

Attachment 3

SUBJECT: Implementing Changes to the Child and Adult Care Food Program (CACFP) in Interim Rule entitled, “Child and Adult Care Food Program: Improving Management and Program Integrity”

TO: All Sponsoring Organizations in your State

On September 1, 2004, FNS published an interim rule entitled, “Child and Adult Care Food Program: Improving Management and Program Integrity” (69 FR 53501). This rule puts into effect regulatory provisions that FNS had proposed on September 12, 2000 (65 FR 55101), as modified in response to 548 public comments received on that proposal.

Although FNS is soliciting public comment on this interim rule, its provisions will be codified in the Code of Federal Regulations and will have the force of law, effective October 1, 2004. FNS issued this as an interim rule, and allowed a lengthy period for public comments, to permit State agencies and institutions to comment on the rule after they have actually implemented all of its provisions.

This memorandum is intended to provide sponsoring organizations with information for their use in implementing the provisions of this interim rule. In addition to discussing each regulatory change in the rule that affects sponsoring organizations, this memorandum will also:

- Provide an “index” of the rule (the Federal Register page numbers of the preamble discussion relating to each provision, as well as the specific regulatory citation(s) for each provision) to help you quickly locate discussions of a specific regulatory change;
- Address implementation timeframes; and
- Discuss the areas where this second interim rule interacts with the provisions of the first interim rule published on June 27, 2002 (67 FR 43447), which implemented statutory provisions mandated by the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000 (Public Laws 106-224 and 106-472, respectively).

Although FNS will provide a more in-depth discussion of most of these regulatory changes in National training to be provided in the spring of 2005, SAs and institutions are expected to implement most of these provisions (the exceptions are clearly noted in the attached guidance) by October 1, 2004.

Please contact _____ of my staff with any questions concerning this guidance.

[Title]
[Organization]

Attachments

Implementation Guidance for Sponsoring Organizations of Family Day Care Homes and Centers: 2nd Interim CACFP Management Improvement Rule

Introduction

On September 1, 2004, the Food and Nutrition Service (FNS) published an interim rule entitled, “Child and Adult Care Food Program: Improving Management and Program Integrity” (69 FR 53501). This rule put into effect discretionary provisions (i.e., provisions that were not statutorily mandated) that FNS had proposed on September 12, 2000 (65 FR 55101), as modified in response to the 548 public comments we received on that proposal. Although FNS is soliciting public comment on this interim rule, and is allowing a lengthy period for public comment, the rule’s provisions will be codified in the Code of Federal Regulations and will have the force of law, effective October 1, 2004. Thus, although FNS is soliciting public comments, compliance with the interim rule’s provisions is required, in accordance with the implementation dates discussed in this guidance.

This guidance is intended to provide sponsoring organizations with information for their use in implementing the provisions of this second interim management improvement rule. In addition to discussing each change in the rule, the guidance will:

- Provide an “index” of the rule, to help you more quickly locate discussions of specific provisions;
- Address implementation timeframes; and
- Discuss interactions between the provisions of the first interim rule published on June 27, 2002 (67 FR 43447) and this second interim rule.

Part I: State agency (SA) Review of Institutions’ [Independent Center and Sponsoring Organization] Program Applications (preamble, pp. 53504-53512; regulatory language: §§ 226.6(b) and 226.6(f) [pp. 53536-53541], 226.15(b) and 226.16(b) [pp. 53544-53545], and 226.23(a) [p. 53547]).

The first interim rule, published on June 27, 2002, implemented a number of new statutorily-mandated eligibility requirements that could most efficiently be captured during the initial and renewal application process. These changes added new requirements to the application process for SAs and applicant institutions.

However, this interim rule offers SAs the opportunity to streamline the institution application process by providing greater flexibility in how SAs manage the renewal

application process. Specifically, this rule incorporates into the regulations the option for SAs to take renewal applications from institutions on an other-than-annual basis, provided that institutions provide the SA with some other required information on a more frequent basis.

