation under such title for at least 25 percent of the children for which the organization provides such nonresidential day care services.” Section 202 of Pub. L. 102–342 amended this provision to permit a private for-profit center to participate in CACFP if it receives title XX compensation for at least 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less.

This provision assists proprietary centers in situations where 25 percent or more of their licensed capacity is used by title XX recipients, but the actual number of title XX recipients is less than 25 percent of the total number of children enrolled. For example, a private for-profit day care center has a licensed capacity of 100 and an enrollment of 125, of which 25 are title XX children. Enrollment exceeds licensed capacity because a number of children are in part-time care, and the actual number of children in attendance at any one time never exceeds licensed capacity. The center is eligible to participate in the CACFP because 25 percent of the center’s licensed capacity (25/100) consists of title XX children. Similarly, a private for-profit center has a licensed capacity of 100 and an enrollment of 75, of which 20 are title XX children. The center is eligible to participate in the CACFP because 27 percent of the center’s enrollment (20/75) consists of title XX children. In both examples, the lesser of the two numbers—enrollment or licensed capacity—was chosen as a basis for determining CACFP eligibility.

Pub. L. 102–342 did not amend Section 17(o) of the NSLA, which permits a private for-profit adult day care center to participate in the CACFP only if at least 25 percent of its enrolled eligible participants are title XIX or XX beneficiaries.

Accordingly, this rulemaking amends Sections 226.2, 226.6, 226.10, 226.11, 226.15, 226.17, and 226.19 by changing the CACFP eligibility criteria for private for-profit child care centers to permit

such centers to participate if at least 25 percent of their enrolled children, or 25 percent of their licensed capacity, whichever is less, are title XX recipients.

### 4. Adult Day Care

Section 811(a) of Pub. L. 102–375 amended Section 17(o)(2)(A)(i) of the NSLA (42 U.S.C. 1766(o)(2)(A)(i)) to affirm that approved centers may claim reimbursement for meals served to individuals where the centers provide day care services to functionally impaired adults or individuals 60 years of age or older in a group, either outside their home or outside their group living arrangement. This includes meals served in a group living arrangement.

The purpose of adult day care, as stated by Congress in the Conference Report (H. Rept. 100–427) on the Older American Act Amendments of 1987, is to “. . . assist its participants to remain in the community, enabling families and other care givers to continue caring for an impaired individual at home.” This report evinces Congress’s intent that CACFP benefits be available to individuals who attend adult day care while remaining in the community. Accordingly, we believe it is consistent with Congressional intent to define individuals remaining in the community as those residing in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements. Group living arrangements include residential communities, which may or may not be subsidized by federal, State or local funds, but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community, but who may receive on-site monitoring. The law’s addition of group living arrangements to this section of the NSLA does not require a change in previous FCS policy; rather, it confirms that policy.

Under this policy, the Department has interpreted the term “group living arrangement” to exclude residential *institutions* because the residents of such institutions no longer remain in the community or reside with family members or other caregivers who would benefit from the respite that adult day care services provide. Examples of such excluded residential institutions would be hospitals, nursing homes, asylums for the mentally ill or for persons with mental or physical disabilities, convalescent homes, apartment complexes designed only for the functionally impaired that provide

meals and full-time care, hospices, and assisted living retirement facilities.

The Department also believes it necessary to emphasize that each adult day care center must maintain records that document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as newly defined in Section 226.2.

Accordingly, this rulemaking amends Sections 226.2 and 226.19a to make clear that adult day care centers may receive meal reimbursement under the CACFP if they provide day care services to qualified persons in a group setting, either outside their homes or their group living arrangement and must document each participant’s living arrangement.

### 5. Technical Clarification Provision

This provision clarifies that households participating in the FDPIR are “categorically eligible” to receive free meals in the CACFP. In accordance with Section 9(b)(6) of the NSLA (42 U.S.C. 1758(b)(6)), households receiving food stamps under the Food Stamp Act of 1977, as amended (7 U.S.C. 2011, *et seq.*) (FSA) are “categorically eligible” to receive free meals under the Child Nutrition Programs. The FDPIR is authorized by Section 4(b) of the FSA. Under that section, eligible households may alternatively elect to participate in the FDPIR. Because eligible households must meet similar criteria to those required for food stamp eligibility, and since the FDPIR is authorized under the FSA, households electing to participate in the FDPIR fall within the NSLA’s classification of people “categorically eligible” for free meals in the CACFP.