*What has the **State of (Name)** decided with regard to taking less-frequent-than-annual reapplications?*

Possible responses:

- A. As you know, this State has already implemented [less-than-annual] renewal applications. We will be issuing additional guidance to notify you of any changes to current requirements as part of your next reapplication process.**
- B. We have decided to implement [less-than-annual] renewal applications in Fiscal Year 2005. We will be issuing additional guidance to notify you of how this change will affect you as part of your next reapplication process.**
- C. We are currently studying the interim rule's provisions and, based on the results of our analysis and on future training to be provided by FNS, we will make a final determination regarding the continuation of our current reapplication process. We will notify you of our decision by [timeframe].**

[For those using Option A above]: You previously issued guidance on implementation of the three-year renewal option. What is the status of that guidance?

That guidance, which was issued on *[enter date of State transmission to institutions]*, is rescinded and is replaced by the provisions of the interim rule, this guidance, and any additional guidance we issue on this subject.

Does the interim rule permit the use of permanent agreements?

Yes. In response to public comment, the interim rule permits SAs to enter into permanent agreements with any institution participating in CACFP, while continuing to require, in accordance with section 9(i) of the National School Lunch Act (NSLA), the use of permanent agreements between SAs and school food authorities (SFAs) in instances where the SFA administers more than one child nutrition program under the auspices of that SA.

How will this affect institutions participating in CACFP in the State of (Name)?

- A. As you know, based on prior FNS guidance, we already have permanent agreements with all institutions in the State of (Name). We will notify you if, as a result of this rule, any changes are required to our current permanent agreement with your institution.**

- B. We have decided to convert all current agreements to permanent agreements as part of each institution's next reapplication process. We will provide you with further information at that time.***
- C. We are currently studying this provision in the interim rule and, based on the results of our analysis and on future training to be provided by FNS, we will make a final determination regarding the use of permanent agreements in the State of (Name). We will notify you of our decision by [timeframe].***

What is the purpose of reapplication if the sponsor has a "permanent agreement"?

The "permanent" agreement does not guarantee a sponsor the right to participate in CACFP in perpetuity; it simply relieves the SA and sponsor from the paperwork burden of including an agreement renewal every time the sponsor reapplies to participate. Whether or not a SA elects to use the permanent agreement option, all participating institutions are still required to reapply at intervals not to exceed three years.

The reapplication process provides the SA with an opportunity to reassess the sponsor's continued financial viability, administrative capability, and internal controls, and its continued adherence to other Program requirements. In a sense, the reapplication process allows the SA to perform a "desk review" of sponsors' operations, which supplements the required "onsite" reviews that are also performed on a cycle not exceeding three years. If, as a result of its review of a renewal application or an onsite Program review, the SA determines that the sponsor is no longer operating in conformance with Program requirements and is unable to come into compliance with those requirements, the SA would then initiate the serious deficiency process in accordance with § 226.6(c), which could culminate in the termination of the permanent agreement.

If a sponsor has a permanent agreement and fails to reapply, what action must the SA take?

If a sponsor chose not to reapply and was not seriously deficient, the SA would simply terminate its permanent agreement with the sponsor, and no further action would be necessary. In essence, this would amount to a "termination for convenience" by the sponsor; it would be eligible to reapply as a new institution at any time in the future and there would be no need to offer appeal rights when the agreement was terminated.

However, if the sponsor that fails to reapply has been declared seriously deficient prior to the end of the reapplication period, the serious deficiency process would continue, in accordance with § 226.6(c)(3)(iii)(A)(6) of the regulations. If the sponsor failed to appeal its proposed termination or the SA prevailed on appeal, the SA would terminate its permanent agreement and place the sponsor on the National Disqualified List.

If a sponsor has a permanent agreement and reapplies, but is denied approval, what action must the SA take?

If a participating sponsor reapplies but its renewal application is denied, and the application denial is not due to a serious deficiency (e.g., the institution submitted an incomplete application), the SA would simply inform the sponsor of the denial, provide the sponsor with an opportunity to appeal (in accordance with § 226.6(k)(2)(i)) and, if the sponsor failed to appeal or the SA prevailed on appeal, terminate the permanent agreement.

If the denial of the sponsor's renewal application was due to one or more serious deficiencies in its application (e.g., the proposed budget demonstrated that the sponsor was not financially viable), the procedures of § 226.6(c)(2) must be followed and, if the SA prevails on appeal, the SA would terminate sponsor's agreement and place it on the National Disqualified List.

Can you summarize the minimum content requirements for initial and renewal applications submitted by different types of sponsors?