Accordingly, this rulemaking amends Sections 226.2 and 226.23 to make clear FDPIR participants are “categorically eligible” to receive free meals in the CACFP.

### 6. Miscellaneous Technical Amendments

For purposes of Section 17 of the NSLA, Section 310 of Pub. L. 101–147 redefined the existing term “handicapped children” to now be defined as “children with handicaps” (42 U.S.C. 1766(a)). In addition, the term “Internal Revenue Code of 1954” was redefined to reflect the latest version of the Code, which was published in 1986.

Accordingly, this rule removes the reference to “handicapped children” in the definition of a “child care center” at Section 226.2 and replaces it with “children with handicaps.” In addition, it removes the reference to “mentally or physically handicapped persons” in the definition of “children” at Section 226.2

and replaces it with "persons with mental or physical handicaps." Finally, references to the Internal Revenue Code at Sections 226.15(a), 226.17(b)(2), 226.19(b)(2), and 226.19a(b)(4) are updated.

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

Day care, Food assistance programs, Grant programs—health, infants and children, Surplus agricultural commodities.

Accordingly, the Department is amending 7 CFR Part 226 as follows:

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

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

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

2. In § 226.2:

a. Paragraph (a) of the definition of *Adult day care center* is amended by adding the words "or a group living arrangement" after "homes".

b. The definition of *Child care center* is amended by removing the words "handicapped children" and adding in their place the words "children with handicaps".

c. Paragraph (c) of the definition of *Children* is amended by removing the words "mentally or physically handicapped persons" and adding in their place the words "persons with mental or physical handicaps".

d. The definition of *Documentation* is revised.

e. A new definition of *FDPIR household* is added in alphabetical order.

f. The definition of *Free meal* is revised.

g. A new definition of *Group living arrangement* is added in alphabetical order.

h. The definition of *Proprietary Title XX center* is revised.

i. The definition of *State agency* is amended by adding a new sentence to the end of the paragraph.

j. The definition of *Verification* is amended by revising the fourth sentence.

The additions and revisions specified above read as follows:

#### § 226.2 Definitions.

\* \* \* \* \*

*Documentation* means:

(a) The completion of the following information on a free and reduced-price application:

- (1) Names of all household members;
- (2) 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);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a food stamp or FDPIR household or an AFDC assistance unit, "documentation" means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp, FDPIR or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced-price meals:

(1) The name(s), appropriate case number(s) and name of qualifying program(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(d) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, "documentation" means the completion of only the following information on a free and reduced-price application:

(1) The name(s) and appropriate food stamp or FDPIR case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section; and

(2) The signature of an adult member of the household.

\* \* \* \* \*

*FDPIR household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

\* \* \* \* \*

*Free meal* means a meal served under the Program to a participant from a family that meets the income standards for free school meals; or to a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC reciprocity; or to an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR reciprocity or is a SSI or Medicaid participant. Regardless of whether the

participant qualified for free meals by virtue of meeting one of the criteria of this definition, 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.

\* \* \* \* \*

*Group living arrangement* means residential communities which may or may not be subsidized by federal, State or local funds but which are private residences housing an individual or a group of individuals who are primarily responsible for their own care and who maintain a presence in the community but who may receive on-site monitoring.

\* \* \* \* \*

*Proprietary Title XX center* means any private, for profit center:

(a) Providing nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act, and in which title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for Program participation; or,

(b) Providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

\* \* \* \* \*

*State agency* \* \* \* This also may include a State agency other than the existing CACFP State Agency, when such agency is designated by the Governor of the State to administer only the adult day care component of the CACFP.

\* \* \* \* \*

*Verification* \* \* \* However, if a food stamp, FDPIR 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 or FDPIR household or AFDC assistance unit; or, for an adult participant, if a food stamp or FDPIR 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 or FDPIR household or is a current SSI or Medicaid participant.