Yes. Attachment A includes charts summarizing the minimum State and Federal requirements for the content of new and renewal applications submitted by sponsoring organizations. It also includes, in the middle columns of each chart, a description of other information that sponsors are required to submit to the SA, and the frequency of such required submissions, regardless of the length of time between applications.

Part II: SA and Sponsor Review and Oversight Requirements (preamble, pp. 53512-53526)

Household Contacts (preamble, pp. 53512-53513; regulatory language : § 226.6(m)(3)(x) and 226.6(m)(5) [p. 53542], and § 226.16(d)(5) [p.53546]).

The rulemaking published on September 12, 2000, proposed very specific requirements for when and how household contacts (also referred to as “parental contacts” or “parent audits”) were to be conducted. In response to public comment that these proposed requirements were too complex and would prohibit the use of effective household contact systems that were already in place, the interim rule requires only that SAs establish household contact systems for use by sponsors in their review of facilities, and by the SA in its review of sampled facilities as part of a sponsor review.

In the interim rule, what are the minimum content requirements for household contacts?

There are no specific minimum requirements. The specific events that would trigger the required conduct of a household contact is left to each SA to determine, as are the specific procedures that sponsors or the SA would use in conducting a household contact. We believe that the household contact might be an especially effective tool when investigating instances of block claiming or a provider's repeated absence at the time of unannounced reviews.

When and how will the State of (Name) implement its household contact systems?

Possible responses:

- A. **[For States that already have household contact systems] The interim rule requires that these systems be implemented by April 1, 2005. In the coming months, we will analyze our existing household contact system requirements to ensure that they are capable of effectively verifying children's attendance. If any changes result from this review, we will inform sponsoring organizations of the changes no later than February 1, 2005, to enable them to plan accordingly for Fiscal Year (FY) 2006.**
- B. **[For States in which one or more sponsors have developed their own household contact systems] The interim rule requires that these systems be implemented by April 1, 2005. In the coming months, we will analyze sponsors' existing household contact systems to ensure that they are capable of effectively verifying children's attendance. If our review shows that changes are needed to one or more sponsor's systems, we will inform sponsoring organizations of the changes no later than February 1, 2005, to enable them to make any necessary changes by April 1, 2005.**
- C. **[For States in which no household contact systems exist] We will contact sponsoring organizations to solicit your input on the best way to meet this requirement and, no later than February 1, 2005, we will notify sponsors in (State Name) of the systems that need to be in place by April 1, 2005.**

We will, of course, work with any sponsor that needs to make amendments to its Fiscal Year 2005 budget as a result of these changes, and will respond to requested amendments as quickly as possible. Sponsor management plans will not need to be amended to reflect the conduct of household contacts until [fill in date of sponsor's next reapplication, based on the SA's implementation of the multi-year renewal application cycle].

Enrollment forms (preamble, pp.53513-53515; regulatory language: §§ 226.2, "Outside-school-hours care center" [p. 53535], 226.15(e)(2) and (e)(3) [p. 53544], 226.16(b)(1) [pp. 53544-53545], and 226.19(b) [p.53546]).

Does the interim rule modify the requirements for enrollment forms proposed on September 12, 2000?

No, with the single exception noted in the following Q and A. As proposed, the interim rule requires that enrollment forms be updated annually and signed by a parent or guardian, and that the forms indicate the "normal" days in care and meals to be received by each enrolled child.

Were there changes in the proposed requirements for enrollment forms collected by outside-school hours care centers?

The only significant change was the elimination of the requirement for enrollment forms in outside-school-hours care centers. When the at-risk snack program was added to the CACFP, Congress recognized that many outside-school-hours centers operated on a drop-in basis, just like at-risk programs, and conformed the licensing requirements in section 17(a)(5)(C) of the NSLA for at-risk programs and after outside-school-hours centers. The guidance implementing the CACFP at-risk program eliminated enrollment requirements for at-risk snack programs; given the similarity in the drop-in nature of many outside-school-hours programs, it is appropriate to further conform the at-risk and outside-school-hours requirements by eliminating enrollment requirements for outside-school-hours programs.

In this State, licensing regulations [require/do not require] licensing for outside-school-hours care centers. Therefore, this change will [describe impact in your State].

Does the interim rule require annual enrollment updates for children in sponsored and independent centers as well as homes?

Yes.

Due to liability and other concerns, State licensing staff or the center's attorneys may have dictated the content of the enrollment forms used by a child care center. How can centers comply with this requirement?

We are aware of this potential issue. The intent of the regulations is to ensure that the child's presence in the home or center, and the child's normal schedule, is annually verified by a parent or guardian, and is available to reviewers during an onsite visit. For centers in the *State of (Name)*, we believe that the easiest way to capture this information is **[on the enrollment form] or [as part of the Income Eligibility Form (IEF) that must annually be submitted by the households of children in care]**. It must be stressed, however, that using the IEF in this way will require all centers in *(State Name)* to ensure that they will capture the required information from parents who elect not to submit income information on the IEF, and whose children are therefore considered to be in the "paid" category by default. In these instances, centers must ensure that the household annually updates that portion of the IEF that lists the children in care and their schedules, even if the household does not provide income eligibility information.

When must these provisions be implemented?

The interim rule requires that new procedures for annual updates to the enrollment form (or to the IEF, as discussed above), signed by a parent or guardian and indicating the child's normal schedule, must be implemented by April 1, 2005. This means that any new IEF or enrollment form, collected on or after that date, will need to comply with the new requirements. For enrollment forms that are already collected annually, the changes must be in place the next time, on or after April 1, 2005, that the forms are collected. For all other enrollment forms, the changes must be in place by September 30, 2005.

Review Elements for Sponsor Reviews of Facilities (preamble, pp. 53516-53518; regulatory language: §§ 226.15(e)(4) and 226.16(d)(4) [pp. 53544, 53545]).

What changes are made by the interim rule?

Although the CACFP regulations have always specified the frequency of sponsor reviews, they have not specified the minimum content of those reviews. The interim rule requires that, as part of each review of a facility, the sponsor must assess the facility's compliance with the regulatory requirements pertaining to:

- The Program meal pattern;
- Licensing or approval;
- Participation in, or attendance at, sponsor training;
- Meal counts;
- Menu and meal records; and
- The new requirements pertaining to annually updated enrollment forms.

In addition, each facility review is required to:

- Assess whether the facility has corrected problems noted on previous reviews; and
- Include a five-day reconciliation of meal counts with enrollment and attendance records.

[If applicable in your State]: These, of course, are minimum requirements. In this State, the following additional review elements are also required: [list].

Were there any changes from the review elements proposed on September 12, 2000?

There are two changes to the sponsor review elements proposed on September 12, 2000.

In response to comments, FNS removed the review of health and safety from the list of required review elements in this interim rule. However, sponsors are reminded that the law and regulations (section 17(d)(5)(C) of the NSLA, as implemented in § 226.16(l)(4) of the first interim rule) nevertheless require sponsors conducting CACFP reviews in facilities to take appropriate action when they encounter conduct or conditions that pose an imminent threat to children's health or safety, or to public health or safety.

A second area that proved somewhat controversial involved the clarification that family day care homes were only required to record meal counts on a daily basis (as opposed to a time-of-service or point-of-service requirement in centers). Based on SA comment, the interim rule provides SAs with the authority to require meal counts more frequently than daily, but only if there are a total of 12 or more children enrolled in the home (i.e., in group day care homes or in homes providing shift care to 12 or more children). In

addition, SAs or sponsors may include a requirement for more frequent than daily meal counts as part of a provider's corrective action plan.

Meal Claim Edit Checks (preamble, pp. 53518-53520; regulatory language: §§ 226.10(c), 226.11(b), and 226.13(b) [pp. 53543-53544]).

The interim rule requires that, by October 1, 2005, sponsors have monthly edit checks in place to ensure that:

- The facility has been approved to serve the meal types being claimed;
- The number of meals claimed does not exceed the number derived by multiplying approved meal types times days of operation times enrollment; and
- Block claims are detected.

What is the revised definition of a “block claim” in the interim rule?

The interim rule defines a “block claim” as a claim on which the number of meals claimed by a facility for one or more meal types is identical for 15 consecutive days within a claiming period. This modifies the proposed definition, which would have required follow-up action if the claim was identical for 10 or more consecutive days within one or more claiming period. Thus, for facilities that serve meals on weekdays only, the block claim edit check would be triggered when the facility claimed the same number of meals for one meal type for three consecutive weeks within the same claiming period. For facilities that serve meals on weekdays and weekends, the block claim edit check would be triggered when the facility claimed the same number of meals for one meal type for just over two weeks within the same claiming period.