\* \* \* \* \*

3. In § 226.5, paragraph (b) is revised to read as follows:

**§ 226.5 Donation of commodities.**

(b) The value of such commodities donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of reimbursable lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities established under section 6(e) of the Act for the current school year. Adjustments shall be made at the end of each school year to reflect the difference between the number of reimbursable lunches and suppers served during the preceding year and the number served during the current year, and subsequent commodity entitlement shall be based on the adjusted meal counts. At the discretion of FCS, current-year adjustments may be made for significant variations in the number of reimbursable meals served. Such current-year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time. CACFP State agencies electing to receive cash-in-lieu of commodities will receive payments based on the number of reimbursable meals actually served during the current school year.

4. In § 226.6:

- a. Paragraph (b)(8) is revised.
- b. Paragraph (c)(11) is revised.

The revisions specified above read as follows:

**§ 226.6 State agency administrative responsibilities.**

(8) For proprietary title XX child care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, in each such center during the most recent calendar month were title XX beneficiaries. In the case of title XIX or title XX adult day care 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 adult 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 XX child care center during a calendar month in which less than 25 percent of enrolled children or 25 percent of licensed capacity, whichever number is less, were title XX beneficiaries. In the case of an adult day care center, 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 adult participants were title XIX or title XX beneficiaries.

\* \* \* \* \*

5. In § 226.10, paragraph (c) is revised to read as follows:

**§ 226.10 Program payment procedures.**

\* \* \* \* \*

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FCS 44) required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. Independent proprietary title XX child care centers shall submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Sponsoring organizations of such child care centers shall submit the number and percentage of the enrolled children or licensed capacity, whichever is less, receiving title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for child care centers in which less than 25 percent of the enrolled children and licensed capacity were title XX beneficiaries for the month claimed. Independent proprietary title XIX or title XX adult day care centers shall submit the percentages of enrolled adult participants receiving title XIX or title XX benefits for the month claimed for months in which not less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries. Sponsoring organizations of such adult day care centers shall submit the

percentage of enrolled adult participants receiving title XIX or title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not submit claims for adult day care centers in which less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries for the month claimed.

\* \* \* \* \*

6. In § 226.11, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

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

\* \* \* \* \*

(b) Each child care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children, except that such reports shall be made for a proprietary title XX center only for calendar months during which not less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. Each adult day care institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to adult participants, except that such reports shall be made for a proprietary title XIX or title XX center only for calendar months during which no less than 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

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

\* \* \* \* \*

7. In § 226.15:

a. Paragraph (a) is amended by removing "1954" and adding "1986" in its place.

b. Paragraph (b)(6) is revised.

The revision specified above reads as follows:

**§ 226.15 Institution provisions.**

\* \* \* \* \*

(b) \* \* \*

(6) For each proprietary title XX child care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled children, or 25 percent of the licensed capacity, whichever is less, during the most recent calendar month were title XX beneficiaries. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of the adult 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.

\* \* \* \* \*

**§ 226.17 Amended**

8. In § 226.17:

a. Paragraph (b)(2) is amended by removing "1954" and adding "1986" in its place.

b. The second sentence of paragraph (b)(4) is amended by adding the words ", or 25 percent of licensed capacity, whichever is less," after the word "children" the third time it appears.

**§ 226.19 Amended**

9. In § 226.19:

a. Paragraph (b)(2) is amended by removing "1954" and adding "1986" in its place.

b. The third sentence of paragraph (b)(5) is amended by adding the words "or 25 percent of licensed capacity, whichever is less," after "children" the third time it appears.

10. In § 226.19a:

a. The first sentence of paragraph (b)(3) is amended by adding the words "or a group living arrangement" after "home".

b. The first sentence of paragraph (b)(4) is amended by removing "1954" and adding "1986" in its place.

c. Paragraph (b)(10) is amended by adding a new sentence to the end of the paragraph.

The addition specified above reads as follows:

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

\* \* \* \* \*

(b) \* \* \*

(10) \* \* \* Finally, each adult day care center shall maintain records which document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as defined in § 226.2.