What penalty does the interim rule attach to a facility's submission of a block claim?

The interim rule does not attach a “penalty” to the submission of a block claim. For that matter, there was no “penalty” for submission of a block claim in the proposed rule either. Rather, the term “block claim” is descriptive: it describes a pattern of claiming that constitutes a “red flag” and triggers a required follow-up action by the sponsor. In the interim rule, the required follow-up action is that the sponsor must conduct an unannounced review of the facility submitting the block claim within 60 days of receiving the claim.

However, the interim rule recognizes that some sponsors (especially small and mid-size sponsors serving many small day care homes spread over a large geographic area) might find it difficult, if not impossible, to conduct all of the required unannounced reviews within a 60-day period. In such situations, the rule permits SAs, on a case-by-case basis, to grant a sponsor up to 30 additional days to conduct all of the required unannounced reviews. Please submit requests for additional time to complete unannounced reviews triggered by the block claim edit check to **[Name of responsible staff person]** as soon as

your organization identifies a need for additional time. Your request must provide as much detail as possible describing the circumstances (e.g., the current number of monitoring staff cannot conduct all of the required reviews within 60 days, given the number of homes triggering the reviews and the distances to be traveled by monitors) that make it impossible for you to meet the regulatory timeframe.

Does the interim rule provide relief from follow-up review requirements to sponsors with one or more facilities submitting legitimate block claims?

Yes. Block claims can be the result of legitimate factors, though they are among the claiming patterns most likely to indicate the submission of a false claim. However, because block claims can be innocuous, the rule prevents sponsors from having to repeatedly conduct unannounced visits to a facility that regularly submits a legitimate block claim.

The interim rule, at § 226.10(c)(3), requires that, if a sponsor detects a block claim and determines during the conduct of the required unannounced follow-up review that the facility will legitimately submit block claims on a regular basis, the sponsor must document that reason in the review file. The sponsor is not required to conduct additional unannounced follow-up reviews for additional block claims detected during that year. However, any facility that submits a block claim during the year must receive at least three reviews during the year from its sponsor (see discussion of review “averaging” by sponsors, below).

If the SA is aware that a sponsor of centers is actually preparing the claims for each of its sponsored centers (i.e., the sponsored center submits raw data to the sponsor, and the sponsor then develops the proper claim for each of its sponsored centers and submits a consolidated claim to the SA), can it exempt that sponsor from instituting a block claim edit check?

In this case, since it is the sponsor, rather than the individual sponsored center, that is aggregating the claim, and then consolidating the claim for submission to the SA, we would expect the center sponsor to have a different form of “edit check”. Nevertheless, regardless of who aggregates the raw data for the claim, it is still incumbent on the center sponsor to have a system for determining whether the sponsored center’s raw data does or does not fit the “block claim” pattern. In addition, when the SA reviews a sponsor that is aggregating raw data for its sponsored centers, we will pay particular attention to the center sponsor’s management controls to ensure that it receives accurate information from its sponsored centers, and submits valid claims to the SA.

When must sponsors have these required edit checks in place?

The rule requires sponsors to implement these edit checks no later than October 1, 2005. This will give sponsors time to modify existing automated edit check systems, or to develop new systems. Reviews conducted in FY 2006 will evaluate the edit check systems that sponsors have in place, as of October 1, 2005.

Review Elements for SA reviews of institutions (preamble, p. 53521; regulatory language: § 226.6(m) [p. 53542]).

The interim rule requires that, as part of each review of a sponsor, the SA must assess the sponsor's compliance with the regulatory requirements pertaining to:

- Recordkeeping;
- Meal counts and claims submission;
- Administrative costs;
- Facility licensing or approval;
- The new requirements pertaining to annually updated enrollment forms;
- Implementation of the serious deficiency, termination, and appeals procedures (home sponsors only);
- Training and monitoring of facilities;
- Implementation of the SA's household contact system;
- Tiering classification (home sponsors only); and
- Any applicable instructions and handbooks issued by FNS, the Department of Agriculture, or the SA, and all other Program requirements.

[If applicable in your State]: These, of course, are minimum requirements. In this State, the following additional elements are reviewed: [list].

Review Cycle for Sponsored Facilities (preamble, pp. 53521-53523; regulatory language: § 226.16(d)(4)(iii) and (d)(4)(iv) [p. 53545]).

The interim rule permits sponsors, at their discretion, to “average” their reviews of facilities. The intent of this change is to permit sponsors to focus their review efforts on facilities that are more likely to commit errors (i.e., newer facilities and facilities with a history of operational problems). Sponsors may elect to implement review averaging for the review year beginning October 1, 2004. The sponsor must inform the SA that they will utilize the “review averaging” option and, to facilitate SA review of your monitoring system, the sponsor should also describe how it plans to implement the review averaging option.

Sponsors electing this option must conduct the same total number of annual reviews (three times the number of facilities they sponsor) as before, but may arrive at that number by reviewing some facilities twice a year, and other facilities more than three times per year. However, each facility must receive two unannounced reviews per year. As previously noted, the interim rule at § 226.16(d)(4)(iv) prohibits a facility from receiving less than three reviews per year if the facility has submitted a block claim during the review year.

The interim rule also makes the standard review requirements identical for all types of sponsored facilities:

- Each participating home, sponsored child and adult care center, and sponsored outside-school-hours care center must be reviewed three times per year, unless the review averaging provision is used;
- Two of the three required reviews must be unannounced;
- One of the unannounced reviews must include the observation of a meal service;
- A new facility must be reviewed during its first four weeks of operation; and
- Not more than six months may elapse between reviews of any facility.

Can you provide an example of how averaging might work?

Averaging would work somewhat differently for each sponsor, depending on the nature of its concerns about its “problem-prone” providers. For example, in some cases, a sponsor might want to make four unannounced reviews of each problem-prone provider during the year. In other cases, it might be more appropriate to make two unannounced and two announced reviews of each problem-prone provider. When we provide training on this rule, we will present several scenarios for how averaging might “play out” in different circumstances.

Disallowing Payments to Facilities (preamble, pp. 53523-53524; regulatory language: § 226.10(f) [p. 53543]).

The second interim rule clarifies that, based on the results of audits, investigations, or reviews, SAs must deny payments to facilities that have engaged in unlawful acts with respect to the Program, including the submission of false claims based on absent or non-existent children. For example, this could occur if the SA was aware of audit results showing fraudulent claiming activity by a particular sponsored center. The SA could notify the sponsor that, based on the audit findings, it was removing that center’s meals from the sponsor’s consolidated claim, and provide the sponsor with the right to appeal the disallowance. Of course, the SA could choose instead to request that the sponsor submit an amended claim for the month.

Change to Audit Requirements (preamble, p. 53524; regulatory language: § 226.8 [p. 53543]).

The second interim rule conforms the CACFP regulations to OMB circular and Departmental audit requirements by:

- Increasing the audit threshold for organization-wide audits from \$25,000 to the dollar amount mandated by Department-wide financial management regulations;
- Prohibiting the use of Federal funds for audits not required by Federal regulations; and

- Clarifying that SAs may use audit funds to conduct agreed-upon procedures engagements (i.e., limited-scope reviews performed by auditors), as described in 7 CFR section 3052.230(b)(2).

Tier I Income Eligibility based on Food Stamp Program Participation (preamble, pp. 53524-53526; regulatory language: § 226.6(f)(1)(x) [p. 53541]). [Sponsors of family day care homes only only]:

The interim rule requires sponsors to provide to the SA a list of family day care homes claiming eligibility for tier I reimbursement on the basis of the provider’s participation in the Food Stamp Program (FSP). The SA, in turn, is required to pass this list to the SA responsible for administering the FSP. Thus, the list must include:

- Providers living outside Tier I eligible areas, who claim eligibility for Tier I reimbursement for all children in care based on their food stamp eligibility; and
- Providers in eligible areas who have established their child’s eligibility for Tier I reimbursement based on the provider household’s food stamp participation.

What action will [SA name] take if the SA administering FSP finds that a provider has not fully reported her household income, and was, therefore, ineligible to receive food stamps?

The regulations do not require a specific response, since the appropriate response will vary with the circumstances of each case. At a minimum, we will inform the provider’s sponsor and require the sponsor to take appropriate action. Such action might include changing the provider’s tiering classification if the provider lives in a non-eligible area, or changing the eligibility status of the provider’s own children if the provider lives in an eligible area.