11. In § 226.23:

a. The second sentence of paragraph (c)(2) is amended by adding the words "or FDPIR" after the words "food stamp" each time they appear.

b. The fifth and seventh sentences of paragraph (d) are amended by adding the words "or FDPIR" after the words "food stamp" each time they appear.

c. The sixth sentence of paragraph (e)(1)(i) is amended by adding the words "or FDPIR" after the words "food stamp" each time they appear.

d. Paragraph (e)(1)(ii)(F) is amended by adding to the first sentence "FDPIR" after the words "food stamp" and by revising the seventh sentence.

e. Paragraph (e)(1)(iii)(E) is amended by adding to the first sentence the words "or FDPIR" after the words "food stamp" and by revising the seventh sentence.

f. Paragraph (e)(1)(iv) is revised.

g. The introductory text of paragraph (e)(1)(v) and paragraph (e)(1)(v)(A) are amended by adding the words "or FDPIR" after the words "food stamp" each time they appear.

h. Paragraph (e)(1)(v)(B) is revised and the undesignated text following the paragraph is removed.

i. Paragraphs (e)(2)(vii)(A) and (e)(2)(vii)(B) are revised.

j. Paragraph (h)(2)(i) is amended by revising the second sentence.

k. Paragraph (h)(2)(iii)(A) is revised.

l. Paragraph (h)(2)(iii)(D) is amended by adding the words "FDPIR," between the words "or" and "AFDC".

m. Paragraph (h)(2)(iv) is revised.

n. Paragraph (h)(2)(v)(A) is revised.

o. Paragraph (h)(2)(v)(C) is amended by revising the second sentence.

p. Paragraph (h)(2)(vi) is amended by adding the word "FDPIR," between the words "stamps," and "AFDC".

The revisions specified above read as follows:

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

\* \* \* \* \*

(e)(1) \* \* \*

(ii) \* \* \*

(F) \* \* \* 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, Indian tribal organization or welfare office to determine current certification for receipt of food stamps, FDPIR 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. \* \* \*

\* \* \* \* \*

(iii) \* \* \*

(E) \* \* \* 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, Indian tribal organization or welfare office to determine current certification for receipt of food stamps or FDPIR benefits, 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. \* \* \*

\* \* \* \* \*

(iv) If they so desire, households applying on behalf of children who are members of food stamp or FDPIR households or AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp or FDPIR households, AFDC assistance units, or, for children enrolled in tier II day care homes, other qualifying Federal or State program, shall be required to provide:

(A) The names and food stamp, FDPIR, AFDC, or for tier II homes, other case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is



provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, FDPIR, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

(v) \* \* \*

(B) The signature of an adult member of the household as provided in paragraph (e)(1)(iii)(F) of this section. In accordance with paragraph (e)(1)(iii)(G) of this section, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, it may be used to verify the current food stamp, FDPIR, 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 stamp, FDPIR, SSI, or Medicaid benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(iii) of this section.

(2) \* \* \*

(vii) \* \* \*

(A) In the case of households of enrolled children that provide a food stamp, FDPIR 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, FDPIR or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp or FDPIR 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, FDPIR, SSI or Medicaid Programs.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(i) \* \* \* However,

(A) If a food stamp, FDPIR 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 or FDPIR household or AFDC assistance unit; or

(B) If a food stamp or FDPIR 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 or FDPIR household or is currently certified to receive SSI or Medicaid benefits.

\* \* \* \* \*

(iii) \* \* \*

(A) Section 9 of the National School Lunch Act requires that, unless households provide the child's food stamp, FDPIR or AFDC case number, or the adult participant's food stamp or FDPIR case number or SSI or Medicaid assistance identification number, those selected for verification must provide the social security number of each adult household member;

\* \* \* \* \*

(iv) Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp, FDPIR, 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, FDPIR, or AFDC Program benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp, FDPIR, or AFDC Programs. An identification card for any of these programs is not acceptable as verification unless it contains 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 FDPIR 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 or FDPIR benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program or FDPIR. 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.

(v) \* \* \*

(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, FDPIR or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

\* \* \* \* \*

(C) \* \* \* Information concerning income, family size, or food stamp/FDPIR/AFDC certification for enrolled children, or food stamp/FDPIR/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 Program meal benefits. \* \* \*

\* \* \* \* \*

Dated: April 10, 1997.

**Mary Ann Keeffe,**

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-19]

RIN 0579-AA83

#### Karnal Bunt Regulated Areas

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Karnal bunt regulations to modify the criteria for classifying regulated areas by including in those criteria a requirement that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area. We are also modifying the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed. We are taking this action because tests currently available for use in identifying spores do not allow us to differentiate between small numbers of Karnal bunt spores and the spores of an as yet unnamed, but widely distributed, ryegrass smut. This action will have the effect of removing some areas in