However, in some cases, a provider’s ineligibility for food stamps would not affect her ability to receive tier I benefits, either for her own child or for all of the children in care. The FSP requires that recipient households have income at or below 130 percent of the Federal income poverty guidelines. Thus, if a provider loses food stamp eligibility, but her actual household income was still at or below 185 percent of the income poverty guidelines, the provider would still be eligible to receive tier I reimbursement for meals served to her child and to all children in care, based on the provider’s submission of a completed and verified IEF.

Since the recent reauthorization (Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004) includes provisions that could affect implementation of this provision, we will issue further guidance on proper implementation in the near future.

Must the sponsor declare the provider “seriously deficient” in cases where the provider loses her food stamp eligibility?

Not necessarily. The appropriate response will depend on whether the provider lost food stamp eligibility as a result of having knowingly submitted false information about the income received from child care (i.e., the provider had submitted false information on her CACFP or food stamp application, which would meet the “serious deficiency” criteria set forth at §§ 226.16(l)(2)(i) or (l)(2)(vii) or (l)(2)(viii)).

Part III: Training and other Operational Requirements (preamble, pp. 53526-53530):

Training of facilities (preamble, pp. 53526-53528; regulatory language: §§ 226.6(m)(3)(viii) [p. 53542], 226.15(e)(12) and (e)(14) [p. 53544], 226.16(d)(2), (d)(3), and (d)(4)(i)(C) [p. 53545], 226.18(b)(2) [p. 53546]; 226.19(b)(7) [p. 53546], and 226.19a(b)(11)[p. 53547]).

The interim rule requires mandatory training for key staff of all facilities, both before Program participation and annually thereafter. Like the proposed rule, the interim rule does not require a minimum number of annual training hours. The interim rule does correct an error in the proposal by clarifying that the SA, not the sponsor, always defines the “key staff” of a facility who must attend training.

Can a sponsor still conduct training in a provider’s home, as opposed to conducting group training for providers outside of the home?

Yes. The interim rule does not limit a sponsor’s use of in-home training, distance learning, or other innovative training techniques, provided that the training is properly documented and that [SA name] is satisfied that this training will accomplish the regulatory requirements for training content and frequency.

Does the requirement apply to all types of sponsored facilities, including at-risk sites, adult child care centers, and all types of child care centers?

Yes.

Does the requirement that certain content be included in the annual training mean that facility staff will be required to be trained on the same information every year?

No. Repetition of some information may be necessary to ensure continued Program compliance, but the rule does not require that experienced and inexperienced providers or facility staff receive the same training year after year.

Times of meal service (preamble, pp. 53528-53529; regulatory language: § 226.20(k) [p. 53547]).

The interim rule provides SAs with regulatory authority to specify the length of meal services and the time that elapses between meal services. This authority was added to help SAs discourage a form of abuse, in which claims are submitted for multiple meals for children who are only in care for a short period of time. The rule also removed the specified times of meal service for outside-school-hours care centers, meaning that the SA has the option to establish policy for these centers as well.

- A. In the State of (Name), we have decided not to implement any restrictions on times of meal services at present. We will notify affected institutions if we decide to implement such policies in the future.**
- B. In the State of (Name), we have decided to implement the following limitations to times of meal services for the following types of facilities:**
- C. In the State of [Name], we are modifying our existing policy as follows:**

Reimbursement to new centers (preamble, p. 53529; regulatory language: § 226.11(a) [p. 53543]).

The interim rule clarifies that SAs have two options for reimbursing meals to new centers: they may reimburse a new center for documented meals served in the month prior to month of the SA's agreement with the center, or they may choose to reimburse a new center only for meals served on or after the date of the agreement. The interim rule clarifies that, regardless of the option chosen, the SA must have a uniform Statewide policy on this subject.

- A. In the State of (Name), we have always had the policy of reimbursing new centers (fill in policy).**
- B. In the State of (Name), we have decided to implement the following policy with respect to the reimbursement of all new centers:**

Regulations and guidance (preamble, pp. 53529-53530; regulatory language: §§ 226.6(m)(3)(iv) [p. 53542] and 226.15(m) [p. 53544]).

The interim rule clarifies that guidance issued by FNS is binding, and must be implemented by SAs and sponsors. The Administrative Procedures Act recognizes Federal agencies' authority to issue interpretive guidance on implementation of regulations.

Sponsor disbursement of food service payments (preamble, p. 53530; regulatory language: § 226.18(b)(7) [p. 53546]).

The interim rule clarifies that sponsors are not permitted to deduct money from providers' food service reimbursements, unless they have purchased food for the provider and have the provider's written consent to deduct payments for food. Based on public comment, the interim rule also underscores the fact that this language in no way limits a

sponsor's ability to deny payment of invalid claims submitted by providers. It must also be noted that this language does not limit a sponsor's ability to withhold provider reimbursement due to a State or Federal tax offset or as a result of a court-ordered garnishment of wages.

Part IV: Miscellaneous non-discretionary changes from earlier laws (preamble, pp. 53530-53533):

This is a miscellaneous group of statutorily-mandated provisions that are addressed in this interim rule.

Advances to institutions (preamble, pp. 53530-53531; regulatory language: § 226.10(a) [p. 53543]).

The interim rule includes the provision that SAs may choose to issue advances to institutions at their discretion. This implements section 17(f)(4) of the NSLA, as amended by section 708(f)(2) of Public Law 104-193, the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA). This non-discretionary provision was previously implemented in guidance issued on [enter date of SA issuance]. **The State of (Name) [has not/has] elected to use this authority [as follows/as stated in guidance issued to institutions on [date]].**

Elimination of AFDC, replacement with references to TANF (preamble, p. 53531; regulatory language: §§ 226.2 [p. 53535] and 226.23 [p. 53547]).

This change incorporates into the CACFP regulations PRWORA's elimination of the Aid for Families with Dependent Children (AFDC) Program and its replacement of AFDC with the Temporary Assistance for Needy Families (TANF) Program.

SA Outreach requirements (preamble, pp. 53531-53532; regulatory language: § 226.6(a) [p. 53536] and 226.6(g) [p. 53541]).

The interim rule clarifies that, although section 708(a) of PRWORA eliminated some specific statutory requirements relating to SA outreach activities, the broader requirement for SAs to conduct outreach, especially in low-income and rural areas, still remains.

Prohibition on incentive bonuses for FDCH recruitment (preamble, p. 53532; regulatory language: § 226.15(g) [p. 53544]).

The interim rule incorporates the provision of section 17(a)(6)(D) of the NSLA, as amended by section 708(b) of PRWORA. This non-discretionary provision prohibits family day care home sponsoring organizations from basing payment to their employees on the number of homes recruited by the employee. This provision was previously implemented in guidance issued on [enter date of SA issuance].

Pre-approval visits to private (child care) institutions (preamble, pp. 53532-53533; regulatory language: § 226.6(b)(1), introductory paragraph) [p. 53536].

The interim rule implements section 17(d)(1)(B) of the NSLA, as amended by section 107(c) of Public Law 105-336, which requires SAs to visit new private child care institutions (including for-profit and non-profit institutions, but not including public institutions or any type of adult day care institution). This requirement was implemented in guidance issued on *[enter dates of SA issuance]*.

Provision of WIC information to child care facilities and independent centers (preamble, p. 53533; regulatory language: §§ 226.6(r) [p. 53542] and 226.15(n) [p. 53544]).

The interim rule implements section 17(s) of the NSLA, which requires SAs to make available information on the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to all participating institutions (except independent outside-school-hours centers), and for institutions to ensure that participating households receive the information. The required information on the WIC Program was provided by FNS to SAs on *[enter date of SA issuance]*.

Audit funding reduction (preamble, p. 53533; regulatory language: § 226.4(h) [p. 53536]).

The interim rule implements section 17(i) of the NSLA, as amended by section 107(e) of Public Law 105-336. This change reduced State audit funds, from 2 percent of Program funds used by the State in the second preceding year, to 1.5 percent of such funds through FY 2004, and to 1 percent of such funds in FY 2005 through 2007.

Elimination of fourth meal in centers (preamble, p. 53533; regulatory language: §§ 226.15(e)(5) [p. 53544], 226.17(b)(3) [p. 53546], and 226.19(b)(5) [p. 53546]).

Section 708(d) of PRWORA amended section 17(f)(2)(B) of the NSLA by eliminating centers' ability to claim reimbursement for four meals per child per day. The change was implemented in guidance issued on *[enter date of SA issuance]*.

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